CALIFORNIA STATE BAR COURT REPORTER

DIGEST

California State Bar Court Reporter
State Bar Court of California
180 Howard Street, 6th Floor
San Francisco, CA 94105-1639

DISCIPLINARY RULES COMPARISON CHART

Current CA Rule (eff. May 27, 1989	Fonner CA Rule (1975- May26, 1989)	ABA Model Rules	ABA Model Code - Disciplinary Rules	Subject Matter •
1-100	1-100	8.5	-	Purpose, definitions and scope
1-110	9-101	-	-	Compliance with reproval conditions
1-120	-	8.4(a)	DR I-I02(A)(I), (2)	Assisting or inducing violation or rules
1-200	1-101	8.1	DR 1-101	False statement regarding admission to bar
1-300	3-101	*5.5*	DR 3-101	Aiding or committing unauthorized practice
1-310	3-103	5.4(b)	DR 3-103; 5-I07(C)	Partnership with non-lawyer
1-320	3-102	5.4(a)	DR3-102	Fee splitting with non-lawyers
1-400	2-101	7.1 - 7.5	DR 2-IO I - 2-105	Advertising and solicitation
1-500	2-109	5.6	DR2-108	Agreement to restrict practice
1-600	2-102	[cf. 1.7(b); 1.8(f); 5.4(c)]	DR 5-107(8)	Legal service programs
2 100	7-I03	4.2	DR 7-I04{A)(I)	Communication with represented party
2-200	2-108	1.5(e)	DR2-107	Fee splitting with other lawyers
2-300	-	1.17	-	Sale of law practice
3-110	6-101	I.I; 1.3; 1.16(a)(2); 3.2	DR6-I0I; 7-I01	Duty to act competently
3-200	2-110	3.1	DR2-I09; 7-I02(A)(I), (2)	Asserting frivolous claims/defenses
3-210	7-101	1.2(d); 3.4(a), (b), (c)	DR 7-I02(A)(6), (7); 7-I06(A}	Advising violation of law

• The rules listed on each line of the table address the same general subject matter, which is identified in the right-hand column. However, the contents of the rules are not necessarily identical or even similar.

Current CA Rule (eff. May 27, 1989	Former CA Rule (1975- May 26, 1989)	ABA Model Rules	ABA Model Code - Disciplinary Rules	Subject Matter•
3-300	5-101	l.8(a), (d), G)	DR 5-103(A); 5-104	Business transactions with clients
3-310	4-101; 5-102	1.7; l.8(f), (g); l.9	DDR 5-lOl(A); 5-105; 5-106; S-107(A)	Conflicts of interst
3-320	-	l .8(i)	-	Family relationship with opposing counsel
3-400	6-102	l.8(h)	DR6-l02	Limiting liability to client
3-500	-	l.4	[cf. EC 7-8, 9-2)	Duty to communicate with client
3-510	5-105	[cf. 1.4)	-	Duty to communicate settlement offers
3-600	-	1.13	DR5-107(B)	Organizational clients
3-700	2-11 l(A)(l)- (3); 2-11 l(B), (C)	1.16	DR2-110	Duties to termination of employment
4-100	8-101	1.15	DR 9-102	Client funds and property
4-200	2-107	l.5(a) - (d)	DR2-106	Fees for legal services
4-210	5-104	l.8(e)	DR 5-103(8)	Payment of client's expenses
4-300	5-103	-	-	Foreclosures and judicial sales
4-400	-	l.8(c)	[cf. EC 5-5)	Gifts from clients
5-100	7-104	-	DR 7-105	Threatening to file charges
5-110	7-102	3.8	DR 7-103	Duty of prosecutors
5-200	7-105	3.3; 3.4; 3.5	DR 7-102; 7-106	Trial conduct
5-210	2-l l l(A)(4), (5)	3.7	DR 5-l0l(B); 5-102	Attorney as witness

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Current CA Rule (eff. May 27, 1989	Fonner CA Rule (1975- May 26, 1989)	ABA Model Rules	ABA Model Code - Disciplinary Rules	Subject Matter •
5-220	7-105(2); 7-107(A)	3.4(a)	DR 7-I02(A)(3); 7-109(A), (B)	Suppression of evidence
5-300	7-108	3.5; 8.4(d), (t)	DR 7-106(C)(6); 7-110	Contact with judges and officials
5-310	7-107(8), (C)	3.4(b), (f)	DR 7-109(8), (C)	Contact with witnesses
5-320	7-106	3.5; 4.4; 8.4(d)	DR 7-108	Contact with jurors
-	-	I.2(a) - (c), (e)	DR 7-I0I(B)(I)	Control of representation
B&P Code § 6068(e)o	-	1.6	DR 4-101	Confidentiality
B&P Code§ 6068(e)	-	1.8(b), (d)	DR 4-101(8)(3); 5-104(8)	Use of client infonnation; media rights
-	-	1.10; I.1 I(a), (b)	DR 5-105(0)	Imputed disqualification
B&P Code§ 6131	-	I.I I	DR 9-101(8); cf. DR 8-101	Government and private employment
-	-	1.12	DR 9-J0I(A)	.Fonner judge or arbitrator
-	-	1.14	[cf. EC 7-11, 7-12)	Client under a disability
-	-	2.1	[cf. EC 7-8)	Lawyer as advisor
-	-	2.2	[cf. EC 5-20)	Lawyer as intennediary
-	-	2.3	-	Lawyer as evaluator for third party
B&P Code§§ 6068(b), 6103	-	3.4(c)	DR 7-106(A); 7-106(C)(7)	Disobeying rules of a tribunal

•• The conduct of members of the California bar is regulated not only by the Rules of Professional Conduct adopted by the California Supreme Court, but also by statues enacted by the California Legislature. Relevant sections of the State Bar Act (Cal. Bus. & Prof. Code,§§ 6000 et seq.) Are cited in this table only where there is no Rule of Professional Conduct pertaining to the same subject matter.

• The rules listed on each line of the table address the same general subject matter, which is identified in the right-hand column. However, the contents of the rules are not necessarily identical or even similar.

Current CA Rule (eff. May 27, 1989	Former CA Rule (1975- May 26, 1989)	ABA Model Rules	ABA Model Code - Disciplinary Rules	Subject Matter •
-	-	3.4(d)	-	Conduct during discovery
-	-	3.6	DR 7-107	Trial publicity
-	-	3.9	DR 7-106(8)(1)	Lawyer as advocate in non-'judicial matters
B&P Code§ 6106	-	4.1	DR 7-102(A)(3) - (7)	Truthfulness to third persons
-	-	4.3	DR 7-104(A)(2)	Dealing with unrepresented party
B&P Code§ 6068(0	-	4.4	DR 7-102(AXI); 7-106(C)(2)	Rights of third persons
-	-	5.1	[cf. DR l-102(A)(2)]	Duty of partner, supervising lawyer
-	-	5.2	-	Duty of subordinate lawyer
-	-	5.3	[cf. DR 4-lOI(D)]	Non-lawyer assistants
B&P Code§§ 6106-6172	-	5.4(d)	DR 5-107(C)	Professional corporations
-	-	5.7	-	Ancillary services
B&P Code § 6068(h)	-	6.1	[cf. EC 2-25, 8-3)	Pro bono work
B&P Code§ 6068(b)	-	6.2	[cf. EC 2-29, 2-30)	Judicially appointed representation
-	-	6.3	-	Membership in legal services organization
-	-	6.4	-	Law refonn - conflicts of interest
-	-	8.2	DR 8-102; 8-103	Judicial appointments and elections
B&P Code §§ 6068(i), 6068(0), 6086.8(c)	-	8.3	DR 1-103	Reporting professional misconduct

• The rules listed on each line of the table address the same general subject matter, which is identified in the right-hand column. However, the contents of the rules are not necessarily identical or even similar.

Current CA Rule (eff. May 27, 1989	Former CA Rule (1975- May 26, 1989)	ABA Model Rules	ABA Model Code - Disciplinary Rules	Subject Matter •
B&P Code§§ 6101, 6102,6106	-	8.4(b), (c)	DR l-102(A)(3), (4)	Criminal or dishonest acts
-	-	8.4{d)- (t)	DR 1-102(A)(5), (6); 9-tot(C)	Prejudice to administration ofjustice, etc.

• The rules listed on each line of the table address the same general subject matter, which is identified in the right-hand column. However, the contents of the rules are not necessarily identical or even similar.

INTRODUCTION TO THE CALIFORNIA STATE BAR COURT REPORTER DIGEST

In order to make the most effective use of the California State Bar Court Reporter Digest ("Digest") as a research tool, it is recommended that readers review this introduction thoroughly before turning to the Digest for the first time, The Digest is supplemented (on green paper) with each update to the *California State Bar Court Reporter ("Reporter").* A cumulative update is issued annually.

I. GENERAL INTRODUCTION

A. Special Purpose of Digest

The Digest was developed for the specific purpose of facilitating research in the specialized area of California attorney disciplinary and regulatory law. Its design is tailored to that purpose, and consequently differs in several respects from the general-purpose digests commonly found in law libraries. This difference is also reflected in the existence of an "Additional Analysis" section for each opinion in the *Reporter,* following the headnotes. [1]

In the *Reporter's* digest system, as in the general-purpose digest systems with which lawyers and other legal researchers are familiar, each headnote that appears with an opinion is categorized under one or more subject matter numbers ("topic numbers") selected from a list of digest topics, and the text of the headnote is reproduced under each of those topic numbers in the Digest itself. There the similarity ends.

B. Topic Number System

Although it appears to be a single series of numbers, the list of topic numbers used in the Digest ("Digest Topics list") actually has three different types of topic numbers intermingled in it. They are:

I. Topic numbers denotingJ al issues discussed in headnotes **("headnote-indexing numbers").** Most of the material appearing under these numbers in the Digest will be headnotes, but there may be some case citations without a headnote attached, if the issue denoted by the topic number is mentioned in the cited opinion without extended discussion. (See second paragraph under heading II(B), *post.)*

2. Topic numbers intended exclusively for use under Additional Analysis rather than in connection with headnotes **("additional analysis numbers").** Under these numbers in the Digest, the reader will find a list of case citations only, without associated headnotes.

3. Topic numbers used only as topic headings to guide the reader through the structure of the Digest Topics list **("topic heading numbers").** The sole purpose of the topic heading numbers is to provide an organizational structure to the Digest. No case references of any kind appear under any topic heading number in the Digest; instead, all relevant case references are listed under one of the more specific topic numbers into which the topic heading number is subdivided.

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[1] The editorial material prefacing each opinion published in the *Reporter* includes not only a summary and headnotes, but also a section entitled "Additional Analysis." In disciplinary proceedings, the Additional Analysis section contains a complete listing of the charges of which the respondent was found culpable and not culpable, as well as a summary of the recommended discipline, if any. The Additional Analysis section also lists the Digest topic numbers of issues touched upon in the opinion without extended substantive discussion, including but not limited to aggravating and mitigating factors mentioned but not discussed in detail.

II. EXPLANATION OF TOPIC NUMBER SYSTEM

A. Headnote-Indexing Numbers Generally

Most of the numbers in the Digest Topics list are headnote-indexing numbers. These numbers generally function the same way as the topic numbers in general-purpose digests: each headnote is categorized under all relevant headnote-indexing numbers, according to its subject matter, and the text of the headnote is then reproduced in the Digest under each number under which the headnote has been categorized.

> **Example**: In *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, at page 2, the topic numbers which appear above the text of the first headnote—107, 108, 162.19, 165, and 204.90—are all headnote-indexing numbers. The text of the headnote is reproduced under each of these numbers in the Digest.

B. Headnote-Indexing Numbers Versus Additional Analysis Numbers

When a topic number is used as a headnote-indexing number, the associated headnote is reproduced under that topic number in the Digest. When a topic number is used under the Additional Analysis section associated with an opinion, the citation to that opinion, without any headnote text, appears under that topic number in the Digest. *No topic number ever appears both as a headnote-indexing number and under Additional Analysis in the same case.*

Most of the topic numbers that appear in the Additional Analysis sections of the opinions in the *Reporter* are topic numbers that are designed to be used *only* in the Additional Analysis section. (See discussion under headings II(C)(1)(b) and II(C)(3), *post*.) However, in connection with a specific opinion, a topic number that is normally a headnote-indexing number may appear under Additional Analysis rather than with a specific headnote. This signifies that the topic denoted by that topic number is addressed in the opinion, but in such a peripheral or general way that there is no headnote on the topic. In such a case, the citation to the opinion will appear in the Digest under that topic number, but without any associated headnote text. This occurs frequently in connection with opinions in which aggravating or mitigating factors were found or rejected by the court without any extended legal discussion. (See discussion under heading II(C)(2), *post*.)

C. Special Portions of the Digest Topics List

In certain portions of the Digest Topics list, which are discussed in detail in this section, the topic numbers have a special internal structure, and some or all of the topic numbers are intended for use under Additional Analysis. The exact details of this internal structure varies from section to section of the Digest Topics list. In some instances, the topic numbers are used *exclusively* under Additional Analysis. In others, they may be used *either* under Additional Analysis *or with headnotes* as headnote-indexing numbers, depending upon the particular case.

1. *Topic Numbers for Statute and Rule Violations*. The topic numbers from 210 through 490.05 deal with possible statute, rule, and common law violations with which attorneys may be charged. Each specific

violation has a main topic number (usually ending in "._0"), which is followed by separate subsidiary topic numbers for "found" (usually ending in "._1") and "not found" (usually ending in "._5").[2]

(a) *Headnote-indexing numbers.* The main ("._0") topic number listed opposite the name of each statute or rule or common-law duty is a **headnote-indexing number.** These main topic numbers are used in connection with *headnotes* summarizing a *substantive discussion* of that statute or rule or common law duty-for example, what facts constitute or do not constitute a violation thereof, or what are the elements of the offense. Thus, the headnote-indexing number for a particular statute, rule or common law duty appears only in connection with headnotes, and a case will not be listed in the Digest under this topic number unless it contains a headnoted discussion of the particular violation.

> **Example:** In *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, at page 2, the topic number 213.10 (for State Bar Act, section 6068(a)) appears above headnote number 4. This headnote summarizes a substantive legal discussion of section 6068(a). The text of the headnote is reproduced in the Digest under topic number 213.10.

(b) *Additional analysis numbers.* The "found" and "not found" topic numbers associated with each State Bar Act section and Rule of Professional Conduct are **additional analysis numbers.** For every violation charged in the notice to show cause in a case, *whether or not there is a substantive, headnoted discussion of that violation in the opinion,*[3] the numbers listed under Additional Analysis will include either a "found" (._1) or "not found" (._5) topic number (or both, if the violation is found as to one count but not found as to another). Thus, the topic numbers listed under Additional Analysis for each opinion give the reader a *complete* record regarding the violations of which the respondent was and was not found culpable in that case.

> **Example:** In *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, at page 5, the Additional Analysis section, under "Culpability-Found" lists the topic numbers 221.11, 280.01, 280.51, and 420.11. This indicates that the respondent was found culpable of violating the statutes, rules, and duties associated with those topic numbers. The citation to *Mapps,* without any headnote text, appears in the Digest under each of those topic numbers.

For each topic number listed in the Additional Analysis section associated with an opinion, the citation to that opinion, without any associated headnote text, appears in the Digest under that topic number. Thus, for each statute, rule and common law duty, the Digest lists under the appropriate "found" and "not found" topic numbers the citation of *every* opinion published in the *Reporter* in which a violation of that statute, rule or duty was found, or charged and not found. (See, e.g., the Digest entries under topic numbers 213.11 (Section 6068(a}-Found) and 213.15 (Section 6068(a}-Not Found).)

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[2] There are a few exceptional cases, in which the pattern is ".O_" for the main topic number, ".1_" for various categories of "found", and ".S_" for "not found". (See, e.g., topic numbers 420.00 et seq.)

[3] Note that where there is a substantive discussion in the opinion concerning a given alleged statute, rule, or duty violation, that discussion is summarized in one or more headnotes, and those headnotes are categorized (and reproduced in the Digest) under the main topic number for that statute, rule, or duty. The headnote is not categorized or reproduced under the. found, or not found, topic numbers.

2. *Topic Numbers for Aggravation, Mitigation, and Application of Standards.* The topic numbers under aggravation (500's and 600's), mitigation (700's), and application of standards[4] (800's and 900's) may be used *either* as headnote-indexing numbers *or* as additional analysis numbers; thus, they may either be used to categorize headnotes or be listed under Additional Analysis. However, as previously noted, they are never listed in both places for the same opinion. Thus, *the aggravating and mitigating factors and standards listed under Additional Analysis for any given opinion* ***will not necessarily constitute a complete list*** *of the factors and standards addressed in the opinion.* Aggravating and mitigating factors and standards which are discussed substantively, and therefore associated with headnotes, will *not* be found under Additional Analysis. In order to develop a list of *all* aggravating and mitigating factors addressed in a given opinion, the reader must consult *both* the topic numbers listed above the headnotes *and* the topic numbers listed under Additional Analysis.

Topic numbers for aggravating and mitigating factors and standards which are mentioned in the opinion, but for which there is no relevant headnote, are listed under Additional Analysis.

> **Example:** In *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, at page 5, the topic number 710.54 appears in the Additional Analysis section under "Mitigation-Declined to Find." Topic number 710.54 is a headnote-indexing number. However, when the court in *Mapps* declined to find this particular mitigating factor (lack of a prior disciplinary record), it did so without any extended discussion. (See *Mapps, supra,* at p. 12.) Therefore, the appropriate topic number (710.54) is listed under Additional Analysis, because there is no headnote with which it could have been associated. Correspondingly, in the Digest, under topic number 710.54, there is a citation to *Mapps,* but without any headnote text. (See Digest under topic number 710.54.)

If there is a headnote summarizing a discussion of aggravation, mitigation, or the application of the standards, the appropriate topic number(s) is found with the headnote.

> **Example:** In *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, at page 3, headnotes 10, 13, and 14 all relate to various aggravating factors discussed in the opinion. Appropriate topic numbers associated with these aggravating factors (543.10, 543.90, 545, 605, and 613.90) are used to categorize these headnotes.-These same topic numbers do *not* appear again in the Additional Analysis section *(id.* at p. 5).

3. *Topic Numbers for Discipline Imposed.* Topic numbers from 1000 through 1055 (discipline in original matters), from 1600 through 1655 (discipline in conviction matters), and from 1800 through 1850 (discipline in probation revocation matters), are additional analysis numbers, and are listed under Additional Analysis *only.* For every opinion that contains a discipline recommendation, the topic numbers listed under Additional Analysis, taken together, will constitute a *complete summary* of the recommended discipline,

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[4] References to "standards" are to the Standards for Attorney Sanctions for Professional Misconduct (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct).

including all probation conditions imposed other than the basic reporting conditions.[5] Conversely, under each of these numbers in the Digest, the reader will find the citation to every opinion in which that level of discipline was recommended.

> **Example**: In *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, at page 5, under the Discipline part of the Additional Analysis section, the discipline recommended in the opinion is summarized in full with the appropriate topic numbers: 1013.11 for five years stayed suspension; 1015.08 for two years actual suspension; 1017.11 for five years probation; and 1022.10, 1024, 1026, and 1030 for the recommended probation conditions. The citation to *Mapps* appears in the Digest under each of those topic numbers.

D. Topic Heading Numbers

Certain topic numbers that appear as headings for topics which are further subdivided, and which have no headnotes or case citations reproduced under them in the Digest, are of the "topic heading numbers" type. All of the topic numbers listed in the "Digest Overview" are topic heading numbers. Other examples include topic numbers such as 106—Issues re Pleadings, and 1013—Stayed Suspension. *The topic heading numbers are simply guides to the structure of the Digest Topics list, like chapter titles in a book.* They are not used to categorize headnotes and never appear under Additional Analysis.

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[5] Certain standard State Bar Court probation conditions, such as the quarterly reporting requirement (see *Mapps*, p. 16 [numbered paragraph 3]), are not recorded in any way in the *Reporter's* editorial material or in the Digest because they are recommended by the State Bar Court as a matter of course whenever probation is part of the discipline recommendation.

Substantive, headnoted discussions regarding the appropriate conditions to recommend as part of the discipline in a given case are categorized under topic numbers 170 through 179, *not* under the equivalent Additional Analysis topic numbers (1020 et seq.).

DIGEST OVERVIEW

* Published in Digest Supplement only

Note: For an explanatory introduction to the Digest, see Introduction to the California State Bar Court Reporter Digest in Vol. 6.

DIGEST TOPICS

100 Generally Applicable Procedural Issues

Note: References to rules in topic headings 101 through 199, unless otherwise noted, are to the Rules of Procedure of the State Bar, as adopted effective January 1, 2011 (2011 rules), including subsequent amendments and additions. The 2011 rules reorganized and renumbered the rules governing State Bar Court proceedings, and grouped them under Title V, Discipline.

Note: Other pretrial matters include all motions made prior to trial (rule 5.45); stipulations (rules 5.53-5.58); and pretrial statements and conferences (rule 5.101).

Note: Certain chapters of the 2011 version of the Rules of Procedure, as subsequently augmented, are indexed out of sequence, as follows:

Division 6, Chapter 4, Fee Arbitration Award Enforcement Proceedings
Rules 5.360-5.371: Topic number 3000 et seq.
Division 6, Chapter 5, Alternative Discipline Program
Rules 5.380-5.389: Topic number 3100 et seq.
Division 6, Chapter 6, Legal Specialization Proceedings
Rules 5.390-5.399: Topic number 2900 et seq.
Division 7, Chapter 2, Resignation Proceedings
Rules 5.420-5.427: Topic number 3300 et seq.

170 Issues re Conditions Imposed as Part of Discipline

Note: See also topic number 802.50 (Standard 1.4). References to Standards are to the Standards for Attorney Sanctions for Professional Misconduct, as amended through 2019.

Note: For award of costs to exonerated respondent (rule 5.131), see topic number 133)

Note: For section 6103.7, see topic number 220.50 below.

Note: For section 6106.2, see topic number 223 below.

250 Rules of Professional Conduct (RPC) Violations

Note: The current version of the Rules of Professional Conduct ("2018 RPC" or "RPC") became effective November 1, 2018. References to "2018 RPC" or "RPC" are to those rules, including subsequent amendments. References to "1989 RPC" are to the rules in effect from May 27, 1989 to October 31, 2018, including the rules as amended effective September 14, 1992, which are sometimes referred to

elsewhere as the "1992 Rules." References to "1975 RPC" are to the rules in effect from 1975 to May 26, 1989.

Note: For RPC 5.3.1 and 1989 rule 1-311 (employing lawyer ineligible to practice), see topic number 252.60 et seq.

Note: For cases under 1989 RPC 1-400(D) or 1975 RPC 2-101(A) involving false or misleading solicitation, or solicitation involving intrusion, coercion, duress, etc., see topic numbers 253.10-253.15.

Note: For cases involving improper designation as a certified specialist under RPC 7.4, see topic numbers 252.70-252.75.

Note: For cases involving false or misleading solicitation under 1989 RPC 1-400(D) or 1975 RPC 2-101(A), see topic numbers 253.10-253.15.

Note: Cases applying 1989 RPC 1-500(B) may be found under topic numbers 255.00-255.05.

Note: Topic numbers 258.20-258.25 are retained solely for cases involving misconduct under the 1989 RPC or 1975 RPC. For cases involving improper referral fees under 2018 RPC 7.2(b), see topic numbers 252.40-252.49.

Note: Topic numbers 272.00 through 272.05 retained solely for cases decided under 1989 RPC 3-210 or 1975 RPC 7-101. For cases involving similar misconduct under the 2018 rules, see topic numbers 251.20-251.25.]

Note: For cases involving compensation from non-clients under 1989 RPC 3-310(F), see topic numbers 273.30-273.35.

Note: For cases involving third party payor interference with a lawyer's professional judgment or lawyer-client relationship, formerly covered under 1989 RPC 3-310(F), see topic numbers 273.10-273.15 (covering RPC 1.8.6 and 5.4(c)) and 352.00-352.05 (covering RPC 2.1). For cases involving conflicts of interest between a lawyer's own clients and the clients of a legal services organization with which the lawyer is affiliated, see topic numbers 370.00-371.05 (covering RPC 6.3).

Note: Cases applying 1989 RPC 5-200(A)-(D) may involve misconduct now covered by RPC 3.3(b) or (d), or RPC 8.4(c) or (d). For cases under RPC 3.3(b), see topic numbers 320.30-320.35. For cases under RPC 3.3(d), see topic numbers 320.50-320.55. For cases under RPC 8.4(c) and (d), see topic numbers 373.10-373.25. Cases involving a lawyer asserting personal knowledge of facts at issue when not testifying as a witness, formerly covered under 1989 RPC 5-200(E) and topic numbers 320.00-320.05, are now covered by RPC 3.4(g), under topic numbers 322.00-322.09.

Note: For older cases involving misconduct similar to that now covered by RPC 3.3(b), see topic numbers 320.00-320.09 (1989 RPC 5-200(A)-(D)).

Note: For older cases involving misconduct similar to that now covered by RPC 3.3(d), see topic numbers 320.00-320.09 (1989 RPC 5-200(A)-(D)).

Note: For cases applying 1989 RPC 5-200(E) to a lawyer asserting personal knowledge of facts at issue when not testifying as a witness, see topic numbers 320.00-320.09.

Note: For older cases involving similar misconduct under 1989 RPC 5-220, see topic numbers 325.00-325.05.

Note: For older cases involving similar misconduct under 1989 RPC 5-220, see topic numbers 325.00-325.05.

Note: For older cases involving similar misconduct under Bus. & Prof. Code section 6068, subdivisions (a) and/or (b), see topic numbers 213.10-213.25.

350.05 Not Found
351.00 Duties to prospective client (RPC 1.18)
351.01 Found
351.05 Not Found
352.00 Lawyer as advisor (RPC 2.1)
352.01 Found
352.05 Not Found

Note: For cases involving compensation from a non-client, see also topic numbers 273.10-273.15.

353.00 Duties of lawyer as third-party neutral (RPC 2.4)
353.01 Found
353.05 Not Found
354.00 Failing to disclose representative capacity in non-adjudicative proceedings (RPC 3.9)
354.01 Found
354.05 Not Found
355.00 False statement/omission of material facts to third person (RPC. 4.1)
355.01 Found
355.05 Not Found
356.00 Improper communications with unrepresented person (RPC 4.3)
356.01 Found
356.05 Not Found
357.00 Improper handling of inadvertently transmitted writings (RPC 4.4)
357.01 Found
357.05 Not Found
358.00 Violating duties as manager or supervisor (RPC 5.1)
358.01 Found
358.05 Not Found

Note: For misconduct involving failing to supervise subordinates under 1989 RPC 3-110, see topic numbers 270.30-270.35.

359.00 Violating duties of subordinate lawyers (RPC 5.2)
359.01 Found
359.05 Not Found
360.00 Violating duties regarding non-lawyer assistants (RPC 5.3)
360.01 Found
360.05 Not Found

Note: For misconduct involving failing to supervise non-lawyer assistants under 1989 RPC 3-110, see topic numbers 270.30-270.35.

370.00 Knowingly participating in decision/action of legal services organization incompatible with lawyer's obligations to lawyer's client (RPC 6.3(a))
370.01 Found
370.05 Not Found
370.10 Knowingly participating in decision/action of legal services organization where interests of organization's client are adverse to interests of lawyer's client (RPC 6.3(b))

Note: For cases involving disciplinary proceedings arising out of criminal convictions, see topic numbers 1500-1535.

Note: For cases involving acts of moral turpitude under section 6106 of the State Bar Act, see topic numbers 221.00-221.50.

Note: Earlier cases involving particular types of conduct prejudicial to the administration of justice may be found under sections 6068 and 6103 of the State Bar Act (topic numbers 213.10-213.75, 220.00-220.15), as well as various 1989 rules. Cases involving prejudice to the administration of justice as an aggravating factor in determining degree of discipline may be found under topic numbers 586-588.50.

Note: See topic number 802.21 for definition of prior record.

Note: See also topic number 760 et seq.

Note: See also topic number 765 et seq.

Note: See also topic number 725 et seq.

Note: See also topic number 740 et seq.

800 Application of Standards

Note: The Standards were originally adopted in 1986, and revised non-substantively, to update cross-references, in 2001 and 2007. References to "1986 Standards" are to the version in effect from 1986

through 2013. The Standards were significantly reorganized, renumbered, and amplified effective January 1, 2014 (the "interim Standards"), and again effective July 1, 2015 (the "2015 Standards"). The 2015 Standards were amended in 2019 (the "2019 Standards") to reflect the adoption of the 2018 Rules of Professional Conduct, but the 2019 Standards retained the numbering and organization of the 2015 Standards.

Due to the substantial reorganizations of the Standards in 2014 and 2015, some Standards are covered in the Digest in a different order than they appear in the 2015 and 2019 Standards. For the convenience of the researcher, cross-references are included in appropriate locations in the Digest Topic Number list. In addition, a table showing the location in the Digest of each of the 2019 Standard numbers, and its equivalent in the interim Standards and the 1986 Standards, is included in the introductory materials at the start of the Digest.

Note: For aggravation and mitigation, see topic numbers 500 et seq. and 600 et seq.

Note: For issues regarding specific conditions attached to sanctions, see topic number 170 et seq.

Note: For **Standard 1.5** (Aggravation), see topic numbers 500 et seq.; for **Standard 1.6** (Mitigation), see topic numbers 700 et seq.

Note: For Standard 2.1 (Misappropriation) in 2015 and Interim Standards, see topic number 822.

Note: Topic number 820 retained solely for cases decided prior to January 1, 2014. For cases decided after January 1, 2014, see topic number 822 et seq. for misappropriation, and topic number 824 et seq. for commingling and trust account violations.

Note: Topic number 822.32 retained solely for cases decided prior to January 1, 2014. For cases decided after January 1, 2014, see topic number 822.35 for gross negligence, and topic number 822.36 for neither intentional misconduct nor gross negligence.

822.53 Negligent rather than purposeful

Note: Topic number 822.53 retained solely for cases decided prior to January 1, 2014. For cases decided after January 1, 2014, see topic number 822.35 for gross negligence, and topic number 822.36 for neither intentional misconduct nor gross negligence.

822.54 Good faith belief in right to funds
822.55 Compelling mitigation
822.59 Other reason
824 **Standard 2.2(a)** (1986 Standard 2.2(b)) Commingling/Trust Account Violation - 3 months actual suspension
824.10 Applied
824.20 Declined to apply – greater sanction imposed
824.21 Coupled with other misconduct
824.22 Other aggravating factors
824.29 Other reason
824.50 Declined to apply – lesser sanction imposed
824.51 No applicable misconduct found
824.52 Negligent rather than purposeful
824.53 Purely technical violation
824.54 Compelling mitigation
824.59 Other reason
825 **Standard 2.2(b)** (Other violation involving mishandling of client funds or property – suspension or reproval)
825.10 Applied – suspension
825.20 Applied – reproval
825.50 Declined to apply
825.51 Greater sanction imposed
825.52 Lesser sanction imposed
825.59 Other issues re Standard 2.2(b)

Note: For **standard 2.3** (illegal or unconscionable fee), see topic number 870 et seq. For **standard 2.4** (business transaction with or adverse pecuniary interest to client) see topic number 880 et seq.

826 **Standard 2.5** (Representation of adverse interests/conflicts of interest)
826.10 Std. 2.5(a): Conflict Affecting Current Client (RPC 1.7(a), (b), (d))
826.11 Applied – actual suspension
826.13 Declined to apply – disbarment
826.15 Decline to apply – lesser or no discipline
826.20 Std. 2.5(b): Conflict Affecting Former Client (RPC 1.9(a), (b))
826.21 Applied – actual suspension
826.23 Declined to apply – disbarment
826.25 Declined to apply – lesser or no discipline
826.30 Std. 2.5(c): Other Conflicts/Breaches of Duty of Loyalty
826.31 Applied – actual suspension – harm to client
826.32 Applied – actual suspension – other reason
826.33 Applied – lesser or no discipline – no harm to client
826.34 Applied – lesser or no discipline – other reason
826.35 Declined to apply – disbarment warranted
826.40 Std. 2.5(d): Violation of Pre-2018 RPC
826.41 Applied – actual suspension – harm to client

Note: For **standard 2.7 (interim Standard 2.5)** (performance, communication, or withdrawal violations), see topic number 840 et seq.

Note: For **standard 2.10** (interim Standard 2.6) (unauthorized practice of law while suspended or inactive), see topic number 910 et seq.

Note: For **standard 2.12** (interim Standard 2.8), see topic number 920 et seq.; for **standard 2.13** (interim Standard 2.9), see topic number 930 et seq.

860 **Standard 2.17(b)** (interim Standard 2.13(b), 1986 Standard 2.6) (Misdemeanor conviction under Bus. & Prof. Code Sections 6128, 6129, or 6153)

Note: The original 1986 Standard 2.6 applied to a broad range of misconduct. Cases found under topic number 860 et seq. that were decided prior to 2014 may involve types of misconduct not covered under current standard 2.17(b) or interim Standard 2.13(b).

861 Applied – disbarment
861.10 Gravity of offense severe
861.20 Harm to victim great
861.30 Coupled with other misconduct
861.40 Other aggravating factors
861.90 Other reason
863 Applied – suspension
863.10 Gravity of offense not severe
863.20 Harm to victim small
863.30 Other mitigating factors
863.90 Other reason
865 Declined to apply
865.10 No applicable misconduct found
865.20 Gravity of offense not severe
865.30 Harm to victim small
865.40 Other mitigating factors
865.90 Other reason

870 **Standard 2.3(a)** (1986 standard 2.7) (Unconscionable Fee – 6 Months actual suspension)
871 Applied
875 Declined to apply
875.10 No applicable misconduct found
875.20 Compelling mitigation
875.90 Other reasons

877 **Standard 2.3(b)** (Illegal Fee/RPC 1.5(c)-(e) – suspension or reproval)
877.10 Applied – suspension
877.20 Applied – reproval
877.50 Declined to apply
877.51 No applicable misconduct found
877.52 Compelling mitigation
877.59 Other reasons

880 **Standard 2.4** (1986 standard 2.8) (Business Transaction with Client)
881 Applied – suspension
881.10 Misconduct and/or harm not minimal
881.20 Coupled with other misconduct
881.30 Other aggravating factors
881.90 Other reason
883 Applied – reproval
883.10 Misconduct and/or harm minimal

Note: For **Standard 2.15** (interim Standard 2.11), see topic number 1552 et seq.; for **Standard 2.16** (interim Standard 2.12), see topic number 1554 et seq.

Note: Prior to 2014, unauthorized practice of law was included in the misconduct covered by 1986 Standard 2.6. Relevant cases may be found under topic number 860 et seq.

Note: Prior to 2014, violation of the duties listed in Business and Professions Code section 6068 was included in the misconduct covered by 1986 Standard 2.6. Relevant cases may be found under topic number 860 et seq. Standard 2.12 covers violations of section 6068 **except** subsections (c), (g), (m), and (n). Violations of section 6068(c) and (g) are covered under Standard 2.9 (topic numbers 829-829.79). Violations of section 6068(m) and (n) are covered under Standard 2.7 (topic numbers 840-846.79).

Note: For Aggravation, Mitigation, and other issues re application of the Standards, see topic numbers 500 et seq., 700 et seq., and 800 et seq.

Note: Topic number 1551 retained solely for cases decided prior to January 1, 2014.

Note: Topic numbers 1552-1552.59 retained solely for cases decided prior to May 17, 2019. Felony convictions under circumstances involving moral turpitude are now covered by Standard 2.15(a)(2) (topic numbers 1553.60-1553.69)

Note: For topic number 1554.10, retained solely for cases decided prior to January 1, 2014, see below, following topic number 1554.39.

Note: Topic numbers 1554.10 and 1554.50-1554.59, relating to 1986 Standard 3.4 (no moral turpitude but discipline warranted) retained solely for cases decided prior to January 1, 2014.

Note: All cases listed under topic number 1554.10 are also listed under the specific Part B standard(s) applied.

Note: For Aggravation, Mitigation, and Application of Standards, see those headings under Substantive Issues in Disciplinary Matters Generally, topic numbers 500 et seq., 700 et seq., and 800 et seq.

Note: For Aggravation, Mitigation, and Application of Standards, see those headings under Substantive Issues in Disciplinary Matters Generally, topic numbers 500 et seq., 700 et seq., and 800 et seq.

Note: For Aggravation, Mitigation, and Application of Standards, see those headings under Substantive Issues in Disciplinary Matters Generally, topic numbers 500 et seq., 700 et seq., and 800 et seq.

2000 Regulatory Proceedings

2050 Issues in Section 6007(b)(1) Proceedings
2051 Special Procedural Issues
2051.05 Interpretation of Rules of Procedure (Div. 4, Ch. 1 (rules 5.170-5.177))
2051.10 Appointment and Compensation of Counsel (rule 5.174)
2051.20 Initiation of Proceeding (rule 5.171(A))
2051.21 By Motion
2051.25 By Order to Show Cause
2051.30 Mental or Physical Examination
2051.40 Admissibility of Evidence
2051.50 Sufficiency of Evidence/Burden of Proof
2051.60 Abatement of Other Proceedings (rule 5.174(D))
2051.70 Effective Date of Inactive Enrollment Order (rule 5.175)
2051.80 Applicability of Other Rules of Procedure (rule 5.177)
2051.90 Other Procedural Issues
2052 Inactive Enrollment under Section 6007(b)(1)
2052.10 Ordered
2052.11 Without Hearing (rules 5.172(A), 5.173(A))
2052.13 After Hearing (rule 5.172(B)(2), 5.173(B)(2))
2052.50 Not Ordered
2054 Petition to End Section 6007(b)(1) Inactive Enrollment
2054.05 Interpretation of Rules of Procedure (Div. 4, ch. 4 (rules 5.205-5.212))
2054.10 Granted
2054.50 Denied
2054.90 Other Issues re Termination of Section 6007(b)(1) Inactive Enrollment
2059 Miscellaneous Issues in Section 6007(b)(1) Cases

2070 Issues in Section 6007(b)(2) Proceedings
2070.05 Interpretation of Rules of Procedure (Div. 4, Ch. 2 (rules 5.180-5.186)
2071.10 Special Procedural Issues
2071.20 Initiation of Proceeding (rule 5.181)
2071.30 Limitation of Issues (rule 5.182(B)(2))
2051.40 Effective Date of Inactive Enrollment Order (rule 5.184)
2071.80 Applicability of Other Rules of Procedure (rule 5.186)
2071.90 Other Procedural Issues
2072 Inactive Enrollment under Section 6007(b)(2)
2072.10 Ordered
2072.11 Without Hearing (rules 5.182(A))
2072.13 After Hearing (rule 5.182(B)(2))
2072.20 Exceptions to Order (rule 5.183)
2072.21 Granted
2072.25 Denied
2072.50 Not Ordered
2074 Petition to End Section 6007(b)(2) Inactive Enrollment
2074.05 Interpretation of Rules of Procedure (Div. 4, ch. 4 (rules 5.205-5.212))
2074.10 Granted

2300 Issues in Other Section 6007 Proceedings

Note: For inactive enrollment of probationers under § 6007(d), see topic number 1715.

Note: For Petitions to terminate inactive enrollment under section 6007(b), see topic numbers 2054 et seq., 2074 et seq., and 2140 et seq.; under section 6007(c)(1) or (c)(2), see topic number 2240 et seq.

2906.20 Board findings entitled to great weight (rule 5.390)
2906.30 Burden of proof on member (rule 5.396)
2906.40 Proof by clear and convincing evidence (rule 5.396)
2906.90 Other issues re burden of proof and standard of review
2907 Review by Review Department (rule 5.397)
2908 Binding effect of final State Bar Court decision (rule 5.398)
2920 Denial of Certification/Recertification
2921 Reversed
2925 Upheld
2940 Suspension or Revocation of Certification
2941 Reversed
2945 Upheld
2990 Miscellaneous Issues in Legal Specialization Proceedings

3000 Issues in Fee Arbitration Award Enforcement Proceedings
3001 Interpretation of Rules of Procedure, Div. 6, Ch. 4 (rules 5.360-5.371)
3002 Commencement of Proceeding (rule 5.361)
3003 Right to Hearing/Waiver of Hearing (rule 5.364)
3004 Burden of Proof/Showing Required (rule 5.365)
3009 Other Procedural Issues
3010 Inactive Enrollment under Bus. & Prof. Code section 6203(d)
3011 Granted
3015 Denied
3019 Other Issues re Inactive Enrollment
3030 Termination of Inactive Enrollment (rule 5.370)
3031 Granted
3035 Denied
3039 Other Issues re Termination of Inactive Enrollment
3090 Miscellaneous Issues in Fee Arbitration Award Enforcement Proceedings

3100 Issues in Alternative Discipline Program Proceedings
3110 Interpretation of Rules of Procedure, Div. 6, ch. 5 (rules 5.380-5.389)
3120 Eligibility to participate (rule 5.381)
3120.10 Participation granted
3120.50 Participation denied
3121 Conditions for participation (rule 5.382(A))
3122 Grounds for ineligibility (rule 5.382(C))
3123 Effect of nonacceptance (rule 5.382(D))
3130 Disposition and deferral (rule 5.384(A)-(D))
3131 Placement on inactive status (rule 5.384(E))
3131.10 Ordered
3131.50 Not ordered
3132 Term of participation (rule 5.385)
3133 Effect of later proceedings (rule 5.386)
3140 Termination for failure to comply (rule 5.387)
3140.10 Ordered
3140.50 Not ordered
3150 Review (rule 5.389)
3190 Other issues in Alternative Discipline Program Proceedings

Standards for Attorney Sanctions for Professional Misconduct
Table of Standard Numbers and Digest Topic Numbers

Introductory Note: The Standards were originally adopted in 1986 (the "1986 Standards"), and not substantively amended until a substantially revised version became effective January 1, 2014 (the "interim Standards"). The Standards were revised again, including some additions, reordering, and renumbering, effective July 1, 2015 (the "2015 Standards").

Where "None" appears in a column in the table below, there was no equivalent, in the version of the Standards referenced in that column, to the 2015 Standard listed in the left-hand column. In such instances, cases involving the subject matter covered by the 2015 Standard, if any, appear in the Digest under the "catch-all" provisions of interim Standards 2.18 and/or 2.19, or 1986 Standard 2.10, at topic number 900 et seq.

Digest topic numbers in **bold** are those for which the topic number is out of sequence based on the numerical order in the version of the Standards that became effective July 1, 2015.

2015 Std. No.	Title of Standard	Interim Std. No.	1986 Std. No.	Main Digest Topic No.	Comments
1.1	Purpose/Scope	1.1	1.1	802.10	See also 801.20, 802.30
1.2	Definitions	1.2	1.2	802.20	
1.3	Degrees of Sanctions	1.3	1.4	802.40	1986 Standard 1.3 retained at 802.30
1.4	Conditions Attached	1.4	1.5	802.50	
1.5	Aggravation	1.5	1.2(b)	**500**	Cross-referenced before 802.60
1.6	Mitigation	1.6	1.2(e)	**700**	Cross-referenced before 802.60
1.7	Determination of Sanction	1.7	1.6	802.60	
1.8	Prior Discipline	1.8	1.7	804	
Part B	Introductory Paragraph	None	2.1	811	
2.1	Misappropriation	2.1	2.2(a)	822	1986 Standard 2.2 retained at 820
2.2	Commingling/Trust Acct.	2.2	2.2(b)	824	Current 2.2(b) is at 825
2.3	Illegal/Unconscionable Fee	2.3	2.7	**870**	Cross-referenced before 826
2.4	Business/Fin'l Interest	2.4	2.8	**880**	Cross-referenced before 826
2.5	Rep. of Adverse Interests	None	None	826	
2.6	Breach of Confidentiality	None	None	827	
2.7	Perform/Commun./W'draw	2.5	2.4	**840**	Cross-referenced before 828
2.8	Fee Split w/ Non-Lawyer	None	None	828	
2.9	Frivolous Litigation	None	None	829	
2.10	Unauthorized Practice	2.6	2.6(d)	**910**	Cross-referenced before 830
2.11	Moral Turpitude	2.7	2.3	830	
2.12	Violation of B&P 6068	2.8	2.6(a)	**920**	Cross-referenced before 840
2.13	Sex with Client	2.9	None	**940**	Cross-referenced before 840
2.14	Violate Discip. Condns.	2.10	2.9	890	
2.15	Crime of Moral Turp.	2.11	3.2, 3.3	**1552**	Cross-referenced before 900
2.16	Crime w/out Moral Turp.	2.12	3.4	**1554**	Cross-referenced before 900
2.17	Specific Misdemeanors	2.13	2.5, 2.6(e), 2.6(f)	**850, 860**	
2.18	Other Statutory Violation	2.14	2.10	**900**	See 901.05, 905.05
2.19	Other Rule Violation	2.15	2.10	**900**	See 903.05

101 Generally Applicable Procedural Issues — Jurisdiction

Action by court or judge is presumed valid and made within lawful exercise of jurisdiction. Final judgments are subject to collateral attack only on following grounds: (1) lack of subject matter jurisdiction; (2) lack of personal jurisdiction; or (3) actions in excess of jurisdiction. To succeed on collateral attack, respondent must prove jurisdictional defect from face of record. Where respondent failed to establish jurisdictional defect, civil court decisions must be viewed as valid, and Review Department rejected respondent's collateral attacks on civil court decisions. Furthermore, where respondent already challenged certain court orders in courts of record, respondent cannot continue to do so in State Bar Court, as civil court orders were final and binding for disciplinary purposes. Similarly, respondent failed to prove any jurisdictional defect in case that led to respondent's involuntary inactive enrollment, which case was now final and closed, and respondent did not provide any support for Review Department's ability to review case long after case was final. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[1a-c]**

Under rule 2101, Rules of Procedure of State Bar, OCTC had exclusive jurisdiction to determine whether to file charges against attorney. Furthermore, under rule 2603, Rules of Procedure of State Bar, Office of Chief Trial Counsel (OCTC) may reopen investigations or complaints if (1) there was new material evidence; or (2) Chief Trial Counsel determines there was good cause. Decision to reopen case was within OCTC's prosecutorial discretion. Rule 2603 did not require OCTC to make good cause showing at trial or hearing judge to make good cause finding to reopen case, and Office of General Counsel approval was not required to reopen matter. Where OCTC, through letter, provided notice to attorney that case was closed but could be reopened, case was not closed "on . . . merits," as respondent contended, and OCTC had discretion to reopen case. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[2a, b]**

For disciplinary purposes, superior court orders are final and binding once review in courts of record is waived or exhausted. Attorneys cannot wait until State Bar disciplinary proceedings commence to collaterally challenge legitimacy of superior court orders. State Bar Court does not have jurisdiction to determine validity of civil court orders. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[4a-c]**

102.10 Generally Applicable Procedural Issues – Improper Prosecutorial Conduct – Improper reopening of investigation

Under rule 2101, Rules of Procedure of State Bar, OCTC had exclusive jurisdiction to determine whether to file charges against attorney. Furthermore, under rule 2603, Rules of Procedure of State Bar, Office of Chief Trial Counsel (OCTC) may reopen investigations or complaints if (1) there was new material evidence; or (2) Chief Trial Counsel determines there was good cause. Decision to reopen case was within OCTC's prosecutorial discretion. Rule 2603 did not require OCTC to make good cause showing at trial or hearing judge to make good cause finding to reopen case, and Office of General Counsel approval was not required to reopen matter. Where OCTC, through letter, provided notice to attorney that case was closed but could be reopened, case was not closed "on . . . merits," as respondent contended, and OCTC had discretion to reopen case. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[2a, b]**

102.20 Generally Applicable Procedural Issues – Improper Prosecutorial Conduct – Delay in Prosecution

Rule 5.21, Rules of Procedure of State Bar, provided generally that disciplinary proceeding must begin within five years from date of violation. Five-year limit was tolled while civil proceedings based on same acts or circumstances as violation were pending in any court. While respondent was acting as fiduciary in holding funds in escrow, five-year limitations period did not commence. As respondent did not deliver all funds until after civil lawsuit filed against him, limitations did not begin to run prior to start of lawsuit. Where counts related to circumstances alleged in civil lawsuit, counts were tolled as related to ongoing civil proceeding. Review Department rejected respondent's argument that civil litigation did not toll limitations period as disciplinary issues related only to small part of civil complaint. Conduct related to violations alleged in notice of disciplinary charges (NDC) was clearly same conduct alleged as part of civil litigation, and no authority requires entire lawsuit or certain percentage of lawsuit to relate to alleged violations. Review Department also rejected respondent's claim that appeal did not toll limitations period because it addressed "derivative" issue related to amount of damages owed, as respondent's appeal was of lawsuit based on same act of violation. Review Department held that while civil litigation was pending, include appeal, limitations period was tolled. However, even if appeal period was not tolled, NDC was filed within limitations period,

as NDC was filed well under five years from judgement in civil case. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[7a-e]**

If disciplinary proceeding is based solely on complainant's allegations of violation of State Bar Act or Rules of Professional Conduct, rule of limitations (Rules of Proc. of State Bar, rule 5.21) provides that proceeding must begin within five years from date of violation. Normally, a statute or rule is violated when every element of violation has occurred. However, rule of limitations is tolled during period that attorney acts in fiduciary relationship with complainant or related party, even if it is other than an attorney-client relationship. Moreover, if disciplinary charge is based on continuing violation of duty, violation is deemed committed at termination of entire course of conduct. Where respondent allegedly breached fiduciary duty to investor under movie financing agreement requiring respondent to hold funds in escrow until close of movie production, rule of limitations was tolled as long as fiduciary relationship continued, and respondent's alleged diversion of funds created continuing violation lasting until completion of purpose of fiduciary duty. Accordingly, where initial notice of disciplinary charges was filed within five years after completion of movie production, misappropriation charge was timely even though diversion of funds occurred more than five years earlier. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[2a-h]**

Under rule 5.21(C)(3) of Rules of Procedure of State Bar, rule of limitations for disciplinary charges is tolled during pendency of government investigations or proceedings based on same acts or circumstances as violation. Where Tennessee civil proceeding found that respondent had defrauded investor and was liable for damages, rule of limitations was tolled for disciplinary charges based on same acts or circumstances. However, subsequent sister state collection proceedings, and bankruptcy proceeding to determine dischargeability of debt under Tennessee judgment, were not based on same acts or circumstances, and thus did not toll rule of limitations. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[3a, b]**

Respondent seeking to dismiss disciplinary charges on basis of rule of limitation has burden of proving facts showing rule of limitation applies. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[6]**

Limitations period is calculated from date of filing of original notice of disciplinary charges (NDC). Where original NDC was filed within five years after termination of fiduciary duty that respondent was alleged to have violated, original NDC was timely filed, and amended NDC based on same misconduct related back to filing of original NDC. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[8]**

102.30 Generally Applicable Procedural Issues – Improper Prosecutorial Conduct– Investigative and/or pretrial misconduct

Respondent's assertion that Office of Chief Trial Counsel had unclean hands for never properly investigating respondent's claims against others was unsupported and therefore rejected by Review Department. Respondent's allegations against others were irrelevant and had no effect on Review Department's culpability conclusions for respondent's own misconduct. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[2]**

Rule 2604, Rules of Procedure of State Bar, provided, in part, that Office of Chief Trial Counsel (OCTC) may file Notice of Disciplinary Charges (NDC) when attorney had received fair, adequate, and reasonable opportunity to deny or explain matters that were subject of NDC charges. Rule 5.30, Rules of Procedure of State Bar, required OCTC to notify attorney before NDC was filed of right to request early neutral evaluation conference (ENEC). Where OCTC mailed notice of ENEC right to respondent's State Bar address, but respondent did not receive notice because respondent had not updated address, which was respondent's responsibility, Review Department held no procedural violation of rule 2604, and hearing judge did not err for not mentioning in decision that no ENEC was held as respondent not entitled to ENEC due to respondent's own failure to update State Bar address. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[3a, b]**

Fundamental requirement of due process is opportunity to be heard at meaningful time and in meaningful manner. In California disciplinary proceedings, adequate notice requires only that attorney be fairly apprised of precise nature of charges before proceedings commence. Where Notice of Disciplinary Charges pled specific facts comprising violation and specific rule violated, respondent received due process, and Review Department rejected respondent's contention that due process required that respondent be given notice during investigation that conduct violated specific rule before State Bar could charge respondent with violation. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[2]**

102.90 Generally Applicable Procedural Issues – Improper Prosecutorial Conduct – Other improper prosecutorial conduct

Respondent's assertion that Office of Chief Trial Counsel had unclean hands for never properly investigating respondent's claims against others was unsupported and therefore rejected by Review Department. Respondent's allegations against others were irrelevant and had no effect on Review Department's culpability conclusions for respondent's own misconduct. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[2]**

Rule 2604, Rules of Procedure of State Bar, provided, in part, that Office of Chief Trial Counsel (OCTC) may file Notice of Disciplinary Charges (NDC) when attorney had received fair, adequate, and reasonable opportunity to deny or explain matters that were subject of NDC charges. Rule 5.30, Rules of Procedure of State Bar, required OCTC to notify attorney before NDC was filed of right to request early neutral evaluation conference (ENEC). Where OCTC mailed notice of ENEC right to respondent's State Bar address, but respondent did not receive notice because respondent had not updated address, which was respondent's responsibility, Review Department held no procedural violation of rule 2604, and hearing judge did not err for not mentioning in decision that no ENEC was held as respondent not entitled to ENEC due to respondent's own failure to update State Bar address. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[3a, b]**

103 Generally Applicable Procedural Issues — Disqualification/Bias of Judge

Where respondent failed to establish that hearing judge demonstrated bias or that respondent was specifically prejudiced, and where purpose of hearing judge's questions at trial was to clarify judge's own confusion about testimony, respondent failed to meet burden to show judicial bias, and failed to show he was deprived of due process. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[2]**

106.10 Generally Applicable Procedural Issues – Issues re Pleadings – Sufficiency of pleadings to state grounds for action sought

Notice of Disciplinary Charges must (1) cite statutes or rules attorney allegedly violated; (2) contain facts comprising violation in sufficient detail to permit preparation of defense; and (3) relate stated facts to authorities attorney allegedly violated. Where facts charged in Notice of Disciplinary Charges were very specific, charge cannot be interpreted broadly so other facts not alleged constitute misconduct; such would infringe on respondent's right to fair proceeding as respondent is entitled to adequate notice of rule or statute violated and manner respondent allegedly violated it. Review Department rejected Office of Chief Trial Counsel's argument that respondent received notice that respondent's overall communication with clients was being charged. As Notice of Disciplinary Charges was narrowly drafted and was not amended to conform to proof, Review Department did not consider other allegations by Office of Chief Trial Counsel on review that respondent failed to communicate in other instances. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[3a, b]**

In reviewing an order dismissing a disciplinary proceeding, Review Department looks to operative notice of disciplinary charges (NDC), deems all allegations in that NDC to be true, and may also rely on any judicially noticed facts to assess the sufficiency of the operative NDC. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[1]**

If disciplinary proceeding is based solely on complainant's allegations of violation of State Bar Act or Rules of Professional Conduct, rule of limitations (Rules of Proc. of State Bar, rule 5.21) provides that proceeding must begin within five years from date of violation. Normally, a statute or rule is violated when every element of violation has occurred. However, rule of limitations is tolled during period that attorney

acts in fiduciary relationship with complainant or related party, even if it is other than an attorney-client relationship. Moreover, if disciplinary charge is based on continuing violation of duty, violation is deemed committed at termination of entire course of conduct. Where respondent allegedly breached fiduciary duty to investor under movie financing agreement requiring respondent to hold funds in escrow until close of movie production, rule of limitations was tolled as long as fiduciary relationship continued, and respondent's alleged diversion of funds created continuing violation lasting until completion of purpose of fiduciary duty. Accordingly, where initial notice of disciplinary charges was filed within five years after completion of movie production, misappropriation charge was timely even though diversion of funds occurred more than five years earlier. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[2a-h]**

106.20 Standards of Proof/Standards of Review – Respondent's burden in disciplinary matters

Notice of Disciplinary Charges must (1) cite statutes or rules attorney allegedly violated; (2) contain facts comprising violation in sufficient detail to permit preparation of defense; and (3) relate stated facts to authorities attorney allegedly violated. Where facts charged in Notice of Disciplinary Charges were very specific, charge cannot be interpreted broadly so other facts not alleged constitute misconduct; such would infringe on respondent's right to fair proceeding as respondent is entitled to adequate notice of rule or statute violated and manner respondent allegedly violated it. Review Department rejected Office of Chief Trial Counsel's argument that respondent received notice that respondent's overall communication with clients was being charged. As Notice of Disciplinary Charges was narrowly drafted and was not amended to conform to proof, Review Department did not consider other allegations by Office of Chief Trial Counsel on review that respondent failed to communicate in other instances. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[3a, b]**

Fundamental requirement of due process is opportunity to be heard at meaningful time and in meaningful manner. In California disciplinary proceedings, adequate notice requires only that attorney be fairly apprised of precise nature of charges before proceedings commence. Where Notice of Disciplinary Charges pled specific facts comprising violation and specific rule violated, respondent received due process, and Review Department rejected respondent's contention that due process required that respondent be given notice during investigation that conduct violated specific rule before State Bar could charge respondent with violation. *In the Matter of Martin* (Review Dept. 2020) 5 Cl State Bar Ct. Rptr. 753. **[2]**

Respondent seeking to dismiss disciplinary charges on basis of rule of limitation has burden of proving facts showing rule of limitation applies. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[6]**

Where disciplinary statute defined violation of specified Civil Code section as constituting attorney misconduct, attorney was properly found culpable of violating disciplinary statute even though notice of disciplinary charges charged violation of disciplinary statute only, and did not expressly charge violation of Civil Code section. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[9]**

106.30 Procedural Issues—Issues re Pleadings—Duplicative charges

Where respondent misrepresented case settled when it was actually dismissed, respondent's failure to inform client about dismissal was factually joined with misrepresentation respondent was working on case and getting client settlement money. Review Department therefore treated moral turpitude violation and violation of failing to inform client of significant developments as single offense involving moral turpitude for discipline purposes. No additional disciplinary weight was given to Business and Professions Code section 6068(m) violation because respondent's misconduct underlying section 6068(m) charge was factually same as misconduct underlying moral turpitude charge. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[2a, b]**

Where respondent was found culpable of three ethical violations (fourth violation involved same misconduct as another violation so was not considered a separate violation for disciplinary purposes), Review Department gave limited weight in aggravation for multiple acts of misconduct. Despite Office of Chief Trial Counsel's argument that respondent should receive significant aggravation for multiple acts of misconduct because misconduct spanned multiple years and caused significant harm, Review Department did not find it appropriate to consider significant harm in assigning aggravation weight for multiple acts of

misconduct, as doing so would double count harm in evaluating aggravation for multiple acts of wrongdoing and harm to client, public, or administration of justice. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[5]**

Attorney willfully violates Business and Professions Code section 6103 when, despite being aware of final, binding court order, attorney knowingly chooses to violate order. Where respondent heard judge's oral orders to move away from criminal defendant client during client's remand into custody, and respondent failed to obey orders for several seconds when orders demanded immediate compliance, respondent willfully violated Business and Professions Code section 6103, but as same misconduct underlay section 6068, subdivision (b) violation, no additional weight assigned for section 6103 violation. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[3]**

Where same acts of misconduct by respondent violated both section 6068(a) and rule 3-300, hearing judge erred by dismissing section 6068(a) charge with prejudice. Better approach was to find both violations, but assign duplicative violation no additional weight in determining discipline. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[6]**

Where respondent was culpable of committing act of moral turpitude and of violating rule of professional conduct based on same misconduct underlying respondent's culpability of violating Business and Professions Code section 6068(a), hearing judge was correct in giving other violations no additional weight in culpability. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[4a, b]**

Misrepresentation of fact to court for purpose of obtaining continuance violates attorney's duty not to mislead courts. For this purpose, administrative tribunal acting in quasi-judicial capacity is not distinct from court. Where respondent directed assistant to make material misrepresentation to administrative tribunal on respondent's behalf, and then took no steps to correct record despite notice that tribunal had relied on misrepresentation, respondent was culpable of intentional act of moral turpitude and of misleading tribunal, but violations were treated as single offense involving moral turpitude, and no additional weight was assigned to duplicative charge. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511. **[3a - f]**

Where respondent misused her authority and discretion as trustee of her family's trust, intentionally violated numerous fiduciary duties set forth in the Probate Code by means infused with dishonesty and/or concealment, made repeated misrepresentations to the court and third parties in documents filed which falsely represented her as trustee after she had been removed, and intentionally violated court orders, respondent was culpable of multiple intentional acts of moral turpitude. Respondent was also culpable of violating section 6068(a), but Review Department assigned these violations no additional weight because they were duplicative of section 6106 violations. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494. **[3a, b]**

Where charge against respondent prosecutor of failing to comply with Constitution and laws, based on respondent's willful violation of criminal defendant's constitutional rights, overlapped with moral turpitude charge based on same misconduct, charge of failing to comply with law was properly dismissed as duplicative. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[4]**

Where section 6106 moral turpitude charge for making misrepresentations to a tribunal and section 6068, subdivision (d) charge for seeking to mislead a judge were based on the same misconduct, section 6068, subdivision (d) charge dismissed as duplicative. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 464. **[1]**

Where finding that respondent was culpable of moral turpitude already accounted for respondent's pattern of telling half-truths, Review Department rejected OCTC's request for finding of aggravation under either multiple acts of wrongdoing or pattern of misconduct. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[7]**

Where respondent, after learning that he was suspended from practice, attempted to negotiate settlement of clients' case and appeared for a client at a deposition, respondent was culpable of violating section 6068(a)

by his unauthorized practice of law, but this violation was given no weight, because respondent was also found culpable of moral turpitude based on same facts. *In the Matter of Burke (Review* Dept. 2016)5Cal State Bar Ct. Rptr. 448. **[8a-c]**

106.40 Procedural Issues – Issues re Pleadings – Amendment of pleadings

Where hearing judge allowed State Bar's Office of Chief Trial Counsel (OCTC) to amend Notice of Disciplinary Charges (NDC) three days before trial started and did not allow continuance of trial, but it was undisputed that only amendments made to NDC were to allege and attach certified copies of final South Carolina disciplinary order and underlying attorney disciplinary rules, in place of uncertified records submitted with original NDC, and respondent had not established required showing of prejudice, Review Department upheld hearing judge's allowance of OCTC's amendment to original NDC as non-substantive when denying respondent's request for trial continuance. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[2]**

Notice of Disciplinary Charges must (1) cite statutes or rules attorney allegedly violated; (2) contain facts comprising violation in sufficient detail to permit preparation of defense; and (3) relate stated facts to authorities attorney allegedly violated. Where facts charged in Notice of Disciplinary Charges were very specific, charge cannot be interpreted broadly so other facts not alleged constitute misconduct; such would infringe on respondent's right to fair proceeding as respondent is entitled to adequate notice of rule or statute violated and manner respondent allegedly violated it. Review Department rejected Office of Chief Trial Counsel's argument that respondent received notice that respondent's overall communication with clients was being charged. As Notice of Disciplinary Charges was narrowly drafted and was not amended to conform to proof, Review Department did not consider other allegations by Office of Chief Trial Counsel on review that respondent failed to communicate in other instances. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[3a, b]**

Limitations period is calculated from date of filing of original notice of disciplinary charges (NDC). Where original NDC was filed within five years after termination of fiduciary duty that respondent was alleged to have violated, original NDC was timely filed, and amended NDC based on same misconduct related back to filing of original NDC. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[8]**

Evidence of uncharged misconduct can be considered in aggravation if respondent's due process rights are not violated. Where OCTC was or should have been aware of uncharged misconduct before disciplinary charges were filed, misconduct should have been charged. Nonetheless, where respondent stipulated to conduct constituting uncharged misconduct; uncharged misconduct was elicited for relevant purpose and based on respondent's own representations; and hearing judge granted motion to conform charges to proof at trial, hearing judge correctly assigned nominal weight in aggravation for uncharged misconduct. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[7a-c]**

106.50 Generally Applicable Procedural Issues – Issues re Pleadings – Answer to initial pleading

Willful violation of rule 9.20(c) requires neither bad faith nor even actual knowledge of rule provision violated. Where respondent conceded in answer to charges, and in stipulation of facts, that respondent failed to timely file rule 9.20(c) declaration and that State Bar sent email notices informing respondent of rule 9.20(c) filing duties, one that was received and another that was not returned, respondent was culpable of willfully violating rule 9.20(c). *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[1]**

Where respondent's answer to disciplinary charges and subsequent stipulation admitted his culpability of willful violation of rule 9.20(c); respondent admitted facts of uncharged misconduct; and respondent did not dispute culpability of violating statutory duty even though stipulation was technically limited to facts of offenses, respondent was entitled to significant mitigating credit for cooperation with State Bar, even though facts in probation and rule 9.20 matters are generally easily provable and stipulations do not save significant time. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[5]**

106.90 Generally Applicable Procedural Issues – Issues re Pleadings – Other issues

Amended Notice of Disciplinary Charges (NDC) charged assortment of actions that, taken together, alleged overreaching and breach of fiduciary duties. However, failure to communicate allegations were already alleged under more specific Business and Professions Code subsection – section 6068, subdivision (m) – in separate Amended NDC count. Before enactment of subdivision (m), which was added in 1986 and became effective in 1987, there was "common law" duty to communicate and proper to base culpability under subdivision (a). Now, improper to find violations for same facts under both subdivisions (a) and (m) of Business and Professions Code section 6068. Specific statute should be charged instead of using broader subdivision (a*). In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911**. [12a,b]**

Rule 2604, Rules of Procedure of State Bar, provided, in part, that Office of Chief Trial Counsel (OCTC) may file Notice of Disciplinary Charges (NDC) when attorney had received fair, adequate, and reasonable opportunity to deny or explain matters that were subject of NDC charges. Rule 5.30, Rules of Procedure of State Bar, required OCTC to notify attorney before NDC was filed of right to request early neutral evaluation conference (ENEC). Where OCTC mailed notice of ENEC right to respondent's State Bar address, but respondent did not receive notice because respondent had not updated address, which was respondent's responsibility, Review Department held no procedural violation of rule 2604, and hearing judge did not err for not mentioning in decision that no ENEC was held as respondent not entitled to ENEC due to respondent's own failure to update State Bar address. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[3a, b]**

Whether an attorney engaged in multiple acts of misconduct in aggravation is not limited to counts pleaded. Where respondent's culpability of two counts of violating former rule 4-100(A) encompassed 168 separate acts of misconduct, respondent committed multiple acts of misconduct. However, where misconduct lasted only 10 months, respondent's multiple acts did not warrant substantial aggravation. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[5]**

Evidence of uncharged misconduct can be considered in aggravation if respondent's due process rights are not violated. Where OCTC was or should have been aware of uncharged misconduct before disciplinary charges were filed, misconduct should have been charged. Nonetheless, where respondent stipulated to conduct constituting uncharged misconduct; uncharged misconduct was elicited for relevant purpose and based on respondent's own representations; and hearing judge granted motion to conform charges to proof at trial, hearing judge correctly assigned nominal weight in aggravation for uncharged misconduct. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[7a-c]**

Where respondent was found culpable of three disciplinary violations, but committed at least 25 acts of wrongdoing over two-year period by repeatedly failing to respond to letters from insurer regarding client's claim, hearing judge erred in assigning only minimal aggravating weight to respondent's multiple acts of wrongdoing. Multiple acts of wrongdoing are not limited to the counts pled, and respondent's recurring ethical violations were assigned significant aggravating weight. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[3]**

113 Generally Applicable Procedural Issues—Discovery (rules 5.65-5.71)

Once applicant appeals to State Bar Court adverse moral character determination by State Bar's Committee of Bar Examiners (Committee), court must determine whether applicant possesses good moral character. In moral character proceedings, State Bar's Office of Chief Trial Counsel (OCTC) investigates applicant's moral character, discovery occurs, and then matter proceeds to trial. OCTC may take applicant's deposition. Moral character hearings in State Bar Court are de novo and not limited to matters Committee considered. Applicant bears burden of establishing good moral character and cannot meet burden by refusing to cooperate in State Bar investigation. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989. **[1a, b]**

Discovery sanctions are reviewed under abuse of discretion or error of law standard. Two requirements to impose discovery sanctions: (1) failure to comply with court-order discovery; and (2) failure must be willful. In analyzing discovery ruling, court is guided by California's long-standing public policy favoring disclosure and objectives that discovery rules were enacted to accomplish: (1) ascertaining truth and

preventing perjury; (2) providing effective means to detect and expose false claims and defenses; (3) making facts available in simple, convenient, and inexpensive way; (4) educating parties before trial as to value of claims and defenses; (5) expediting litigation; (6) safeguarding against surprise; (7) preventing delay; (8) simplifying and narrowing issues; and (9) expediting and facilitating preparation and trial. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989. **[2]**

Disobeying court order to provide discovery is misuse of discovery process under Civil Discovery Act which is applicable in State Bar Court proceedings. Permissible sanction in State Bar Court under Civil Discovery Act is terminating sanction that dismisses action. Where applicant chose not to appear for two scheduled depositions, improperly refused to answer questions at another deposition, and terminated a fourth deposition, applicant did not comply with hearing judge's orders requiring her to sit for deposition and cooperate with investigation and discovery; applicant's failure to comply was willful; and hearing judge had denied two other motions to dismiss by State Bar's Committee of Bar Examiners based on applicant's failure to participate in deposition, hearing judge correctly determined that discovery sanctions were appropriate and did not abuse her discretion by imposing terminating sanctions. Applicant had opportunity to comply with orders to participate in deposition but did not do so. Applicant obstructed discovery, causing dismissal, which prevented State Bar Court from determining whether applicant was morally fit to practice law. Review Department held terminating sanctions were appropriate and affirmed hearing judge's dismissal order. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989. **[3a-d]**

Where applicant failed to seek stay of proceedings in Hearing Department, Review Department rejected applicant's argument that hearing judge should not have dismissed case while request for interlocutory review of hearing judge's order denying applicant's motion for relief from further deposition was pending. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989.**[4]**

Rule 5.65, Rules of Procedure of State Bar, provided that, generally, written discovery requests must be made and served on other party within 10 days after service of answer to notice of disciplinary charges (NDC), or within 10 days after service of any amendment to NDC. Where respondent was aware of 2013 investigation in 2013 but did not timely request discovery of Office of Chief Trial Counsel's investigation file until one month before trial and 10 months after NDC filed; respondent offered no evidence or valid reason why respondent failed to comply with State Bar discovery rules; respondent had ample opportunity to seek discovery earlier in case; and respondent, by not making timely discovery request, could not properly make motion to compel, hearing judge did not abuse discretion by denying respondent's motion to compel as untimely. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[4a, b]**

115 Procedural Issues—Continuances (rule 5.49)

Where hearing judge allowed State Bar's Office of Chief Trial Counsel (OCTC) to amend Notice of Disciplinary Charges (NDC) three days before trial started and did not allow continuance of trial, but it was undisputed that only amendments made to NDC were to allege and attach certified copies of final South Carolina disciplinary order and underlying attorney disciplinary rules, in place of uncertified records submitted with original NDC, and respondent had not established required showing of prejudice, Review Department upheld hearing judge's allowance of OCTC's amendment to original NDC as non-substantive when denying respondent's request for trial continuance. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[2]**

Where OCTC argued for first time in closing trial brief that respondent engaged in dishonesty and bad faith in seeking continuance of disciplinary trial, Review Department declined to assign bad faith as aggravating factor, because respondent did not have opportunity to respond to OCTC's bad faith allegation, and OCTC did not establish by clear and convincing evidence that respondent deliberately attempted to mislead court. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[7a-c]**

117 Generally Applicable Procedural Issues—Dismissal (rules 5.122-5.124)

Disobeying court order to provide discovery is misuse of discovery process under Civil Discovery Act which is applicable in State Bar Court proceedings. Permissible sanction in State Bar Court under Civil Discovery Act is terminating sanction that dismisses action. Where applicant chose not to appear for two scheduled depositions, improperly refused to answer questions at another deposition, and terminated a fourth

deposition, applicant did not comply with hearing judge's orders requiring her to sit for deposition and cooperate with investigation and discovery; applicant's failure to comply was willful; and hearing judge had denied two other motions to dismiss by State Bar's Committee of Bar Examiners based on applicant's failure to participate in deposition, hearing judge correctly determined that discovery sanctions were appropriate and did not abuse her discretion by imposing terminating sanctions. Applicant had opportunity to comply with orders to participate in deposition but did not do so. Applicant obstructed discovery, causing dismissal, which prevented State Bar Court from determining whether applicant was morally fit to practice law. Review Department held terminating sanctions were appropriate and affirmed hearing judge's dismissal order. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989. **[3a-d]**

Where applicant failed to seek stay of proceedings in Hearing Department, Review Department rejected applicant's argument that hearing judge should not have dismissed case while request for interlocutory review of hearing judge's order denying applicant's motion for relief from further deposition was pending. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989.**[4]**

Where moral character proceeding dismissed with prejudice, and no moral character hearing on merits occurred, applicant prohibited from beginning new proceeding in State Bar Court based on same adverse moral charter determination from State Bar's Committee of Bar Examiners (Committee). To allow applicant to do so would reward applicant for obstructing discovery. If applicant wants to continue to seek admission to practice law in California, applicant must submit new Application for Determination of Moral Character, and Committee determines when applicant may file such new application. Applicant may appeal any other future adverse moral character determinations by Committee, as allowed by applicable rules, based on different Application for Determination of Moral Character. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989. **[5a, b]**

Rule 5.21, Rules of Procedure of State Bar, provided generally that disciplinary proceeding must begin within five years from date of violation. Five-year limit was tolled while civil proceedings based on same acts or circumstances as violation were pending in any court. While respondent was acting as fiduciary in holding funds in escrow, five-year limitations period did not commence. As respondent did not deliver all funds until after civil lawsuit filed against him, limitations did not begin to run prior to start of lawsuit. Where counts related to circumstances alleged in civil lawsuit, counts were tolled as related to ongoing civil proceeding. Review Department rejected respondent's argument that civil litigation did not toll limitations period as disciplinary issues related only to small part of civil complaint. Conduct related to violations alleged in notice of disciplinary charges (NDC) was clearly same conduct alleged as part of civil litigation, and no authority requires entire lawsuit or certain percentage of lawsuit to relate to alleged violations. Review Department also rejected respondent's claim that appeal did not toll limitations period because it addressed "derivative" issue related to amount of damages owed, as respondent's appeal was of lawsuit based on same act of violation. Review Department held that while civil litigation was pending, include appeal, limitations period was tolled. However, even if appeal period was not tolled, NDC was filed within limitations period, as NDC was filed well under five years from judgement in civil case. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[7a-e]**

In reviewing an order dismissing a disciplinary proceeding, Review Department looks to operative notice of disciplinary charges (NDC), deems all allegations in that NDC to be true, and may also rely on any judicially noticed facts to assess the sufficiency of the operative NDC. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[1]**

If disciplinary proceeding is based solely on complainant's allegations of violation of State Bar Act or Rules of Professional Conduct, rule of limitations (Rules of Proc. of State Bar, rule 5.21) provides that proceeding must begin within five years from date of violation. Normally, a statute or rule is violated when every element of violation has occurred. However, rule of limitations is tolled during period that attorney acts in fiduciary relationship with complainant or related party, even if it is other than an attorney-client relationship. Moreover, if disciplinary charge is based on continuing violation of duty, violation is deemed committed at termination of entire course of conduct. Where respondent allegedly breached fiduciary duty to investor under movie financing agreement requiring respondent to hold funds in escrow until close of movie production, rule of limitations was tolled as long as fiduciary relationship continued, and respondent's

alleged diversion of funds created continuing violation lasting until completion of purpose of fiduciary duty. Accordingly, where initial notice of disciplinary charges was filed within five years after completion of movie production, misappropriation charge was timely even though diversion of funds occurred more than five years earlier. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[2a-h]**

Under rule 5.21(C)(3) of Rules of Procedure of State Bar, rule of limitations for disciplinary charges is tolled during pendency of government investigations or proceedings based on same acts or circumstances as violation. Where Tennessee civil proceeding found that respondent had defrauded investor and was liable for damages, rule of limitations was tolled for disciplinary charges based on same acts or circumstances. However, subsequent sister state collection proceedings, and bankruptcy proceeding to determine dischargeability of debt under Tennessee judgment, were not based on same acts or circumstances, and thus did not toll rule of limitations. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[3a, b]**

Limitations period is calculated from date of filing of original notice of disciplinary charges (NDC). Where original NDC was filed within five years after termination of fiduciary duty that respondent was alleged to have violated, original NDC was timely filed, and amended NDC based on same misconduct related back to filing of original NDC. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[8]**

Stipulated facts in disciplinary proceedings are binding on parties under State Bar rule 5.58(G). Where respondent stipulated that that he was obligated to pay monetary sanctions awarded against his law firm; law firm name did not indicate it was a corporation or limited liability partnership, as would be required by State Bar Rules 3.152(B) and 3.174(B); and even if it were, respondent could not thereby escape personal liability for his own professional malfeasance and still would have been required to report sanctions award against him, record and law supported respondent's stipulation, and hearing judge erred in exonerating respondent and dismissing disciplinary proceeding based on conclusion that respondent was not individually responsible for paying sanctions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[2a, b]**

Where hearing judge held full and fair trial on aggravation and mitigation but dismissed case without making any findings, and Review Department reversed dismissal, Review Department reviewed record and made its own findings and discipline recommendation. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[5]**

119 Generally Applicable Procedural Issues—Other Pretrial Matters

Pursuant to rule 5.101.1(B), Rules of Procedure of State Bar, unless otherwise ordered by court, parties are required to exchange exhibits at least 10 days prior to pretrial conference, and pursuant to rule 5.101.1(I), failure to comply, without good cause, may constitute grounds for exclusion of exhibits. Where respondent failed to exchange exhibits prior to trial as required by rule and ordered by court, and respondent complained he did not do so as respondent was awaiting receipt of case file, respondent cannot hold Office of Chief Trial Counsel (OCTC) responsible for respondent's failure to exchange exhibits in respondent's possession or which respondent was capable of attaining. Where respondent contended that (1) respondent was experiencing personal problems; (2) respondent lacked litigation experience and had no experience with State Bar Court matters; (3) respondent's counsel withdrew from case 12 days before start of trial, and (4) respondent failed to explain how exclusion of exhibits prejudiced him, respondent did not establish good cause for failing to exchange exhibits with OCTC prior to trial, and Review Department affirmed hearing judge's finding excluding exhibits from evidence. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[5a-c]**

Rule 5.104(C), Rules of Procedure of State Bar, required admission of relevant evidence if it was sort of evidence on which responsible persons were accustomed to rely in conduct of serious affairs. Where judge properly excluded respondent's exhibits under rule 5.101.1(I), Rules of Procedure of State Bar, relevance of respondent's evidence was not at issue because respondent had already failed to comply under rule 5.101.1. Review Department held respondent failed to show hearing judge abused discretion in excluding some of respondent's exhibits for failing to comply with Rules of Procedure and therefore rejected respondent's

request to admit excluded exhibits into record. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[6a, b]**

Pretrial statement filed in Hearing Department was part of record in Review Department and could be judicially noticed by Hearing Department on remand. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[5]**

Where respondent stated in pretrial statement that she had committed all acts of misconduct of which Review Department found her culpable, as well as stipulating to certain facts, respondent was entitled to considerable weight in mitigation under standard 1.6(e) for cooperation with State Bar. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660**. [11]**

Due process does not require that petitioner for reinstatement be allowed to present evidence of rehabilitation at evidentiary hearing, where applicable provision of State Bar Rules of Procedure expressly provides for dismissal of petition for failure to comply with prefiling requirements, including reimbursement of Client Security Fund. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[5]**

120 Generally Applicable Procedural Issues—Conduct of Trial

Where respondent failed to establish that hearing judge demonstrated bias or that respondent was specifically prejudiced, and where purpose of hearing judge's questions at trial was to clarify judge's own confusion about testimony, respondent failed to meet burden to show judicial bias, and failed to show he was deprived of due process. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[2]**

Where OCTC did not raise issue of indifference toward rectification or atonement at trial, thus depriving respondent of opportunity to provide rebuttal evidence, and record was unclear regarding relevant facts, Review Department declined to assign aggravation based on respondent's alleged failure to make amends to client by paying for medical treatment. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[5]**

130 Generally Applicable Procedural Issues—Procedure on Review (rules 5.150-5.162)

Where applicant failed to seek stay of proceedings in Hearing Department, Review Department rejected applicant's argument that hearing judge should not have dismissed case while request for interlocutory review of hearing judge's order denying applicant's motion for relief from further deposition was pending. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989.**[4]**

Where Office of Chief Trial Counsel (OCTC) did not appeal hearing judge's finding of no clear and convincing evidence of misappropriation, but instead attempted to argue misappropriation by gross negligence in its responsive brief on appeal, although some facts suggested respondent's actions may have been grossly negligent or construed as other misconduct, Review Department concluded that respondent did not have opportunity to fully address gross negligence issue on review and it would be unfair for Review Department to overturn hearing judge's finding that respondent was not culpable. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[7]**

In reviewing an order dismissing a disciplinary proceeding, Review Department looks to operative notice of disciplinary charges (NDC), deems all allegations in that NDC to be true, and may also rely on any judicially noticed facts to assess the sufficiency of the operative NDC. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[1]**

Pretrial statement filed in Hearing Department was part of record in Review Department and could be judicially noticed by Hearing Department on remand. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[5]**

Regardless of whether issue was fully developed at Hearing Department, Review Department is required to independently review record and make any findings, conclusions, or decision or recommendation different from those of hearing judge. Review Department may also address an issue not raised in request for review, provided parties have opportunity to brief issue. Where hearing judge dismissed disciplinary proceeding

based on rule of limitations, and OCTC argued in pretrial statement and on review that rule of limitations was tolled based on respondent's alleged fiduciary relationship with complaining witness, Review Department could reach issue of tolling based on fiduciary relationship after giving parties opportunity to brief issue. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[7a, b]**

In analyzing applicable standards, State Bar Court first determines which standard specifies most severe sanction for misconduct. Where respondent was charged with two counts of mishandling client funds, and hearing judge found respondent not culpable on those counts but Review Department reversed that finding, Review Department applied most severe standard applicable to those charges, which provided for greater minimum actual suspension than recommended by hearing judge. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[9a, b]**

Where hearing judge found that respondent and his therapist testified credibly regarding respondent's emotional difficulties at the time of his misconduct and his subsequent recovery, these findings were entitled to great weight. Where that testimony and other evidence established that respondent had recovered from his emotional difficulties, and respondent had repeatedly attempted to rectify part of his misconduct, respondent established that he had recovered, and his emotional difficulties were properly considered in mitigation. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646**. [6a, b]**

Where hearing judge found that respondent, as prosecutor in criminal case, committed act of moral turpitude by improperly failing to disclose evidence to defense counsel in order to secure strategic trial advantage, Review Department deferred to hearing judge's determination that respondent's alternative explanation of her conduct lacked credibility. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[3]**

Where hearing judge held full and fair trial on aggravation and mitigation but dismissed case without making any findings, and Review Department reversed dismissal, Review Department reviewed record and made its own findings and discipline recommendation. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[5]**

Where respondent's misconduct was related to prescription drug abuse, Review Department permitted respondent to augment record with evidence of rehabilitation occurring after trial in disciplinary proceedings. Evidence of post-trial rehabilitation was not entitled to full evidentiary weight, however, because it was not subject to cross-examination. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[6a, b]**

Where Supreme Court has not published decision interpreting State Bar Act provision or related provision of Rules of Procedure of State Bar, State Bar Court itself interprets statute and rule as written. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[1]**

Where the Review Department conducts a summary review under rule 5.157 of the Rules of Procedure of the State Bar, the hearing judge's decision is final as to all material findings of fact, and the issues are limited to: (1) contentions that the facts support conclusions of law different from those reached by the hearing judge; (2) disagreement about the appropriate disposition or degree of discipline; or (3) other questions of law. Issues and contentions not raised are waived on summary review. *In the Matter of Unger* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 506**. [la, b]**

Where respondent included facts that were not in the record in her brief on review, Review Department granted OCTC's motion to strike those portions of respondent's brief, under rule 5.156(A) of Rules of Procedure, providing that Review Department considers only evidence in Hearing Department record. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494. [**1a, b]**

Where respondent requested that Review Department correct asserted factual errors by hearing judge, but did not require with rules 5.153 (A) and 5.152(C) requiring her to specify disputed factual findings and support her position with record references, and where errors were merely facts or opinions from respondent's

testimony that were contrary to or unsupported by the record, Review Department denied respondent's request. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494. **[2a, b)**

Lack of clarity in hearing judge's decision, as to whether moral turpitude culpability finding was based on intentional or grossly negligent conduct, was problematic for purposes of ascertaining seriousness of misconduct and assessing corresponding discipline. Review Department clarified, based on misrepresentations in documents respondent drafted and filed, that respondent intentionally deceived tribunal. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[3]**

Where respondent did not request review or file responsive brief on appeal, respondent waived any claim of factual error in record. (Rules Proc. of State Bar, rule 5.152(C).) *In the Matter of Burke* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr, 448. **[1]**

Where respondent did not request review or file responsive brief on appeal, respondent was precluded from appearing at oral argument. (Rules Proc. Of State Bar, rule 5.153 (A).) *In the Matter of Burke* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 448**.[2]**

Where a party seeks to take judicial notice and augment record on review under rule 5.165(D) of the Rules of Procedure of the State Bar, motion must be identified as such and filed and served as separate pleading on the date the opening brief is due to be filed; making such request in a responsive brief is procedurally improper. *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437. **[1]**

135.09 Generally Applicable Procedural Issues –Amendments to Rules of Procedure — Other issues re amendments to Rules of Procedure generally

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statute should not be construed to apply retroactively to offense committed prior to effective date. Where matter was submitted for decision prior to March 1, 2021, effective date of amended rule 5.137(H) of Rules of Procedure of State Bar, and all misconduct occurred prior to April 1, 2020, effective date of former rule 5.137 of Rules of Procedure of State Bar, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[22]**

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statutes should not be construed to apply retroactively to offenses committed prior to effective date. Where all of respondent's misconduct occurred prior to effective date of new State Bar Rule of Procedure implementing statute authorizing monetary sanctions, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[11]**

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statutes should not be construed to apply retroactively to offenses committed prior to effective date. Where all of respondent's misconduct occurred prior to effective date of new State Bar Rule of Procedure implementing statute authorizing monetary sanctions, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 739. **[9]**

Rule 5.441(B)(2) of Rules of Procedure of State Bar establishes that reimbursement of Client Security Fund for moneys paid out as result of disbarred attorney's misconduct is a mandatory prefiling requirement for petitions for reinstatement. Where State Bar Act provision requires such payment, State Bar Board of Governors acted within its authority, and not in conflict with statute, in adopting rule regulating timing of payment by requiring that it be made before petition for reinstatement is filed. Interpreting rule to require prefiling payment supports policy goals of maintaining solvency of Client Security Fund, and preserving judicial resources by avoiding lengthy reinstatement proceedings when petitioner has no prospects for payment. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[3]**

In case involving interpretation of State Bar Rules of Procedure, Review Department took judicial notice of Board of Governors agenda item, State Bar Rules, and relevant state legislation. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[4]**

135.50 Generally Applicable Procedural Issues –Amendments to Rules of Procedure—Defaults and Trials

Under rule 5.106(D) of Rules of Procedure, prior record of discipline was properly considered for purposes of aggravation and level of discipline after respondent's culpability was established. Hearing judge therefore properly denied respondent's request to strike evidence of prior discipline record pursuant to rule 1260 of the State Bar Court Rules of Practice. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[5a, b]**

Under rule 5.106(A), hearing judge should have considered previous disciplinary order as a prior record of discipline even though it was not yet final. *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427. **[3]**

135.60 Generally Applicable Procedural Issues – Amendments to Rules of Procedure – Dispositions and costs

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statute should not be construed to apply retroactively to offense committed prior to effective date. Where matter was submitted for decision prior to March 1, 2021, effective date of amended rule 5.137(H) of Rules of Procedure of State Bar, and all misconduct occurred prior to April 1, 2020, effective date of former rule 5.137 of Rules of Procedure of State Bar, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[22]**

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statutes should not be construed to apply retroactively to offenses committed prior to effective date. Where all of respondent's misconduct occurred prior to effective date of new State Bar Rule of Procedure implementing statute authorizing monetary sanctions, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[11]**

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statutes should not be construed to apply retroactively to offenses committed prior to effective date. Where all of respondent's misconduct occurred prior to effective date of new State Bar Rule of Procedure implementing statute authorizing monetary sanctions, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[9]**

135.87 Amendments to Rules of Procedure — Reinstatement after Disbarment

Rule 5.441(B)(2) of Rules of Procedure of State Bar establishes that reimbursement of Client Security Fund for moneys paid out as result of disbarred attorney's misconduct is a mandatory prefiling requirement for petitions for reinstatement. Where State Bar Act provision requires such payment, State Bar Board of Governors acted within its authority, and not in conflict with statute, in adopting rule regulating timing of payment by requiring that it be made before petition for reinstatement is filed. Interpreting rule to require prefiling payment supports policy goals of maintaining solvency of Client Security Fund, and preserving judicial resources by avoiding lengthy reinstatement proceedings when petitioner has no prospects for payment. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[3]**

141 Evidentiary Issues—Relevance

Hearing judge had broad discretion to determine admissibility and relevance of evidence. Standard of review generally applied to evidentiary rulings is abuse of discretion. To prevail on claim of error, abuse of discretion and actual prejudice resulting from ruling must be established. Where hearing judge denied admission of documents from six separate lawsuits in which company was defendant, as well as company's 2009 bankruptcy petition, hearing judge did not abuse her discretion as civil lawsuits and evidence of company's bankruptcy were irrelevant as evidence had no bearing on circumstances pertaining to

respondent's conviction; documents concerning company's perceived financial distress would not mitigate or excuse respondent's misconduct as bankruptcy proceeding filed in 2009 and respondent's conviction occurred in August 2008; and respondent failed to identify specific additional facts or arguments he would have offered if evidence admitted or that he suffered any actual prejudice. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[3a-c]**

141.10 Evidentiary Issues—Relevant and Reliable Evidence Admissible

Hearing judge had broad discretion to determine admissibility and relevance of evidence. Standard of review generally applied to evidentiary rulings is abuse of discretion. To prevail on claim of error, abuse of discretion and actual prejudice resulting from ruling must be established. Where hearing judge denied admission of documents from six separate lawsuits in which company was defendant, as well as company's 2009 bankruptcy petition, hearing judge did not abuse her discretion as civil lawsuits and evidence of company's bankruptcy were irrelevant as evidence had no bearing on circumstances pertaining to respondent's conviction; documents concerning company's perceived financial distress would not mitigate or excuse respondent's misconduct as bankruptcy proceeding filed in 2009 and respondent's conviction occurred in August 2008; and respondent failed to identify specific additional facts or arguments he would have offered if evidence admitted or that he suffered any actual prejudice. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[3a-c]**

Where culpability determinations were based on evidence introduced at trial without respondent's objection, respondent's due process rights were not violated by admission of such evidence, as any objection had been waived. Moreover, State Bar's rules permit admission of relevant, reliable hearsay evidence to supplement or explain other evidence, although hearsay admitted over timely objection is not sufficient in itself to support a finding. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[1]**

142 Evidentiary Issues—Hearsay

Police reports are not considered business records, an exception to hearsay rules. Respondent's statements in police report, however, were admissible as party admissions, an exception to hearsay rule. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[1a, b]**

Under rule 5.104 of Rules of Procedure of State Bar, only hearsay evidence that is relevant and reliable may be considered for admission, and hearsay may only be used for purpose of supplementing or explaining other evidence. Over timely objection, however, hearsay will not be sufficient itself to support finding unless it would be admissible over objection in civil actions. Unlike hearing judge, who overruled respondent's counsel's hearsay objection and concluded statements in police report were admissible under rules of procedure, Review Department held some statements in police report were inadmissible hearsay, as they did not fall under rule 5.104 as corroborative evidence. Where third-party statements in police report were multi-layered hearsay, not relevant to disciplinary proceeding, did not supplement record, or were insufficient to support other evidence in record, statements were inadmissible hearsay, and Review Department did not consider those third-party statements in police report in findings on review. However, hearsay statements that supplemented or explained respondent's statements/admissions in police report were admissible and, as stipulated facts are binding on parties, third-party witness statements that supplemented parties' stipulation were also admissible. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[2a-e]**

142.10 Evidentiary Issues– Hearsay – Admissibility

Police reports are not considered business records, an exception to hearsay rules. Respondent's statements in police report, however, were admissible as party admissions, an exception to hearsay rule. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[1a, b]**

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not fall under rule 5.104 as corroborative evidence. Where third-party statements in police report were multi-layered hearsay, not relevant to disciplinary proceeding, did not supplement record, or were insufficient to support other evidence in record, statements were inadmissible hearsay, and Review Department did not consider those third-party statements in police report in findings on review. However, hearsay statements that supplemented or explained respondent's statements/admissions in police report were admissible and, as stipulated facts are binding on parties, third-party witness statements that supplemented parties' stipulation were also admissible. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[2a-e]**

Where culpability determinations were based on evidence introduced at trial without respondent's objection, respondent's due process rights were not violated by admission of such evidence, as any objection had been waived. Moreover, State Bar's rules permit admission of relevant, reliable hearsay evidence to supplement or explain other evidence, although hearsay admitted over timely objection is not sufficient in itself to support a finding. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[1]**

Hearsay evidence is admissible in State Bar Court proceedings, but is not sufficient in itself to support finding if admitted over timely objection made on grounds valid in civil actions. Where police reports containing victim's hearsay statements were admitted into evidence by stipulation, without objection or limitation by respondent, hearing judge properly relied on victim's statements. Although hearing judge sustained respondent's counsel's objections at trial to questions that would have elicited victim's hearsay statements from investigator, those objections did not preclude reliance on victim's statements in police report admitted without objection. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[3]**

142.20 Evidentiary Issues– Hearsay – Insufficiency to Support Finding

Under rule 5.104 of Rules of Procedure of State Bar, only hearsay evidence that is relevant and reliable may be considered for admission, and hearsay may only be used for purpose of supplementing or explaining other evidence. Over timely objection, however, hearsay will not be sufficient itself to support finding unless it would be admissible over objection in civil actions. Unlike hearing judge, who overruled respondent's counsel's hearsay objection and concluded statements in police report were admissible under rules of procedure, Review Department held some statements in police report were inadmissible hearsay, as they did not fall under rule 5.104 as corroborative evidence. Where third-party statements in police report were multi-layered hearsay, not relevant to disciplinary proceeding, did not supplement record, or were insufficient to support other evidence in record, statements were inadmissible hearsay, and Review Department did not consider those third-party statements in police report in findings on review. However, hearsay statements that supplemented or explained respondent's statements/admissions in police report were admissible and, as stipulated facts are binding on parties, third-party witness statements that supplemented parties' stipulation were also admissible. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[2a-e]**

Where culpability determinations were based on evidence introduced at trial without respondent's objection, respondent's due process rights were not violated by admission of such evidence, as any objection had been waived. Moreover, State Bar's rules permit admission of relevant, reliable hearsay evidence to supplement or explain other evidence, although hearsay admitted over timely objection is not sufficient in itself to support a finding. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[1]**

Hearsay evidence is admissible in State Bar Court proceedings, but is not sufficient in itself to support finding if admitted over timely objection made on grounds valid in civil actions. Where police reports containing victim's hearsay statements were admitted into evidence by stipulation, without objection or limitation by respondent, hearing judge properly relied on victim's statements. Although hearing judge sustained respondent's counsel's objections at trial to questions that would have elicited victim's hearsay statements from investigator, those objections did not preclude reliance on victim's statements in police report admitted without objection. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[3]**

143 Evidentiary Issues– Attorney-Client/Work Product Privileges

Duty of confidentiality is broader than attorney-client privilege and prohibits attorney from disclosing facts and allegations that might cause client or former client public embarrassment. Where petitioner testified at reinstatement trial that it dawned on petitioner that former client in child molestation case, whose full name petitioner testified to at reinstatement trial, committed crime when petitioner noticed similarities between witnesses' testimony about former client's odd odor and petitioner's own recollection of former client's odor, Review Department held that while petitioner's divulgence of client confidences went beyond what was appropriate disclosure to explain prior misconduct and displayed carelessness regarding professional responsibility to former client, it did not demonstrate lack of rehabilitation as hearing judge found. Petitioner's work as court-appointed paralegal with federal court, which required him to guard confidential records such as matters subject to protective orders, diminished petitioner's carelessness regarding testimony about former client. *In the Matter of Ellerman* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 899. **[3a-e]**

146 Evidentiary Issues—Judicial Notice

Pretrial statement filed in Hearing Department was part of record in Review Department and could be judicially noticed by Hearing Department on remand. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[5]**

Order denying OCTC's petition for involuntary inactive enrollment was judicially noticeable in subsequent disciplinary proceeding involving same respondent. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[5]**

In case involving interpretation of State Bar Rules of Procedure, Review Department took judicial notice of Board of Governors agenda item, State Bar Rules, and relevant state legislation. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[4]**

Where a party seeks to take judicial notice and augment record on review under rule 5.165(D) of the Rules of Procedure of the State Bar, motion must be identified as such and filed and served as separate pleading on the date the opening brief is due to be filed; making such request in a responsive brief is procedurally improper. *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437. **[1]**

147 Evidentiary Issues—Presumptions

Under Evidence Code section 664, it is acknowledged that official duty has been regularly performed; thus, there is presumption that Supreme Court Clerk properly performed official duty in serving respondent and respondent's attorney with discipline order as provided in California Rules of Court, rule 9.18(b). Where respondent began transferring cases due to impending suspension prior to issuance of Supreme Court's rule 9.20 order; Review Department had recommended two-year suspension in respondent's prior disciplinary matter several months earlier; and respondent's attorney referenced Supreme Court's rule 9.20 order in email to respondent, argument that respondent did not receive notice of rule 9.20 order from either Supreme Court or respondent's attorney was not credible, and respondent did not rebut presumption of Evidence Code section 664. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[2]**

148 Evidentiary Issues—Witnesses

Aggravation for lack of candor in disciplinary proceedings must be supported by express finding that testimony lacked candor or was dishonest. Where record contained some incongruities in witnesses' testimony, but Office of Chief Trial Counsel had not presented clear and convincing evidence to establish respondent's testimony lacked candor, Review Department adopted hearing judge's finding that respondent testified credibly and declined to find aggravation for lack of candor. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[5]**

Hearing judge is in better position to assess nature and quality of testimony. Hearing judge's findings that respondent's testimony lacked credibility, and that victim's statements to police were credible, was entitled to great weight. Review Department would not contradict hearing judge's credibility conclusions where record lacked sufficient evidence to do so. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[2a, b]**

Where hearing judge did not explain reason for finding respondent's testimony not credible, and evidence corroborated respondent's testimony, Review Department did not adopt hearing judge's finding

that respondent's testimony was not credible. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. [**8]**

Great weight is given to hearing judge's findings on candor because judge who hears and sees witness testify is best positioned to make this determination. Where hearing judge heard respondent testify over multiple days and did not find lack of candor despite OCTC's request, Review Department declined to find dishonest testimony as additional aggravating factor. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494. **[7]**

151 Evidentiary Issues — Evidentiary Effect of Stipulations

Under rule 5.104 of Rules of Procedure of State Bar, only hearsay evidence that is relevant and reliable may be considered for admission, and hearsay may only be used for purpose of supplementing or explaining other evidence. Over timely objection, however, hearsay will not be sufficient itself to support finding unless it would be admissible over objection in civil actions. Unlike hearing judge, who overruled respondent's counsel's hearsay objection and concluded statements in police report were admissible under rules of procedure, Review Department held some statements in police report were inadmissible hearsay, as they did not fall under rule 5.104 as corroborative evidence. Where third-party statements in police report were multi-layered hearsay, not relevant to disciplinary proceeding, did not supplement record, or were insufficient to support other evidence in record, statements were inadmissible hearsay, and Review Department did not consider those third-party statements in police report in findings on review. However, hearsay statements that supplemented or explained respondent's statements/admissions in police report were admissible and, as stipulated facts are binding on parties, third-party witness statements that supplemented parties' stipulation were also admissible. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[2a-e]**

California Rules of Court, rule 9.20(a)(1) and (4) require attorneys to (1) notify clients being represented in pending matters, along with any co-counsel, of their disciplinary suspension and consequent disqualification to act as attorney after suspension's effective date; (2) notify clients to seek other legal advice if there is no co-counsel; (3) notify opposing counsel in pending litigation; (4) if no opposing counsel, notify adverse parties of suspension and consequent disqualification to act as attorney after suspension's effective date; and (5) file copy of notice with court, agency, or tribunal before which litigation is pending. Where respondent stipulated he was attorney of record in four cases at time Supreme Court order requiring compliance with rule 9.20 was filed, and respondent did not file the required notices of suspension with those courts and still had not done so by time of trial over two and one-half years later, respondent failed to comply with rule 9.20. Review Department rejected respondent's argument that respondent was not obligated to file court notices as respondent filed substitutions of attorney in three cases and informed clients that respondent would be suspended prior to rule 9.20 order's issuance, as respondent did not notify clients of suspension by registered or certified mail, return receipt requested, as required by rule 9.20(b); filed substitutions of attorney in pending cases after Supreme Court rule 9.20 order was filed but before effective date of order; and continued to work on one case that was settled, but not dismissed, after filing of Supreme Court rule 9.20 order. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[1a-d]**

Willful violation of rule 9.20(c) requires neither bad faith nor even actual knowledge of rule provision violated. Where respondent conceded in answer to charges, and in stipulation of facts, that respondent failed to timely file rule 9.20(c) declaration and that State Bar sent email notices informing respondent of rule 9.20(c) filing duties, one that was received and another that was not returned, respondent was culpable of willfully violating rule 9.20(c). *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[1]**

Where respondent's answer to disciplinary charges and subsequent stipulation admitted his culpability of willful violation of rule 9.20(c); respondent admitted facts of uncharged misconduct; and respondent did not dispute culpability of violating statutory duty even though stipulation was technically limited to facts of offenses, respondent was entitled to significant mitigating credit for cooperation with State Bar, even though facts in probation and rule 9.20 matters are generally easily provable and stipulations do not save significant time. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[5]**

Where respondent stipulated in prior disciplinary proceeding that he was unreasonable in believing that representing party to arbitration did not constitute holding himself out as entitled to practice law, respondent was precluded from arguing in subsequent proceeding that such belief was reasonable. While Supreme Court has relieved attorneys of stipulations as to conclusions of law, and principles of res judicata and collateral estoppel did not require Review Department to give binding effect to stipulated conclusions of law in prior proceeding, respondent was bound by his factual stipulation that his belief was unreasonable. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[3a-c]**

Where respondent failed to withdraw from stipulation in prior disciplinary proceeding, or to timely request correction or modification of stipulation, and permitted stipulation's approval by State Bar Court and Supreme Court, respondent waived right to argue for first time in subsequent disciplinary proceeding that stipulation did not accurately reflect his agreement. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[5]**

Evidence of uncharged misconduct can be considered in aggravation if respondent's due process rights are not violated. Where OCTC was or should have been aware of uncharged misconduct before disciplinary charges were filed, misconduct should have been charged. Nonetheless, where respondent stipulated to conduct constituting uncharged misconduct; uncharged misconduct was elicited for relevant purpose and based on respondent's own representations; and hearing judge granted motion to conform charges to proof at trial, hearing judge correctly assigned nominal weight in aggravation for uncharged misconduct. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[7a-c]**

Stipulated facts in disciplinary proceedings are binding on parties under State Bar rule 5.58(G). Where respondent stipulated that that he was obligated to pay monetary sanctions awarded against his law firm; law firm name did not indicate it was a corporation or limited liability partnership, as would be required by State Bar Rules 3.152(B) and 3.174(B); and even if it were, respondent could not thereby escape personal liability for his own professional malfeasance and still would have been required to report sanctions award against him, record and law supported respondent's stipulation, and hearing judge erred in exonerating respondent and dismissing disciplinary proceeding based on conclusion that respondent was not individually responsible for paying sanctions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[2a, b]**

When attorney has actual notice of court order, and does not object, move for reconsideration, or seek appellate review, attorney forfeits right to challenge order based on inadequate notice, and is obligated to comply with order. For due process and notice purposes, discovery sanctions orders are not distinguishable from other types of sanctions orders. Where respondent stipulated he had actual notice of orders imposing monetary discovery sanctions, and did not comply with orders, hearing judge erred in finding respondent not culpable of violating orders because he was not personally named in underlying motions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[3a-c]**

159 Evidentiary Issues—Miscellaneous Evidentiary Issues

Standard of review applied to procedural rulings is abuse of discretion or error of law. Where respondent asserted Office of Chief Trial Counsel (OCTC) presented irrelevant, inflammatory, and prejudicial evidence of other pleadings filed by respondent, but respondent failed to identify specific evidence to which he objected, respondent failed to establish hearing judge abused discretion or erred by admitting OCTC's evidence. Respondent further did not specify how judge's decisions prejudiced case. Review Department therefore rejected respondent's evidentiary arguments. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[3]**

Prior discipline is considered in most cases only as aggravating circumstance in determining discipline in a later proceeding, but prior discipline may also be considered if it tends to prove a fact in issue in determining culpability. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[4]**

Involuntary inactive enrollment proceedings are abbreviated proceedings in which the principal issue is whether OCTC can establish exigent circumstances sufficient to justify enrolling an attorney involuntarily inactive before a formal disciplinary proceeding. Any subsequent disciplinary proceedings are separate

proceedings, and neither the involuntary inactive enrollment order itself nor any of the findings made in the underlying proceedings is binding or has any probative value in the formal disciplinary case. Such an order also is not a final decision on the merits, and thus does not fulfill the requirements of collateral estoppel. Accordingly, Review Department considering disciplinary proceedings declined to consider hearing judge's analysis of statute as set forth in order denying involuntary inactive enrollment. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[4a, b]**

Where respondent's misconduct was related to prescription drug abuse, Review Department permitted respondent to augment record with evidence of rehabilitation occurring after trial in disciplinary proceedings. Evidence of post-trial rehabilitation was not entitled to full evidentiary weight, however, because it was not subject to cross-examination. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[6a, b]**

Under rule 5.106(D) of Rules of Procedure, prior record of discipline was properly considered for purposes of aggravation and level of discipline after respondent's culpability was established. Hearing judge therefore properly denied respondent's request to strike evidence of prior discipline record pursuant to rule 1260 of the State Bar Court Rules of Practice. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[5a, b]**

Where a party seeks to take judicial notice and augment record on review under rule 5.165(D) of the Rules of Procedure of the State Bar, motion must be identified as such and filed and served as separate pleading on the date the opening brief is due to be filed; making such request in a responsive brief is procedurally improper. *In the Matter of DeClue* (Review Dept. 2016)5 Cal. State Bar Ct. Rptr. 437. **[1]**

161 Standards of Proof/Standards of Review — Duty to Present Evidence

Business and Professions Code section 6049.1, subdivision (a), provides that, subject only to two exceptions in section 6049.1, subdivision (b), final determination of professional misconduct found by another jurisdiction shall be conclusive evidence that California law licensee is culpable of professional misconduct disciplinable in California. Licensee has burden to establish that exceptions do not warrant imposition of discipline in California. One exception set forth in section 6049.1, subdivision (b)(3), is whether proceedings of other jurisdiction lacked fundamental constitutional protection. Word "proceedings" in section 6049.1, subdivision (b)(3) concerns only attorney disciplinary proceeding imposed on California attorney in other jurisdiction and not predicate court proceedings in other jurisdiction that may have led to disciplinary proceeding in other jurisdiction. To conclude that "proceedings" included underlying court proceedings in other jurisdiction which led to disciplinary proceeding in other jurisdiction would be contrary to law's plain meaning and would alter very purposes of section 6049.1, by routinely allowing collateral attacks on disciplinary proceedings taken by other bodies and which extend beyond two limited statutory exceptions in section 6049.1, subdivision (b). Where respondent (1) had ample notice of South Carolina charges, participated, and was represented by counsel in evidentiary hearing before Hearing Panel in South Carolina; (2) litigated matter before Supreme Court of South Carlina; (3) sought review before United States' Supreme Court; (4) South Carolina disciplinary proceeding required opposing counsel to present clear and convincing evidence of misconduct to support culpability; and (5) respondent's participation in South Carolina proceedings was opportunity for her to put at issue and litigate any relevant or cognizable topic as to state proceedings which formed basis of reprimand, respondent failed to sustain her burden to establish that disciplinary proceedings in South Carolina lacked fundamental constitutional protection. While local South Carolina counsel was not subjected to sanctions and disciplinary proceedings in South Carolina as was respondent, different treatment did not show unfairness of disciplinary proceeding as to respondent, especially since record of South Carolina disciplinary proceedings ascribed to respondent responsibility for frivolous and dilatory basis of litigation. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[1a-f]**

162 Standards of Proof/Standards of Review — Quantum of Proof Required in Disciplinary Matters— State Bar's burden — Clear and convincing standard

Business and Professions Code section 6068, subdivision (b), establishes attorney's duty to maintain respect due courts of justice and judicial officers. Where respondent told court it lacked backbone; repeatedly

stated respondent did not respect court or its decision; and challenged judge to place respondent in custody, respondent's statements and action demonstrated disrespect to court in violation of Business and Professions Code section 6068, subdivision (b). *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. [1]

Where respondent failed to abide by judge's order to immediately step away from criminal defendant client while client was being remanded into custody, and where respondent subsequently stated to judge respondent was "embarrassed" for court, respondent violated Business and Professions Code section 6068, subdivision (b). *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[2]**

Attorney willfully violates Business and Professions Code section 6103 when, despite being aware of final, binding court order, attorney knowingly chooses to violate order. Where respondent heard judge's oral orders to move away from criminal defendant client during client's remand into custody, and respondent failed to obey orders for several seconds when orders demanded immediate compliance, respondent willfully violated Business and Professions Code section 6103, but as same misconduct underlay section 6068, subdivision (b) violation, no additional weight assigned for section 6103 violation. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[3]**

Aggravation for lack of candor in disciplinary proceedings must be supported by express finding that testimony lacked candor or was dishonest. Where record contained some incongruities in witnesses' testimony, but Office of Chief Trial Counsel had not presented clear and convincing evidence to establish respondent's testimony lacked candor, Review Department adopted hearing judge's finding that respondent testified credibly and declined to find aggravation for lack of candor. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[5]**

162.10 Standards of Proof/Standards of Review — Quantum of Proof Required in Disciplinary Matters— State Bar's burden

Where respondent did not take any action on clients' case after hearing where case dismissed and did not tell clients respondent had stopped working on matter, but more than year after hearing told client respondent was working on setting aside dismissal, respondent's failure to take any action resulted in constructive termination of employment. As respondent failed to give notice to clients that respondent was no longer working on case, respondent was culpable of violating former rule 3-700(A)(2). *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[4a, b]**

Where respondent failed to serve defendant in one matter for over three years and failed to oppose demurrer in another matter, causing court to dismiss clients' cases, and thereafter respondent falsely led clients to believe respondent was working on cases, and clients were distressed to learn years later their cases could no longer be pursued, Review Department agreed with hearing judge that respondent caused significant client harm and assigned substantial weight in aggravation. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[6]**

Where respondent was found culpable of three ethical violations (fourth violation involved same misconduct as another violation so was not considered a separate violation for disciplinary purposes), Review Department gave limited weight in aggravation for multiple acts of misconduct. Despite Office of Chief Trial Counsel's argument that respondent should receive significant aggravation for multiple acts of misconduct because misconduct spanned multiple years and caused significant harm, Review Department did not find it appropriate to consider significant harm in assigning aggravation weight for multiple acts of misconduct, as doing so would double count harm in evaluating aggravation for multiple acts of wrongdoing and harm to client, public, or administration of justice. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[5]**

Where totality of evidence supported conclusion that after automobile accident, respondent consciously and persistently fabricated complex narrative involving phony driver in order to avoid arrest, respondent could not avoid culpability for acting with moral turpitude by claiming he made "drunken

misrepresentations" and did not intend to lie to police officers or recall doing so. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[3a, b]**

162.11 Standards of Proof/Standards of Review — Quantum of Proof Required in Disciplinary Matters – State Bar's burden – Clear and Convincing Standard

Business and Professions Code section 6106 provides, in part, that commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Where respondent believed (1) claim was issued by governmental agency targeting clients, and (2) that even if clients had not already been targeted by governmental agency, they would be soon, it was reasonable to believe attorney simply mistaken regarding existence of governmental claim against clients, and no clear and convincing evidence supported conclusion attorney made material misrepresentation amounting to either grossly negligent or intentional moral turpitude when he wrote letter to insurance company stating governmental entity was implicated in matter. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[4a-d]**

Office of Chief Trial Counsel (OCTC) failed to prove by clear and convincing evidence that attorney made misrepresentations to client's attorney in related matter regarding insurer's objection to settlement agreement in violation of Business and Professions Code section 6106. Where one email to client's attorney in related matter did not mention insurer at all; second email summarized attorney's report to judge at settlement status conference, disclosed that insurer had been provided copy of proposed settlement agreement, and did not mention insurer's response; attorney believed settlement agreement did not contain insurer's position, as attorney had not carefully read drafts with erroneous statement; and attorney had no indication that would lead attorney to believe that client's attorney in related matter thought insurer had not objected, it could not be determined attorney's omission in email to client's attorney in related matter constituted intentional misrepresentation, especially as one email was only summary of status conference and attorney asserted insurer's position was not discussed at status conference. Reasonable factual interpretation is attorney was unaware client's attorney in related matter believed insurer had not objected. Attorney therefore had no reason to mention insurer's objection in emails. Review department therefore held OCTC did not prove by clear and convincing evidence that attorney made misrepresentations to client's attorney in related matter regarding insurer's objection to settlement agreement by omitting this fact from emails. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[15]**

Speculative harm does not satisfy clear and convincing standard required for aggravation. Although very brief moment of disorder in courtroom occurred between respondent and bailiffs, that did not by itself establish aggravation for significant harm. Where Office of Chief Trial Counsel did not establish that specific, cognizable, and significant harm occurred which could be directly attributed to respondent's actions beyond respondent's violation of judge's orders to move away from client who was criminal defendant, Review Department did not affirm hearing judge's finding of substantial harm as aggravating circumstance. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[5a, b]**

Where respondent made statements to brother, 911 operator, and deputy sheriff while intoxicated and with head injury, and generally vague statements were made while in heat of moment and while engaged in mutual combat where both parties received injuries, even if statements were not wholly accurate, without clear evidence of an intent to mislead, evidence did not establish that respondent made deliberate misrepresentations so as to satisfy finding of moral turpitude by clear and convincing standard of proof. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[5a-c]**

Section 6106 applies to misrepresentations and concealment of material facts. Mere negligence in making a representation does not violate section 6106. Where respondent trustee's representations to counsel for trust beneficiary were consistent with respondent's own honestly held beliefs and understanding, and respondent did not attempt to conceal her actions or to mislead beneficiary's counsel, OCTC did not prove by clear and convincing evidence that respondent made misrepresentations, and Review Department therefore dismissed section 6106 charge with prejudice. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660**. [9a-e]**

Where OCTC argued for first time in closing trial brief that respondent engaged in dishonesty and bad faith in seeking continuance of disciplinary trial, Review Department declined to assign bad faith as aggravating factor, because respondent did not have opportunity to respond to OCTC's bad faith allegation, and OCTC did not establish by clear and convincing evidence that respondent deliberately attempted to mislead court. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[7a-c]**

Where clear and convincing evidence showed respondent failed to keep client informed of discovery requests, and of court orders stemming from respondent's failure to respond to discovery, respondent was culpable of failing to keep client reasonably informed of significant developments, in violation of section 6068(m). However, where OCTC did not present clear and convincing evidence that respondent's motivation for lack of communication was to cover up respondent's failure to perform competently, respondent was not culpable of act of moral turpitude in violation of section 6106. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[4a, b]**

Where evidence did not establish clearly and convincingly that respondent failed to communicate with client, in that client could not recall specific dates he called respondent's office, and OCTC did not present any documentary evidence of client's unsuccessful efforts to contact respondent, hearing judge correctly dismissed charge that respondent violated section 6068(m) based on failure to respond to client's telephone calls. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[3]**

Where respondent spent 50-60 hours working on a client's case; OCTC did not prove by clear and convincing evidence that there were outstanding unearned fees that respondent failed to refund; and charge of failure to refund unearned fees in that case was dismissed with prejudice, Review Department did not recommend that respondent be required to make restitution to that client. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[6]**

Where respondent was unaware of his suspension until last minute of three-minute telephonic case management conference and then provided three responses to judge's instructions during remaining very brief period (no more than one minute) and under circumstances where respondent did not have reasonable opportunity to withdraw, Review Department upheld hearing judge's finding that respondent was not culpable of moral turpitude because OCTC did not present clear and convincing evidence that respondent practiced law with requisite level of intent, guilty knowledge, or, at a minimum, gross negligence. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[5a-d]**

State Bar disciplinary proceedings are not criminal, and State Bar Court does not impose criminal penalties. Accordingly, Review Department rejected respondent's argument that because his misconduct could form the basis for a criminal misdemeanor conviction, OCTC was required to prove his culpability beyond a reasonable doubt. *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437. **[3]**

162.19 Standards of Proof/Standards of Review — State Bar's burden — Other/general

Where OCTC did not raise issue of indifference toward rectification or atonement at trial, thus depriving respondent of opportunity to provide rebuttal evidence, and record was unclear regarding relevant facts, Review Department declined to assign aggravation based on respondent's alleged failure to make amends to client by paying for medical treatment. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[5]**

To prove a violation of Business and Professions Code section 6103 based on an attorney's failure to obey court orders, OCTC must establish the attorney knew the orders were final and binding, and intended his acts or omissions. Where respondent was aware of and joined in client's tactical decision not to participate in discovery; was timely served with motions for discovery sanctions but chose not to respond or appear; was served with orders granting monetary sanctions against his client and his firm jointly and severally; and stipulated he was individually responsible for resulting obligation, respondent was obligated either to comply with orders or make formal motion or appeal explaining why he could not do so, and could not simply disregard orders, even under client's instructions. Respondent was therefore culpable of violating section 6103. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[1a-d]**

162.20 Standards of Proof/Standards of Review — Quantum of Proof Required in Disciplinary Matters — Respondent's burden in disciplinary matters

Willfully or corruptly and without authority appearing as attorney for party to action or proceeding constitutes cause for suspension or disbarment. Where attorney credibly testified possible litigation was discussed at meeting with family representative, who retained attorney at that meeting to represent him and his family in matters related to environmental remediation, and family was sued for remediation liability, attorney believed he had authority to act as family representative's attorney in litigation. Although attorney should have updated family representative on case status, this is not evidence of lack of authority. Attorney's failure to communicate did not limit authority he believed in good faith he had obtained from family representative to act as family's attorney. Accordingly, Office of Chief Trial Counsel failed to prove attorney corruptly or willfully appeared without authority in violation of Business and Professions Code section 6104 and hearing judge's culpability finding was reversed. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[5a-c]**

Where attorney reasonably believed he had authority to represent family representative in environmental remediation; attorney understood from meeting with family representative that he was authorized to try to ensure remediation was paid for without cost to family; and possibility of lawsuit to be filed against family to trigger coverage from insurer was probable outcome discussed at meeting, attorney did not commit act involving moral turpitude, dishonesty, or corruption within meaning of Business and Professions Code section 6106 by claiming he represented family representative on four separate occasions in two environmental lawsuits. Review department reversed hearing judge's culpability finding based on finding attorney unreasonably believed he had authority to represent family representative in litigation and committed misrepresentation to court through gross negligence by appearing on family representative's behalf. Even if attorney was mistaken by authority to act – which review department did not conclude – attorney's actions would not rise to grossly negligent moral turpitude as attorney sincerely believed conduct was justified. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[6a, b]**

Under standard 1.6(a), mitigation includes absence of any prior discipline record over many years coupled with present misconduct which is not likely to recur. Where respondent had practiced law discipline-free for seven years; showed some understanding of misconduct; admitted to clients mistakes made; told clients to pursue malpractice insurance claim; did not contest hearing judge's culpability determinations; attributed misconduct to personal issues affecting focus; and showed some insight into misconduct, Review Department concluded both prongs of standard 1.6(a) were met as there was (1) absence of prior discipline record over many years; and (2) record supported finding respondent's misconduct was aberrational. Review Department, however, assigned minimal mitigation as respondent had only practiced for seven years, minimum amount without misconduct to obtain mitigating credit. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[7a, b]**

Respondent may obtain mitigation for extraordinary good character attested to by wide range of references in legal and general communities who are aware of full extent of misconduct. Where character references included three attorneys, former client, friend, and doctor with whom respondent worked when respondent worked as registered nurse; witnesses had known respondent between 12 and 29 years and spoke positively regarding respondent's character and abilities as attorney but were not aware of full extent of misconduct, limited weight in mitigation given for extraordinary good character. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[8]**

Some mitigation for extreme emotional difficulties may be available for extremely stressful family circumstances even when no expert testimony established emotional difficulties as directly responsible for misconduct. Where no expert testimony but respondent presented evidence about emotional difficulties; friend corroborated respondent very distraught after mother's death; respondent submitted medical records documenting family members' diagnoses with serious medical issues; but problems did not fully explain respondent's misconduct as family medical issues did not begin until years after respondent took on one client matter; and respondent had not demonstrated when faced with personal problems in future he would handle them differently to avoid future misconduct, Review Department assigned minimal mitigation for respondent's emotional difficulties that coincided with misconduct but such did not mitigate misconduct that

did not coincide with emotional difficulties. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[9a, b]**

Pro bono work is a mitigating circumstance. Where two-character witnesses discussed respondent's pro bono work for client with serious drug problem; respondent worked for several years on client's various criminal cases and acted as client's mentor; and client credited respondent for client's two-year sobriety, Review Department concluded respondent's pro bono work was entitled to mitigation but assigned limited mitigating weight as respondent did not establish prolonged dedication to pro bono work. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[10]**

Under Evidence Code section 664, it is acknowledged that official duty has been regularly performed; thus, there is presumption that Supreme Court Clerk properly performed official duty in serving respondent and respondent's attorney with discipline order as provided in California Rules of Court, rule 9.18(b). Where respondent began transferring cases due to impending suspension prior to issuance of Supreme Court's rule 9.20 order; Review Department had recommended two-year suspension in respondent's prior disciplinary matter several months earlier; and respondent's attorney referenced Supreme Court's rule 9.20 order in email to respondent, argument that respondent did not receive notice of rule 9.20 order from either Supreme Court or respondent's attorney was not credible, and respondent did not rebut presumption of Evidence Code section 664. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[2]**

Language of former rule 4-100(A) is explicit that personal funds cannot be deposited into client trust account. Where respondent interpreted language of rule to permit respondent to deposit personal funds in client trust account that held no client funds; interpretation was unreasonable given entire language of rule; and respondent did not research case law after receiving letters from State Bar regarding NSF checks and containing copy of former rule 4-100, Review Department rejected respondent's argument that language of rule and case law failed to give adequate notice that using client trust account to hold and disburse personal funds was improper even though account never held client funds. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[3]**

Good faith is not defense to commingling charge. Even if respondent had good faith belief that respondent was not violating rule 4-100(A) in depositing personal funds in, and paying personal expenses from, client trust account that held no client funds, good faith belief does not excuse culpability. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[4]**

Where respondent failed to establish that hearing judge demonstrated bias or that respondent was specifically prejudiced, and where purpose of hearing judge's questions at trial was to clarify judge's own confusion about testimony, respondent failed to meet burden to show judicial bias, and failed to show he was deprived of due process. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[2]**

Neither employees of State Bar nor fellow attorneys can give an attorney permission to violate duties under statutes or ethics rules. Accordingly, it was not a valid defense to disciplinary charges that respondent relied on information in a State Bar flyer, and on advice from OCTC, in determining that his actions did not violate statute. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[6]**

Attorneys must obey a tribunal's orders unless they take steps to have them modified or vacated. Where respondent never sought relief from administrative tribunal's orders on basis of inability to comply or impossibility of compliance, Review Department rejected respondent's arguments that failure to comply was not willful, and that it would have been a waste of time to seek modification because his ability to comply was so uncertain. Fact that tribunal's orders were submitted to aboard for final action also did not excuse respondent's noncompliance, where respondent never disputed finality or validity of orders, and did not seek stay of enforcement or appellate relief. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511. **[7a-d]**

Good faith, or even ignorance of the law, is no defense to a charged violation of statute requiring attorneys to report judicial sanctions to State Bar. Particularly where respondent did not establish that his failure to report sanctions imposed by administrative tribunal was attributable to his belief at the time that

statute did not require reporting such sanctions, respondent was culpable of violating section **6068**(o)(3). *In the Matter of Moriarty* (Review Dept. 2017)5 Cal. State Bar Ct. Rptr. 511. **[9]**

Reliance on advice of counsel is not a defense in a discipline case. Where respondent, while acting as fiduciary, disregarded advice of counsel regarding administration of trust, and committed acts of misconduct after counsel stopped representing her, respondent's misconduct was not excused by reliance on advice of counsel. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494. **[5]**

Where respondent knew he was suspended at time he entered into settlement negotiations, respondent was culpable of act of moral turpitude, even though, prior to attempting to settle case, respondent advised opposing counsel of respondent's suspension and contacted State Bar's Ethics Department. Contacting State Bar employee for advice is not a defense to a violation of rules or statutes governing attorney's professional responsibilities. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[9]**

Where respondent appeared at client's deposition two days after he learned of his suspension for failure to pay child support, respondent's knowing unauthorized practice of law constituted act of moral turpitude. Respondent was not entitled to assume he had been reinstated after becoming current on child support, because respondent knew his status could be confirmed on State Bar's website. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[10a, b]**

162.30 Standards of Proof/Standards of Review – Issues and burden of proof in section 6049.1 proceedings

Business and Professions Code section 6049.1, subdivision (a), provides that, subject only to two exceptions in section 6049.1, subdivision (b), final determination of professional misconduct found by another jurisdiction shall be conclusive evidence that California law licensee is culpable of professional misconduct disciplinable in California. Licensee has burden to establish that exceptions do not warrant imposition of discipline in California. One exception set forth in section 6049.1, subdivision (b)(3), is whether proceedings of other jurisdiction lacked fundamental constitutional protection. Word "proceedings" in section 6049.1, subdivision (b)(3) concerns only attorney disciplinary proceeding imposed on California attorney in other jurisdiction and not predicate court proceedings in other jurisdiction that may have led to disciplinary proceeding in other jurisdiction. To conclude that "proceedings" included underlying court proceedings in other jurisdiction which led to disciplinary proceeding in other jurisdiction would be contrary to law's plain meaning and would alter very purposes of section 6049.1, by routinely allowing collateral attacks on disciplinary proceedings taken by other bodies and which extend beyond two limited statutory exceptions in section 6049.1, subdivision (b). Where respondent (1) had ample notice of South Carolina charges, participated, and was represented by counsel in evidentiary hearing before Hearing Panel in South Carolina; (2) litigated matter before Supreme Court of South Carlina; (3) sought review before United States' Supreme Court; (4) South Carolina disciplinary proceeding required opposing counsel to present clear and convincing evidence of misconduct to support culpability; and (5) respondent's participation in South Carolina proceedings was opportunity for her to put at issue and litigate any relevant or cognizable topic as to state proceedings which formed basis of reprimand, respondent failed to sustain her burden to establish that disciplinary proceedings in South Carolina lacked fundamental constitutional protection. While local South Carolina counsel was not subjected to sanctions and disciplinary proceedings in South Carolina as was respondent, different treatment did not show unfairness of disciplinary proceeding as to respondent, especially since record of South Carolina disciplinary proceedings ascribed to respondent responsibility for frivolous and dilatory basis of litigation. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[1a-f]**

162.90 Standards of Proof/Standards of Review — Quantum of Proof Required in Disciplinary Matters — Other/general

Reasonable doubts resulting from evidence are resolved in respondent's favor. Evidence leading to differing reasonable factual interpretations must lead court to adopt inference of no culpability. Where respondent met with family representative – who had ability to hire attorney to handle environmental remediation for him and his family – and considering principles regarding reasonable inferences and resolving reasonable doubts in respondent's favor, review department held attorney had authority to represent family. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911**. [1a, b]**

Business and Professions Code section 6106 provides, in part, that commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Where respondent believed (1) claim was issued by governmental agency targeting clients, and (2) that even if clients had not already been targeted by governmental agency, they would be soon, it was reasonable to believe attorney simply mistaken regarding existence of governmental claim against clients, and no clear and convincing evidence supported conclusion attorney made material misrepresentation amounting to either grossly negligent or intentional moral turpitude when he wrote letter to insurance company stating governmental entity was implicated in matter. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[4a-d]**

Where attorney stated in deposition that he estimated he had "five to ten" telephone conversations with client after meeting, but attorney actually had not communicated with client at all during relevant period, deposition statement was not intentional or grossly negligent misrepresentation in violation of Business and Professions Code section 6106, as attorney had not reviewed case file before appearing at deposition; attorney asserted testimony was based on attorney's experience with these cases generally – not specific memory of speaking with client; and at trial, attorney characterized statement as "guess" at time of deposition, which attorney later corrected in interview with New Jersey Office of Attorney Ethics. Record therefore supported reasonable inference attorney was simply mistaken when attorney testified, and testimony reflected attorney's recollection of case at that time. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[8]**

Business and Professions Code section 6068, subdivision (a), provides that attorney has duty to support Constitution and laws of United States and California. Office of Chief Trial Counsel failed to establish that attorney's actions related to form which reflected client was responsible for remediation at site amounted to breach of attorney's fiduciary duties or duty of loyalty to client where (1) record showed clients had some responsibility for premises' remediation; (2) attorney's representation strategy was to engage governmental agency, involve insurer, and obtain insurance coverage for remediation; (3) attorney asserted form did not admit sole responsibility – as site owners also had responsibility – rather, form simply indicated who was taking charge of conducting remediation, which is not indication of sole liability; (4) governmental agency was already aware of attorney's clients, as property owners stated in remediation timeframe extension request that owners were working to find insurance coverage from attorney's clients as they were previous tenant and also responsible for remediation; and (5) review of record points to reasonable inference that attorney was acting in clients' best interests and was following representation strategy discussed with client at meeting. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[10a-c]**

Office of Chief Trial Counsel (OCTC) failed to prove by clear and convincing evidence that attorney made misrepresentations to client's attorney in related matter regarding insurer's objection to settlement agreement in violation of Business and Professions Code section 6106. Where one email to client's attorney in related matter did not mention insurer at all; second email summarized attorney's report to judge at settlement status conference, disclosed that insurer had been provided copy of proposed settlement agreement, and did not mention insurer's response; attorney believed settlement agreement did not contain insurer's position, as attorney had not carefully read drafts with erroneous statement; and attorney had no indication that would lead attorney to believe that client's attorney in related matter thought insurer had not objected, it could not be determined attorney's omission in email to client's attorney in related matter constituted intentional misrepresentation, especially as one email was only summary of status conference and attorney asserted insurer's position was not discussed at status conference. Reasonable factual interpretation is attorney was unaware client's attorney in related matter believed insurer had not objected. Attorney therefore had no reason to mention insurer's objection in emails. Review department therefore held OCTC did not prove by clear and convincing evidence that attorney made misrepresentations to client's attorney in related matter regarding insurer's objection to settlement agreement by omitting this fact from emails. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[15]**

163 Standards of Proof/Standards of Review – Proof of Wilfulness

Business and Professions Code section 6103 provides, in pertinent part, that willful disobedience or violation of court order requiring attorney to do or forbear act connected with or in course of attorney's profession, which attorney ought in good faith do or forbear, constitutes cause for suspension or disbarment. Attorney willfully violates section 6103 when, despite being aware of final, binding court order, respondent knowingly chooses to violate order. Respondent asserted Office of Chief Trial Counsel failed to introduce evidence that respondent's disobedience of court orders caused harm to administration of justice, but that was not relevant to defense to misconduct under Business and Professions Code section 6103. Where respondent was aware of the court orders, admitted he had not complied with them, and had made no effort to comply, there was no evidence that this conduct was "negligence," and Review Department held respondent acted willfully and was culpable of violating Business and Professions Code section 6103 as charged. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[5a-c]**

Willful disobedience or violation of court order requiring attorney to do or forbear act connected with or in course of attorney's profession, which attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. Attorney acts willfully if attorney intends to commit the act or to abstain from committing it. Where attorney failed to pay court ordered sanctions and then appealed order's validity and lost, Review Department upheld hearing judge's culpability determination that respondent violated Business and Professions Code section 6103, as respondent had actual notice of order and requirement to pay sanctions; order was final and binding for disciplinary purposes as respondent's challenge of order was exhausted; sanctions order remained in effect even though entire case was appealed; and failing to pay sanctions until over a year and a half after knowledge of obligation was unreasonable and a violation of order *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[1a-c]**

Mistake of law made in good faith may be defense to Business and Professions Code section 6067 charge, as attorneys are not infallible and cannot be expected to know all law. But section 6103.7 charge is different, as it does not pertain to attorney performance and knowledge of law. Prohibition from threatening immigration status in section 6103.7 establishes a clear ethical standard for conduct that attorneys must uphold. Only willful breach is required for discipline, not knowledge of rule or intent to violate it. Where respondent mentioned illegal immigration status of opposing party in letters and telephone calls to opposing counsel and in civil case management statement, those constituted threats in violation of Business and Professions Code section 6103.7, and respondent's purported ignorance of section 6103.7 was not a defense. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[3a-d]**

Former rule 4-100(A) of Rules of Professional Conduct prohibits attorneys from commingling personal funds with client funds held in trust account. Ignorance of rules governing client trust accounts is no defense to commingling charge. Where personal loan funds were wired directly into respondent's client trust account, and respondent repaid loan with check from client trust account, respondent was culpable of willful violation of former rule 4-100(A), even if respondent believed at time that payment could be made from client trust account. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[11]**

Former rule 4-100(A) absolutely bars use of trust account for personal purposes, even if client funds are not on deposit. Where respondent deposited personal funds in, and paid personal expenses from, client trust account, respondent was culpable of willful violations of former rule 4-100(A), even though no client funds were in trust account. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[1a, b]**

Language of former rule 4-100(A) is explicit that personal funds cannot be deposited into client trust account. Where respondent interpreted language of rule to permit respondent to deposit personal funds in client trust account that held no client funds; interpretation was unreasonable given entire language of rule; and respondent did not research case law after receiving letters from State Bar regarding NSF checks and containing copy of former rule 4-100, Review Department rejected respondent's argument that language of rule and case law failed to give adequate notice that using client trust account to hold and disburse personal funds was improper even though account never held client funds. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[3]**

Good faith is not defense to commingling charge. Even if respondent had good faith belief that respondent was not violating rule 4-100(A) in depositing personal funds in, and paying personal expenses from, client trust account that held no client funds, good faith belief does not excuse culpability. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[4]**

Probation matters do not require proof that respondent actually knew specifics of probation delinquencies, as long as respondent had notice of probation duties. Where respondent failed to schedule and attend meeting with assigned probation deputy and did not submit first quarterly report to Probation until six months after due date, despite email communications from Probation regarding probation duties, respondent willfully failed to comply with three probation conditions in violation of Business and Professions Code section 6068, subdivision (k). *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. [**2a-d]**

164 Standards of Proof/Standards of Review – Proof of Intent

Attorney must act with intent to deceive to violate Business and Professions Code section 6068(d). Where no evidence established that respondent's careless review of California Rules of Court, rule 9.20 compliance declaration his attorney prepared amounted to intentional deception absent other evidence, Review Department adopted hearing judge's dismissal of section 6068(d) charge. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[4]**

Level of intent required to prove California Rules of Court, rule 9.20 violation is general intent, not specific intent or bad faith. Where respondent failed to file court notices of suspension required by rule 9.20, such conduct constituted willful violation of rule 9.20, and Review Department rejected respondent's argument that respondent did not have requisite level of intent to be found culpable of violating rule 9.20 as respondent did not do so willfully and acted in good faith. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[5]**

Where totality of evidence supported conclusion that after automobile accident, respondent consciously and persistently fabricated complex narrative involving phony driver in order to avoid arrest, respondent could not avoid culpability for acting with moral turpitude by claiming he made "drunken misrepresentations" and did not intend to lie to police officers or recall doing so. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[3a, b]**

Where respondent made statements to brother, 911 operator, and deputy sheriff while intoxicated and with head injury, and generally vague statements were made while in heat of moment and while engaged in mutual combat where both parties received injuries, even if statements were not wholly accurate, without clear evidence of an intent to mislead, evidence did not establish that respondent made deliberate misrepresentations so as to satisfy finding of moral turpitude by clear and convincing standard of proof. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[5a-c]**

165 Standards of Proof/Standards of Review—Adequacy of Hearing Department Decision

Disobeying court order to provide discovery is misuse of discovery process under Civil Discovery Act which is applicable in State Bar Court proceedings. Permissible sanction in State Bar Court under Civil Discovery Act is terminating sanction that dismisses action. Where applicant chose not to appear for two scheduled depositions, improperly refused to answer questions at another deposition, and terminated a fourth deposition, applicant did not comply with hearing judge's orders requiring her to sit for deposition and cooperate with investigation and discovery; applicant's failure to comply was willful; and hearing judge had denied two other motions to dismiss by State Bar's Committee of Bar Examiners based on applicant's failure to participate in deposition, hearing judge correctly determined that discovery sanctions were appropriate and did not abuse her discretion by imposing terminating sanctions. Applicant had opportunity to comply with orders to participate in deposition but did not do so. Applicant obstructed discovery, causing dismissal, which prevented State Bar Court from determining whether applicant was morally fit to practice law. Review Department held terminating sanctions were appropriate and affirmed hearing judge's dismissal order. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989. **[3a-d]**

Where client testified client was not aware case dismissed, and respondent's text messages to client misled client regarding respondent's ongoing work on case and settlement of matter and showed client not aware case dismissed, Review Department concluded respondent culpable of failing to keep client reasonably informed of significant developments in client's legal matter and reversed hearing judge, who credited respondent's testimony over client's and dismissed with prejudice Business and Professions Code section 6068, subdivision (m), charge. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[1a-e]**

Aggravating circumstances may include uncharged violations of Business and Professions Code or Rules of Professional Conduct. However, hearing judge erred in finding significant aggravation based on uncharged violation of former rule 4-100(A) based on erroneous factual conclusion from respondent's testimony, where State Bar never raised uncharged misconduct during trial or in post-trial closing brief, and respondent consequently did not have opportunity to defend during trial against uncharged violation. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[6a, b]**

Willful violation of rule 9.20 is considered serious ethical offense for which disbarment is generally appropriate. Standard 1.8(b) provides that disbarment is appropriate where respondent has two or more prior records of discipline if: (1) actual suspension was ordered in any prior disciplinary matter; (2) prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) prior and current disciplinary matters demonstrate respondent's unwillingness or inability to conform to ethical responsibilities. Where respondent who violated rule 9.20 had three prior records of discipline, including one-year actual suspension, and had repeatedly failed to comply with disciplinary probation conditions, and exceptions to standard 1.8(b) were not applicable, hearing judge erred in failing to analyze applicability of standard 1.8(b). Where no reasons existed to depart from discipline called for by standard 1.8(b), Review Department recommended disbarment to adequately ensure public protection. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[8a-f]**

Regardless of whether issue was fully developed at Hearing Department, Review Department is required to independently review record and make any findings, conclusions, or decision or recommendation different from those of hearing judge. Review Department may also address an issue not raised in request for review, provided parties have opportunity to brief issue. Where hearing judge dismissed disciplinary proceeding based on rule of limitations, and OCTC argued in pretrial statement and on review that rule of limitations was tolled based on respondent's alleged fiduciary relationship with complaining witness, Review Department could reach issue of tolling based on fiduciary relationship after giving parties opportunity to brief issue. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[7a, b]**

Hearing judge is in better position to assess nature and quality of testimony. Hearing judge's findings that respondent's testimony lacked credibility, and that victim's statements to police were credible, was entitled to great weight. Review Department would not contradict hearing judge's credibility conclusions where record lacked sufficient evidence to do so. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[2a, b]**

Where hearing judge did not explain reason for finding respondent's testimony not credible, and evidence corroborated respondent's testimony, Review Department did not adopt hearing judge's finding that respondent's testimony was not credible. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[8]**

Where same acts of misconduct by respondent violated both section 6068(a) and rule 3-300, hearing judge erred by dismissing section 6068(a) charge with prejudice. Better approach was to find both violations, but assign duplicative violation no additional weight in determining discipline. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[6]**

Where hearing judge found that respondent and his therapist testified credibly regarding respondent's emotional difficulties at the time of his misconduct and his subsequent recovery, these findings were entitled to great weight. Where that testimony and other evidence established that respondent had recovered from his

emotional difficulties, and respondent had repeatedly attempted to rectify part of his misconduct, respondent established that he had recovered, and his emotional difficulties were properly considered in mitigation. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[6a, b]**

Where hearing judge found that respondent, as prosecutor in criminal case, committed act of moral turpitude by improperly failing to disclose evidence to defense counsel in order to secure strategic trial advantage, Review Department deferred to hearing judge's determination that respondent's alternative explanation of her conduct lacked credibility. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[3]**

Lack of clarity in hearing judge's decision, as to whether moral turpitude culpability finding was based on intentional or grossly negligent conduct, was problematic for purposes of ascertaining seriousness of misconduct and assessing corresponding discipline. Review Department clarified, based on misrepresentations in documents respondent drafted and filed, that respondent intentionally deceived tribunal. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[3]**

166 Standards of Proof/Standards of Review—Independent Review of Record

Once applicant appeals to State Bar Court adverse moral character determination by State Bar's Committee of Bar Examiners (Committee), court must determine whether applicant possesses good moral character. In moral character proceedings, State Bar's Office of Chief Trial Counsel (OCTC) investigates applicant's moral character, discovery occurs, and then matter proceeds to trial. OCTC may take applicant's deposition. Moral character hearings in State Bar Court are de novo and not limited to matters Committee considered. Applicant bears burden of establishing good moral character and cannot meet burden by refusing to cooperate in State Bar investigation. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr 989. **[1a,b]**

Regardless of whether issue was fully developed at Hearing Department, Review Department is required to independently review record and make any findings, conclusions, or decision or recommendation different from those of hearing judge. Review Department may also address an issue not raised in request for review, provided parties have opportunity to brief issue. Where hearing judge dismissed disciplinary proceeding based on rule of limitations, and OCTC argued in pretrial statement and on review that rule of limitations was tolled based on respondent's alleged fiduciary relationship with complaining witness, Review Department could reach issue of tolling based on fiduciary relationship after giving parties opportunity to brief issue. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[7a, b]**

Where hearing judge found that respondent, as prosecutor in criminal case, committed act of moral turpitude by improperly failing to disclose evidence to defense counsel in order to secure strategic trial advantage, Review Department deferred to hearing judge's determination that respondent's alternative explanation of her conduct lacked credibility. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[3]**

Where hearing judge held full and fair trial on aggravation and mitigation but dismissed case without making any findings, and Review Department reversed dismissal, Review Department reviewed record and made its own findings and discipline recommendation. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[5]**

Great weight is given to hearing judge's findings on candor because judge who hears and sees witness testify is best positioned to make this determination. Where hearing judge heard respondent testify over multiple days and did not find lack of candor despite OCTC's request, Review Department declined to find dishonest testimony as additional aggravating factor. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 494 **[7]**

Decisions by criminal and appellate courts finding respondent's misconduct as prosecutor intentional and deliberate were entitled to strong presumption of validity and prima facie weight in State Bar Court, even though respondent was not technically party to criminal case, because disciplinary charges arose from same prosecutorial misconduct. Review Department affords hearing judge's factual findings great weight, but must

independently assess record and may make different findings or conclusions. Where hearing judge failed to give proper weight to court decisions in criminal case, and record demonstrated validity of other courts' findings, Review Department rejected hearing judge's conclusion that respondent's misconduct was grossly negligent, and found it intentional. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[1a-e]**

Lack of clarity in hearing judge's decision, as to whether moral turpitude culpability finding was based on intentional or grossly negligent conduct, was problematic for purposes of ascertaining seriousness of misconduct and assessing corresponding discipline. Review Department clarified, based on misrepresentations in documents respondent drafted and filed, that respondent intentionally deceived tribunal. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[3]**

167 Standards of Proof/Standards of Review—Abuse of Discretion

Discovery sanctions are reviewed under abuse of discretion or error of law standard. Two requirements to impose discovery sanctions: (1) failure to comply with court-order discovery; and (2) failure must be willful. In analyzing discovery ruling, court is guided by California's long-standing public policy favoring disclosure and objectives that discovery rules were enacted to accomplish: (1) ascertaining truth and preventing perjury; (2) providing effective means to detect and expose false claims and defenses; (3) making facts available in simple, convenient, and inexpensive way; (4) educating parties before trial as to value of claims and defenses; (5) expediting litigation; (6) safeguarding against surprise; (7) preventing delay; (8) simplifying and narrowing issues; and (9) expediting and facilitating preparation and trial. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989. **[2]**

Hearing judge had broad discretion to determine admissibility and relevance of evidence. Standard of review generally applied to evidentiary rulings is abuse of discretion. To prevail on claim of error, abuse of discretion and actual prejudice resulting from ruling must be established. Where hearing judge denied admission of documents from six separate lawsuits in which company was defendant, as well as company's 2009 bankruptcy petition, hearing judge did not abuse her discretion as civil lawsuits and evidence of company's bankruptcy were irrelevant as evidence had no bearing on circumstances pertaining to respondent's conviction; documents concerning company's perceived financial distress would not mitigate or excuse respondent's misconduct as bankruptcy proceeding filed in 2009 and respondent's conviction occurred in August 2008; and respondent failed to identify specific additional facts or arguments he would have offered if evidence admitted or that he suffered any actual prejudice. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[3a-c]**

Standard of review applied to procedural rulings is abuse of discretion or error of law. Where respondent asserted Office of Chief Trial Counsel (OCTC) presented irrelevant, inflammatory, and prejudicial evidence of other pleadings filed by respondent, but respondent failed to identify specific evidence to which he objected, respondent failed to establish hearing judge abused discretion or erred by admitting OCTC's evidence. Respondent further did not specify how judge's decisions prejudiced case. Review Department therefore rejected respondent's evidentiary arguments. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[3]**

Rule 5.65, Rules of Procedure of State Bar, provided that, generally, written discovery requests must be made and served on other party within 10 days after service of answer to notice of disciplinary charges (NDC), or within 10 days after service of any amendment to NDC. Where respondent was aware of 2013 investigation in 2013 but did not timely request discovery of Office of Chief Trial Counsel's investigation file until one month before trial and 10 months after NDC filed; respondent offered no evidence or valid reason why respondent failed to comply with State Bar discovery rules; respondent had ample opportunity to seek discovery earlier in case; and respondent, by not making timely discovery request, could not properly make motion to compel, hearing judge did not abuse discretion by denying respondent's motion to compel as untimely. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[4a, b]**

Rule 5.104(C), Rules of Procedure of State Bar, required admission of relevant evidence if it was sort of evidence on which responsible persons were accustomed to rely in conduct of serious affairs. Where judge properly excluded respondent's exhibits under rule 5.101.1(I), Rules of Procedure of State Bar, relevance of

respondent's evidence was not at issue because respondent had already failed to comply under rule 5.101.1. Review Department held respondent failed to show hearing judge abused discretion in excluding some of respondent's exhibits for failing to comply with Rules of Procedure and therefore rejected respondent's request to admit excluded exhibits into record. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[6a, b]**

169 Standards of Proof/Standards of Review—Miscellaneous Issues re Standard of Proof/Standard of Review

Aggravation for lack of candor in disciplinary proceedings must be supported by express finding that testimony lacked candor or was dishonest. Where record contained some incongruities in witnesses' testimony, but Office of Chief Trial Counsel had not presented clear and convincing evidence to establish respondent's testimony lacked candor, Review Department adopted hearing judge's finding that respondent testified credibly and declined to find aggravation for lack of candor. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[5]**

In reviewing an order dismissing a disciplinary proceeding, Review Department looks to operative notice of disciplinary charges (NDC), deems all allegations in that NDC to be true, and may also rely on any judicially noticed facts to assess the sufficiency of the operative NDC. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[1]**

Involuntary inactive enrollment proceedings are abbreviated proceedings in which the principal issue is whether OCTC can establish exigent circumstances sufficient to justify enrolling an attorney involuntarily inactive before a formal disciplinary proceeding. Any subsequent disciplinary proceedings are separate proceedings, and neither the involuntary inactive enrollment order itself nor any of the findings made in the underlying proceedings is binding or has any probative value in the formal disciplinary case. Such an order also is not a final decision on the merits, and thus does not fulfill the requirements of collateral estoppel. Accordingly, Review Department considering disciplinary proceedings declined to consider hearing judge's analysis of statute as set forth in order denying involuntary inactive enrollment. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[4a, b]**

Where the Review Department conducts a summary review under rule 5.157 of the Rules of Procedure of the State Bar, the hearing judge's decision is final as to all material findings of fact, and the issues are limited to: (1) contentions that the facts support conclusions of law different from those reached by the hearing judge; (2) disagreement about the appropriate disposition or degree of discipline; or (3) other questions of law. Issues and contentions not raised are waived on summary review. *In the Matter of Unger* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 506 **[1]**

Decisions by criminal and appellate courts finding respondent's misconduct as prosecutor intentional and deliberate were entitled to strong presumption of validity and prima facie weight in State Bar Court, even though respondent was not technically party to criminal case, because disciplinary charges arose from same prosecutorial misconduct. Review Department affords hearing judge's factual findings great weight, but must independently assess record and may make different findings or conclusions. Where hearing judge failed to give proper weight to court decisions in criminal case, and record demonstrated validity of other courts' findings, Review Department rejected hearing judge's conclusion that respondent's misconduct was grossly negligent, and found it intentional. *In them Matter of Murray* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr 479. **[1a-e]**

Where respondent prosecutor inserted false confession in criminal defendant's statement before disclosing statement to defense counsel, respondent at least violated spirit of statutory scheme governing discovery in criminal prosecutions. Nonetheless, where hearing judge dismissed disciplinary charge of failing to comply with law, on ground that prosecutor did not withhold items subject to disclosure, and Office of Chief Trial Counsel did not challenge dismissal on appeal, Review Department upheld dismissal. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[5]**

Where respondent knew he was suspended at time he entered into settlement negotiations, respondent was culpable of act of moral turpitude, even though, prior to attempting to settle case, respondent advised opposing counsel of respondent's suspension and contacted State Bar's Ethics Department. Contacting State Bar employee for advice is not a defense to a violation of rules or statutes governing attorney's professional responsibilities. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[9]**

171 Issues re Conditions Imposed as Part of Discipline — Restitution Requirements (rule 5.136; Standard 1.4(a))

Where respondent spent 50-60 hours working on a client's case; OCTC did not prove by clear and convincing evidence that there were outstanding unearned fees that respondent failed to refund; and charge of failure to refund unearned fees in that case was dismissed with prejudice, Review Department did not recommend that respondent be required to make restitution to that client. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[6]**

Where respondent was culpable of disobeying court orders by failing to pay monetary sanctions, payment of the sanctions was imposed as condition of respondent's disciplinary probation. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[7]**

172.30 Issues re Conditions Imposed as Part of Discipline — – Monitoring, Treatment and Testing Requirements – Alcohol Testing/Treatment (Standard 1.4(c)

Standard 2.16(b) provides for discipline ranging from reproval to suspension for misdemeanor convictions not involving moral turpitude but encompassing other misconduct warranting discipline. Where respondent had two DUI convictions; second DUI was committed only two years after respondent completed probation in first DUI matter and involved serious injuries to two victims and property damage; second DUI involved false statements to police; repeated criminal conduct, increasing in severity, evidenced alcohol abuse problems, but respondent's assertion regarding abstaining from driving did not solve alcohol problem or assure court future misconduct would not recur, Review Department concluded respondent's actions did not involve moral turpitude but did constitute other misconduct warranting discipline. As mitigating circumstances outweighed sole aggravating circumstance, and due to respondent's compliance with criminal probation terms, Review Department concluded appropriate discipline was public reproval with conditions, including attendance at abstinence-based self-help group, as court concluded respondent had alcohol problem. Although record did not establish respondent's law practice was affected by his alcohol abuse problem, court imposed discipline to prevent future harm to public and to impress upon respondent seriousness of actions, as respondent did not fully understand significance of alcohol problem and how it related to practice of law. *In the Matter of Herich* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820 **[8a-c]**

176 Issues re Conditions Imposed as Part of Discipline—Requirements to Show Rehabilitation (etc.) (Standard 1.2(c)(1))

Where respondent's lack of insight into the seriousness of her misconduct and repeated and continuing failure to appreciate the importance of her professional responsibilities raised additional concerns about the potential for future misconduct, Review Department recommended actual suspension of 18 months and until respondent establishes her rehabilitation, fitness to practice, and present learning and ability in the law. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. [**10a, b]**

179.90 Issues re Conditions Imposed as Part of Discipline – Other Issues – Other

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statute should not be construed to apply retroactively to offense committed prior to effective date. Where matter was submitted for decision prior to March 1, 2021, effective date of amended rule 5.137(H) of Rules of Procedure of State Bar, and all misconduct occurred prior to April 1, 2020, effective date of former rule 5.137 of Rules of Procedure of State Bar, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[22]**

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statutes should

not be construed to apply retroactively to offenses committed prior to effective date. Where all of respondent's misconduct occurred prior to effective date of new State Bar Rule of Procedure implementing statute authorizing monetary sanctions, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[11]**

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statutes should not be construed to apply retroactively to offenses committed prior to effective date. Where all of respondent's misconduct occurred prior to effective date of new State Bar Rule of Procedure implementing statute authorizing monetary sanctions, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738**. [9]**

Where respondent was placed on involuntary inactive enrollment under section 6007(c)(4) following hearing judge's disbarment recommendation, but Review Department reduced discipline to 60-day actual suspension, Review Department ordered involuntary inactive enrollment terminated, and recommended that respondent be given credit for inactive enrollment period toward period of actual suspension. Because inactive enrollment period had lasted longer than 60 days, there would be no prospective period of actual suspension. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[16a-c]**

180.12 Monetary Sanctions–General Issues–Appropriate amount of monetary sanctions

Upward deviation to $3,000 from monetary sanction guideline suggested in rule 5.137 of Rules of Procedure of State Bar appropriate because respondent's misconduct was aggravated by lack of candor. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[14]**

Based on monetary sanction guidelines set forth in rule 5.137 of State Bar Rules of Procedure, and taking into consideration attorney was culpable of violations related solely to failure to communicate in single client matter and discipline warranted was lowest presumed length of time for actual suspension, review department recommended attorney be ordered to pay monetary sanctions in amount of $500. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[22]**

180.11 Monetary Sanctions–General Issues–Effective date/retroactivity of authorizing statute and rule

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statute should not be construed to apply retroactively to offense committed prior to effective date. Where matter was submitted for decision prior to March 1, 2021, effective date of amended rule 5.137(H) of Rules of Procedure of State Bar, and all misconduct occurred prior to April 1, 2020, effective date of former rule 5.137 of Rules of Procedure of State Bar, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[22]**

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statutes should not be construed to apply retroactively to offenses committed prior to effective date. Where all of respondent's misconduct occurred prior to effective date of new State Bar Rule of Procedure implementing statute authorizing monetary sanctions, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[11]**

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statutes should not be construed to apply retroactively to offenses committed prior to effective date. Where all of respondent's misconduct occurred prior to effective date of new State Bar Rule of Procedure implementing statute authorizing monetary sanctions, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[9]**

180.31 Monetary Sanctions – Imposition of Monetary Sanctions– Recommended

In the Matter of Jimenez (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965.

Based on monetary sanction guidelines set forth in rule 5.137 of State Bar Rules of Procedure, and taking into consideration attorney was culpable of violations related solely to failure to communicate in single client matter and discipline warranted was lowest presumed length of time for actual suspension, review department recommended attorney be ordered to pay monetary sanctions in amount of $500. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[22]**

180.35 Monetary Sanctions – Imposition of Monetary Sanctions – Not recommended

In the Matter of Fisher (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999.

In the Matter of Thomas (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944.

In the Matter of Jones (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873.

Monetary sanctions not recommended by Review Department where matter submitted for decision in Hearing Department prior to March 1, 2021 effective date of amended rule 5.137(H) of Rules of Procedure of State Bar, and all misconduct occurred prior to April 1, 2020 effective date of rule 5.137 of Rules of Procedure of State Bar. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[12]**

In the Matter of Caplin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768.

In the Matter of Braun (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738.

191 Miscellaneous General Issues in State Bar Court Proceedings—Effect of /Relationship to Other Proceedings

Rule 2604, Rules of Procedure of State Bar, provided, in part, that Office of Chief Trial Counsel (OCTC) may file Notice of Disciplinary Charges (NDC) when attorney had received fair, adequate, and reasonable opportunity to deny or explain matters that were subject of NDC charges. Rule 5.30, Rules of Procedure of State Bar, required OCTC to notify attorney before NDC was filed of right to request early neutral evaluation conference (ENEC). Where OCTC mailed notice of ENEC right to respondent's State Bar address, but respondent did not receive notice because respondent had not updated address, which was respondent's responsibility, Review Department held no procedural violation of rule 2604, and hearing judge did not err for not mentioning in decision that no ENEC was held as respondent not entitled to ENEC due to respondent's own failure to update State Bar address. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. [3a, b]

Rule 5.21, Rules of Procedure of State Bar, provided generally that disciplinary proceeding must begin within five years from date of violation. Five-year limit was tolled while civil proceedings based on same acts or circumstances as violation were pending in any court. While respondent was acting as fiduciary in holding funds in escrow, five-year limitations period did not commence. As respondent did not deliver all funds until after civil lawsuit filed against him, limitations did not begin to run prior to start of lawsuit. Where counts related to circumstances alleged in civil lawsuit, counts were tolled as related to ongoing civil proceeding. Review Department rejected respondent's argument that civil litigation did not toll limitations period as disciplinary issues related only to small part of civil complaint. Conduct related to violations alleged in notice of disciplinary charges (NDC) was clearly same conduct alleged as part of civil litigation, and no authority requires entire lawsuit or certain percentage of lawsuit to relate to alleged violations. Review Department also rejected respondent's claim that appeal did not toll limitations period because it addressed "derivative" issue related to amount of damages owed, as respondent's appeal was of lawsuit based on same act of violation. Review Department held that while civil litigation was pending, include appeal, limitations period was tolled. However, even if appeal period was not tolled, NDC was filed within limitations period, as NDC was filed well under five years from judgement in civil case. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[7a-e]**

Respondent's conviction conclusively proved elements of his crime. Thus, respondent's 2019 misdemeanor conviction established he drove under influence of alcohol and had prior DUI conviction.

Drunk driving convictions do not establish per se moral turpitude, but moral turpitude can be established based on circumstances surrounding convictions. Where respondent repeatedly falsely denied to police officer consumption of alcohol and not feeling its effects, and falsely claimed driving directly home from office, Review Department concluded (1) respondent's actions did not establish moral turpitude but did amount to other misconduct warranting discipline; and (2) circumstances surrounding DUI convictions were indications of alcohol abuse problem, as respondent was again arrested for drunk driving only two years after criminal probation for first DUI ended; second drunk driving violation resulted in collision that injured two victims and caused property damage; and respondent admitted does not drive anymore so as not to risk driving under influence, which clearly implied respondent did not trust himself to make decision not to drive while impaired from drinking. *In the Matter of Herich* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820 **[1a-e]**

For purposes of attorney discipline, respondent's criminal conviction of driving under the influence of alcohol with an enhancement for an excessive blood alcohol concentration was conclusive proof that respondent committed all elements of that crime. However, it is an attorney's misconduct, not their conviction, that warrants discipline, and facts and circumstances surrounding conviction may be considered in determining whether moral turpitude was involved. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[1a, b]**

Under rule 5.21(C)(3) of Rules of Procedure of State Bar, rule of limitations for disciplinary charges is tolled during pendency of government investigations or proceedings based on same acts or circumstances as violation. Where Tennessee civil proceeding found that respondent had defrauded investor and was liable for damages, rule of limitations was tolled for disciplinary charges based on same acts or circumstances. However, subsequent sister state collection proceedings, and bankruptcy proceeding to determine dischargeability of debt under Tennessee judgment, were not based on same acts or circumstances, and thus did not toll rule of limitations. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[3a, b]**

Where respondent pled guilty in criminal proceeding to willfully and unlawfully committing assault, Review Department declined to consider respondent's belated self-defense claim because it would negate elements of crime to which he pled guilty, and factual basis for plea supported hearing judge's finding that respondent's self-defense claim lacked credibility. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[4a, b]**

Prior discipline is considered in most cases only as aggravating circumstance in determining discipline in a later proceeding, but prior discipline may also be considered if it tends to prove a fact in issue in determining culpability. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[4]**

Where respondent failed to withdraw from stipulation in prior disciplinary proceeding, or to timely request correction or modification of stipulation, and permitted stipulation's approval by State Bar Court and Supreme Court, respondent waived right to argue for first time in subsequent disciplinary proceeding that stipulation did not accurately reflect his agreement. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[5]**

Where OCTC argued for first time in closing trial brief that respondent engaged in dishonesty and bad faith in seeking continuance of disciplinary trial, Review Department declined to assign bad faith as aggravating factor, because respondent did not have opportunity to respond to OCTC's bad faith allegation, and OCTC did not establish by clear and convincing evidence that respondent deliberately attempted to mislead court. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[7a-c]**

Superior court orders are final and binding for disciplinary purposes once review is waived or exhausted in courts of record. Where respondent never sought to stay, vacate, modify, or challenge discovery sanctions order, fact that order was not immediately appealable, and opposing party ultimately agreed to waive discovery sanctions, did not absolve respondent of culpability of failing to obey court order under section 6103. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[6]**

An attorney violates section 6103 when, despite being aware of a final, binding court order, the attorney knowingly takes no action in response to the order or chooses to violate it. Where respondent was aware of motion for discovery sanctions, did not oppose it, and received notice of ruling from opposing counsel, fact that sanctions order was not formally served on respondent did not excuse his failure to comply. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[5a, b]**

Business and Professions Code section allowing any person to file complaint with State Bar for false, misleading, or deceptive legal advertising, and allowing State Bar to require attorney to withdraw advertising on 72 hours' notice if such complaint is supported by substantial evidence, is completely separate from attorneys' duty under Rules of Professional Conduct not to use deceptive or misleading advertising. Accordingly, respondent who employed misleading advertising was properly found culpable of violating Rules of Professional Conduct even though no such complaint was filed, and State Bar did not give him 72 hours' notice to withdraw advertising. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[7]**

Where respondent continued to collect advance fees for loan modification services despite cease and desist orders from several states; ceased his wrongdoing only after temporary restraining order was issued; and continued to insist his conduct was legal even after his operation was shut down by consumer protection agency, respondent's indifference toward rectification and inability to recognize wrongfulness of his misconduct warranted substantial consideration in aggravation. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[13a, b]**

Where respondent not only failed to cooperate with OCTC, but made repeated threats against OCTC employees, resulting in the issuance of restraining orders against him, respondent's behavior was reprehensible and constituted extremely serious aggravation. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[14a-c]**

Involuntary inactive enrollment proceedings are abbreviated proceedings in which the principal issue is whether OCTC can establish exigent circumstances sufficient to justify enrolling an attorney involuntarily inactive before a formal disciplinary proceeding. Any subsequent disciplinary proceedings are separate proceedings, and neither the involuntary inactive enrollment order itself nor any of the findings made in the underlying proceedings is binding or has any probative value in the formal disciplinary case. Such an order also is not a final decision on the merits, and thus does not fulfill the requirements of collateral estoppel. Accordingly, Review Department considering disciplinary proceedings declined to consider hearing judge's analysis of statute as set forth in order denying involuntary inactive enrollment. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[4a, b]**

Order denying OCTC's petition for involuntary inactive enrollment was judicially noticeable in subsequent disciplinary proceeding involving same respondent. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. [**5]**

Respondent's conviction for felony vehicular manslaughter while intoxicated conclusively established that respondent drove while intoxicated and caused victim's death. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[2]**

To prove a violation of Business and Professions Code section 6103 based on an attorney's failure to obey court orders, OCTC must establish the attorney knew the orders were final and binding, and intended his acts or omissions. Where respondent was aware of and joined in client's tactical decision not to participate in discovery; was timely served with motions for discovery sanctions but chose not to respond or appear; was served with orders granting monetary sanctions against his client and his firm jointly and severally; and stipulated he was individually responsible for resulting obligation, respondent was obligated either to comply with orders or make formal motion or appeal explaining why he could not do so, and could not simply disregard orders, even under client's instructions. Respondent was therefore culpable of violating section 6103. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[1a-d]**

When attorney has actual notice of court order, and does not object, move for reconsideration, or seek appellate review, attorney forfeits right to challenge order based on inadequate notice, and is obligated to comply with order. For due process and notice purposes, discovery sanctions orders are not distinguishable from other types of sanctions orders. Where respondent stipulated he had actual notice of orders imposing monetary discovery sanctions, and did not comply with orders, hearing judge erred in finding respondent not culpable of violating orders because he was not personally named in underlying motions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[3a-c]**

For disciplinary purposes, superior court orders are final and binding once review in courts of record is waived or exhausted. Attorneys cannot wait until State Bar disciplinary proceedings commence to collaterally challenge legitimacy of superior court orders. State Bar Court does not have jurisdiction to determine validity of civil court orders. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[4a-c]**

Where respondent was culpable of disobeying court orders by failing to pay monetary sanctions, payment of the sanctions was imposed as condition of respondent's disciplinary probation. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[7]**

Where respondent filed multiple frivolous appeals that appellate court dismissed after finding respondent's arguments had no merit and resulted from subjective bad faith, and where appellate court's findings, which were entitled to great weight, were supported by clear and convincing evidence, respondent was culpable of violating section 6068(c). *In the Matter of Schooler* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 494. **[4]**

Decisions by criminal and appellate courts finding respondent's misconduct as prosecutor intentional and deliberate were entitled to strong presumption of validity and prima facie weight in State Bar Court, even though respondent was not technically party to criminal case, because disciplinary charges arose from same prosecutorial misconduct. Review Department affords hearing judge's factual findings great weight, but must independently assess record and may make different findings or conclusions. Where hearing judge failed to give proper weight to court decisions in criminal case, and record demonstrated validity of other courts' findings, Review Department rejected hearing judge's conclusion that respondent's misconduct was grossly negligent, and found it intentional. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[1a-e]**

Workers' Compensation Appeals Board (WCAB) findings are entitled to strong presumption of validity where supported by substantial evidence. Where respondent was subject to WCAB sanctions order, and where sanctioned misconduct bore strong similarity, if not identity, to charged disciplinary misconduct, WCAB findings constituted conclusive legal determination of respondent's conduct in perpetrating fraud on WCAB. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[4]**

Where respondent refused to dismiss defendants after learning they were not parties to contract at issue; trial court awarded sanctions against respondent; and Court of Appeal affirmed, finding respondent's action was frivolous, Court of Appeal's finding of frivolousness was entitled to strong presumption of validity, and respondent was culpable of maintaining an unjust action. *In the Matter of Burke* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 448. **[11a, b]**

192 Miscellaneous General Issues in State Bar Court Proceedings—Constitutional Issues – Due Process/Procedural Rights

Rule 2604, Rules of Procedure of State Bar, provided, in part, that Office of Chief Trial Counsel (OCTC) may file Notice of Disciplinary Charges (NDC) when attorney had received fair, adequate, and reasonable opportunity to deny or explain matters that were subject of NDC charges. Rule 5.30, Rules of Procedure of State Bar, required OCTC to notify attorney before NDC was filed of right to request early neutral evaluation conference (ENEC). Where OCTC mailed notice of ENEC right to respondent's State Bar address, but respondent did not receive notice because respondent had not updated address, which was respondent's responsibility, Review Department held no procedural violation of rule 2604, and hearing judge did not err for not mentioning in decision that no ENEC was held as respondent not entitled to ENEC due to respondent's

own failure to update State Bar address. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. [3a, b]

Notice of Disciplinary Charges must (1) cite statutes or rules attorney allegedly violated; (2) contain facts comprising violation in sufficient detail to permit preparation of defense; and (3) relate stated facts to authorities attorney allegedly violated. Where facts charged in Notice of Disciplinary Charges were very specific, charge cannot be interpreted broadly so other facts not alleged constitute misconduct; such would infringe on respondent's right to fair proceeding as respondent is entitled to adequate notice of rule or statute violated and manner respondent allegedly violated it. Review Department rejected Office of Chief Trial Counsel's argument that respondent received notice that respondent's overall communication with clients was being charged. As Notice of Disciplinary Charges was narrowly drafted and was not amended to conform to proof, Review Department did not consider other allegations by Office of Chief Trial Counsel on review that respondent failed to communicate in other instances. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[3a, b]**

Fundamental requirement of due process is opportunity to be heard at meaningful time and in meaningful manner. In California disciplinary proceedings, adequate notice requires only that attorney be fairly apprised of precise nature of charges before proceedings commence. Where Notice of Disciplinary Charges pled specific facts comprising violation and specific rule violated, respondent received due process, and Review Department rejected respondent's contention that due process required that respondent be given notice during investigation that conduct violated specific rule before State Bar could charge respondent with violation. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[2]**

Language of former rule 4-100(A) is explicit that personal funds cannot be deposited into client trust account. Where respondent interpreted language of rule to permit respondent to deposit personal funds in client trust account that held no client funds; interpretation was unreasonable given entire language of rule; and respondent did not research case law after receiving letters from State Bar regarding NSF checks and containing copy of former rule 4-100, Review Department rejected respondent's argument that language of rule and case law failed to give adequate notice that using client trust account to hold and disburse personal funds was improper even though account never held client funds. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[3]**

Aggravating circumstances may include uncharged violations of Business and Professions Code or Rules of Professional Conduct. However, hearing judge erred in finding significant aggravation based on uncharged violation of former rule 4-100(A) based on erroneous factual conclusion from respondent's testimony, where State Bar never raised uncharged misconduct during trial or in post-trial closing brief, and respondent consequently did not have opportunity to defend during trial against uncharged violation. *In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753. **[6a, b]**

Where respondent had stipulated in earlier disciplinary proceeding that he was unreasonable in believing he could represent party in arbitration while suspended, respondent's subsequent practice of law in three arbitration matters while on notice of his suspension was an intentional act of moral turpitude, not merely grossly negligent. Finding of moral turpitude did not violate respondent's due process rights, because earlier stipulation put respondent on notice that continuing to appear for parties in arbitration while suspended could involve moral turpitude. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[6a-d]**

Where culpability determinations were based on evidence introduced at trial without respondent's objection, respondent's due process rights were not violated by admission of such evidence, as any objection had been waived. Moreover, State Bar's rules permit admission of relevant, reliable hearsay evidence to supplement or explain other evidence, although hearsay admitted over timely objection is not sufficient in itself to support a finding. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[1]**

Where respondent failed to establish that hearing judge demonstrated bias or that respondent was specifically prejudiced, and where purpose of hearing judge's questions at trial was to clarify judge's own confusion about testimony, respondent failed to meet burden to show judicial bias, and failed to show he was deprived of due process. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[2]**

Evidence of uncharged misconduct can be considered in aggravation if respondent's due process rights are not violated. Where OCTC was or should have been aware of uncharged misconduct before disciplinary charges were filed, misconduct should have been charged. Nonetheless, where respondent stipulated to conduct constituting uncharged misconduct; uncharged misconduct was elicited for relevant purpose and based on respondent's own representations; and hearing judge granted motion to conform charges to proof at trial, hearing judge correctly assigned nominal weight in aggravation for uncharged misconduct. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[7a-c]**

Due process does not require that petitioner for reinstatement be allowed to present evidence of rehabilitation at evidentiary hearing, where applicable provision of State Bar Rules of Procedure expressly provides for dismissal of petition for failure to comply with prefiling requirements, including reimbursement of Client Security Fund. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 529. **[5]**

193 Miscellaneous General Issues in State Bar Court Proceedings—Constitutional Issues—Other

Prosecutors have no First Amendment right to engage in speech that creates substantial likelihood of material prejudice to criminal proceeding or to parties' rights to a fair trial. Where prosecutor's misconduct prejudiced criminal defendant's right to fair trial, State Bar Court would not entertain First Amendment free speech defense to resulting disciplinary charges. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[3]**

194 Miscellaneous General Issues in State Bar Court Proceedings– Effect/Applicability of Statutes Outside State Bar Act

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statute should not be construed to apply retroactively to offense committed prior to effective date. Where matter was submitted for decision prior to March 1, 2021, effective date of amended rule 5.137(H) of Rules of Procedure of State Bar, and all misconduct occurred prior to April 1, 2020, effective date of former rule 5.137 of Rules of Procedure of State Bar, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[22]**

Litigation privilege in Civil Code section 47 does not apply to disciplinary proceedings. Where respondent argued hearing judge improperly relied on civil case management statement as it was privileged communication under Civil Code section 47, Review Department rejected respondent's argument. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[4]**

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statutes should not be construed to apply retroactively to offenses committed prior to effective date. Where all of respondent's misconduct occurred prior to effective date of new State Bar Rule of Procedure implementing statute authorizing monetary sanctions, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[11]**

Rules of statutory construction apply when State Bar Court interprets Rules of Procedure of State Bar. Absent express retroactivity provision or clear evidence of intended retroactive application, statutes should not be construed to apply retroactively to offenses committed prior to effective date. Where all of respondent's misconduct occurred prior to effective date of new State Bar Rule of Procedure implementing statute authorizing monetary sanctions, Review Department did not recommend imposition of monetary sanctions on respondent. *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[9]**

Code of Civil Procedure sections permitting persons not otherwise entitled to practice law in California to represent parties to certain types of arbitrations did not authorize suspended California attorney to practice law by representing party to arbitration. Statute permitting out-of-state attorneys in good standing to represent parties in arbitrations could not be construed to permit suspended California attorneys to practice law in violation of section 6126. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698.**[2a, b]**

Probate Code section 16004 applies to fiduciary relationship between attorney and client, and is statutory complement to rule 3-300. Probate Code establishes rebuttable presumption that trustee has violated fiduciary duties when trustee obtains advantage from beneficiary in transaction between them. When attorney trustee enters into transaction with trust, transaction will be set aside unless attorney can show that beneficiaries had full knowledge of facts connected with transaction and fully understood its effect. Where respondent, as trustee, obtained loan from trust which benefited her, and did not fully inform beneficiaries of terms or risks of loan transaction, respondent violated her duties under Probate Code, and thereby violated section 6068(a). *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[5a, b]**

As fiduciary, trustee has duty to act with utmost good faith, to administer trust according to its terms, and to act with reasonable care, skill and caution as prudent person in similar circumstances. Under Probate Code, trustees must administer trusts solely in interest of beneficiaries, and must not use trust property for trustee's own profit or purpose unconnected with trust. However, these obligations do not override provisions of trust itself. Where terms of trust gave respondent, as trustee, broad management powers, including ability to enter into transactions such as self-dealing that would otherwise violate trustee's statutory duties, respondent was not culpable of violating section 6068(a), through Probate Code violations, by lending money to herself from trust, where loan was secured by respondent's real property and provided for five percent interest rate, and respondent paid off loan in full after request by beneficiary. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[4a, b]**

Trustee of revocable trust owes fiduciary duty to settlor of trust. When settlor has become incompetent, trustee's fiduciary duty is to beneficiaries, and if trustee is an attorney, she is required to treat beneficiaries as clients for purposes of rule 3-300. Where respondent, as trustee, borrowed funds from trust whose settlor was incompetent, respondent violated rule 3-300 by failing to provide beneficiaries with written description of loan terms; failing to tell them they could seek advice of independent attorney; and failing to obtain their written consent to loan terms. Given these failures to comply with rule 3-300, respondent was culpable even if terms of loan were fair and reasonable. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[3a-c]**

When attorney is trustee of trust, trust's beneficiaries are not attorney's clients, but attorney may nevertheless be disciplined as if beneficiaries were clients, because of attorney's fiduciary relationship with beneficiaries. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[2]**

Where disciplinary statute defined violation of specified Civil Code section as constituting attorney misconduct, attorney was properly found culpable of violating disciplinary statute even though notice of disciplinary charges charged violation of disciplinary statute only, and did not expressly charge violation of Civil Code section. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[9]**

Where disciplinary statute defined violation of specified Civil Code sections as constituting attorney misconduct, and statute was amended to delete reference to one of such Civil Code sections, pre-amendment version of statute applied to misconduct that respondent committed prior to effective date of amendment. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[8]**

Civil Code section 2944.7 prohibits any person engaged in loan modifications from collecting any advance fees in advance of completing all contracted loan modification services, and an attorney's violation of the statute constitutes a disciplinable offense under section 6106.3. Section 2944.7 is not ambiguous, and does not permit an exception for attorneys who attempt to obtain loan modifications, but plan to file litigation if a modification request is denied. Where respondent stipulated that clients retained his services to keep their homes and properties; he discussed loan modification with them as an available remedy, along with litigation if loan modification applications were denied; he submitted loan modification applications for them and negotiated with their lenders; and he collected fees from them before completing all loan modification services, respondent was culpable of violating section 6106.3, even if the purpose of his litigation services was not just to obtain loan modifications. *the Matter of Golden* (Review Dept. 2018) 5 Cal State Bar Ct. Rptr. 574. **[2a-h]**

Where disciplinary statute defined violation of specified Civil Code sections as constituting attorney misconduct, and statute was amended to delete reference to one of such Civil Code sections, pre-amendment version of statute applied to misconduct that respondent committed prior to effective date of amendment. *In the Matter of Golden* (Review Dept. 2018) 5 Cal State Bar Ct. Rptr. 574. **[1a, b]**

California's statutory Homeowner Bill of Rights, which provides remedies for home mortgage borrowers including recovery of attorney fees against lenders, does not conflict with statutes prohibiting attorneys in loan modification proceedings from collecting any advance attorney fees, and does not permit attorneys to collect otherwise prohibited advance fees in order to prepare to litigate against a lender as a means to leverage a loan modification. *In the Matter of Golden* (Review Dept. 2018) 5 Cal State Bar Ct. Rptr. 574. **[3a, b]**

Where respondent, as prosecutor in criminal case, failed to disclose discoverable evidence to defense counsel 30 days before trial, in violation of Penal Code section 1054.1, Review Department found respondent culpable of violating section 6068(a) (failure to support laws), concluding that whether evidence in question was exculpatory or material did not affect culpability, because statute required disclosure of all written witness statements. Trial continuances also did not affect culpability, because statute required disclosure 30 days before any trial date set by court, even if continuance of trial was expected and did in fact occur. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[1a-d]**

Where respondent, as prosecutor in criminal case, was obligated to disclose evidence to defense counsel, but failed to disclose it based on unreasonable belief, contrary to clear language of applicable statute, that disclosure was not required, respondent was culpable of committing act of moral turpitude through gross negligence. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593.**[2]**

Where Supreme Court has not published decision interpreting State Bar Act provision or related provision of Rules of Procedure of State Bar, State Bar Court itself interprets statute and rule as written. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[1]**

State Bar Court's review of petition for reinstatement, resulting in determination that petition should be dismissed for failure to satisfy a prefiling requirement, constituted hearing of petition in first instance by State Bar Court, as required under California Rules of Court. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[6]**

196 Miscellaneous General Issues in State Bar Court Proceedings—Comparison to ABA Model Code and/or Model Rules

Review Department rejected as meritless respondent's arguments that the American Bar Association (ABA) Model Rules of Professional Conduct should be followed rather than California Rules of Professional Conduct, and ABA rules take precedence over State Bar Act and California disciplinary statutes. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[4]**

199 Miscellaneous General Issues in State Bar Court Proceedings—Other Miscellaneous General Issues

Office of Chief Trial Counsel (OCTC) failed to prove by clear and convincing evidence that attorney made misrepresentations to client's attorney in related matter regarding insurer's objection to settlement agreement in violation of Business and Professions Code section 6106. Where one email to client's attorney in related matter did not mention insurer at all; second email summarized attorney's report to judge at settlement status conference, disclosed that insurer had been provided copy of proposed settlement agreement, and did not mention insurer's response; attorney believed settlement agreement did not contain insurer's position, as attorney had not carefully read drafts with erroneous statement; and attorney had no indication that would lead attorney to believe that client's attorney in related matter thought insurer had not objected, it could not be determined attorney's omission in email to client's attorney in related matter constituted intentional misrepresentation, especially as one email was only summary of status conference and attorney asserted insurer's position was not discussed at status conference. Reasonable factual interpretation is attorney was unaware client's attorney in related matter believed insurer had not objected. Attorney therefore had no reason to mention insurer's objection in emails. Review department therefore held OCTC did not prove by clear and convincing evidence that attorney made misrepresentations to client's attorney in

related matter regarding insurer's objection to settlement agreement by omitting this fact from emails. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[15]**

Pursuant to rule 5.101.1(B), Rules of Procedure of State Bar, unless otherwise ordered by court, parties are required to exchange exhibits at least 10 days prior to pretrial conference, and pursuant to rule 5.101.1(I), failure to comply, without good cause, may constitute grounds for exclusion of exhibits. Where respondent failed to exchange exhibits prior to trial as required by rule and ordered by court, and respondent complained he did not do so as respondent was awaiting receipt of case file, respondent cannot hold Office of Chief Trial Counsel (OCTC) responsible for respondent's failure to exchange exhibits in respondent's possession or which respondent was capable of attaining. Where respondent contended that (1) respondent was experiencing personal problems; (2) respondent lacked litigation experience and had no experience with State Bar Court matters; (3) respondent's counsel withdrew from case 12 days before start of trial, and (4) respondent failed to explain how exclusion of exhibits prejudiced him, respondent did not establish good cause for failing to exchange exhibits with OCTC prior to trial, and Review Department affirmed hearing judge's finding excluding exhibits from evidence. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[5a-c]**

Rule 5.104(C), Rules of Procedure of State Bar, required admission of relevant evidence if it was sort of evidence on which responsible persons were accustomed to rely in conduct of serious affairs. Where judge properly excluded respondent's exhibits under rule 5.101.1(I), Rules of Procedure of State Bar, relevance of respondent's evidence was not at issue because respondent had already failed to comply under rule 5.101.1. Review Department held respondent failed to show hearing judge abused discretion in excluding some of respondent's exhibits for failing to comply with Rules of Procedure and therefore rejected respondent's request to admit excluded exhibits into record. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[6a, b]**

Where Office of Chief Trial Counsel (OCTC) did not appeal hearing judge's finding of no clear and convincing evidence of misappropriation, but instead attempted to argue misappropriation by gross negligence in its responsive brief on appeal, although some facts suggested respondent's actions may have been grossly negligent or construed as other misconduct, Review Department concluded that respondent did not have opportunity to fully address gross negligence issue on review and it would be unfair for Review Department to overturn hearing judge's finding that respondent was not culpable. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[7]**

Regardless of whether issue was fully developed at Hearing Department, Review Department is required to independently review record and make any findings, conclusions, or decision or recommendation different from those of hearing judge. Review Department may also address an issue not raised in request for review, provided parties have opportunity to brief issue. Where hearing judge dismissed disciplinary proceeding based on rule of limitations, and OCTC argued in pretrial statement and on review that rule of limitations was tolled based on respondent's alleged fiduciary relationship with complaining witness, Review Department could reach issue of tolling based on fiduciary relationship after giving parties opportunity to brief issue. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[7a, b]**

Where respondent was placed on involuntary inactive enrollment under section 6007(c)(4) following hearing judge's disbarment recommendation, but Review Department reduced discipline to 60-day actual suspension, Review Department ordered involuntary inactive enrollment terminated, and recommended that respondent be given credit for inactive enrollment period toward period of actual suspension. Because inactive enrollment period had lasted longer than 60 days, there would be no prospective period of actual suspension. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[16a-c]**

204.10 Substantive Issues in Disciplinary Matters Generally—Culpability—General Substantive Issues re culpability—Willfulness requirement

Willful disobedience or violation of court order requiring attorney to do or forbear act connected with or in course of attorney's profession, which attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. Attorney acts willfully if attorney intends to commit the act or to abstain from

committing it. Where attorney failed to pay court ordered sanctions and then appealed order's validity and lost, Review Department upheld hearing judge's culpability determination that respondent violated Business and Professions Code section 6103, as respondent had actual notice of order and requirement to pay sanctions; order was final and binding for disciplinary purposes as respondent's challenge of order was exhausted; sanctions order remained in effect even though entire case was appealed; and failing to pay sanctions until over a year and a half after knowledge of obligation was unreasonable and a violation of order. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[1a-c]**

Mistake of law made in good faith may be defense to Business and Professions Code section 6067 charge, as attorneys are not infallible and cannot be expected to know all law. But section 6103.7 charge is different, as it does not pertain to attorney performance and knowledge of law. Prohibition from threatening immigration status in section 6103.7 establishes a clear ethical standard for conduct that attorneys must uphold. Only willful breach is required for discipline, not knowledge of rule or intent to violate it. Where respondent mentioned illegal immigration status of opposing party in letters and telephone calls to opposing counsel and in civil case management statement, those constituted threats in violation of Business and Professions Code section 6103.7, and respondent's purported ignorance of section 6103.7 was not a defense. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[3a-d]**

Attorneys must obey a tribunal's orders unless they take steps to have them modified or vacated. Where respondent never sought relief from administrative tribunal's orders on basis of inability to comply or impossibility of compliance, Review Department rejected respondent's arguments that failure to comply was not willful, and that it would have been a waste of time to seek modification because his ability to comply was so uncertain. Fact that tribunal's orders were submitted to a board for final action also did not excuse respondent's noncompliance, where respondent never disputed finality or validity of orders, and did not seek stay of enforcement or appellate relief. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[7 a-d]**

Good faith, or even ignorance of the law, is no defense to a charged violation of statute requiring attorneys to report judicial sanctions to State Bar. Particularly where respondent did not establish that his failure to report sanctions imposed by administrative tribunal was attributable to his belief at the time that statute did not require reporting such sanctions, respondent was culpable of violating section 6068(o)(3). *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[9]**

Where respondent practiced law while suspended for non-payment of child support, OCTC was not required to establish that respondent knowingly committed unauthorized practice of law in order to prove respondent violated sections 6125 and 6126. It was sufficient to prove respondent's conduct was willful. Under standard 2.10(b), knowledge is simply a factor in determining degree of discipline. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[3a, b]**

204.20 Substantive Issues in Disciplinary Matters Generally — Culpability — General substantive issues re culpability — Intent requirement

Moral turpitude includes false or misleading statements to a court or tribunal. Actual intent to deceive is not necessary; gross negligence in creating a false impression is sufficient. Willful deceit violates section 6106. Where respondent took no steps to correct record despite notice that assistant made misrepresentation to administrative tribunal on respondent's behalf, on which tribunal had relied, respondent ratified assistant's misrepresentation, and thus was culpable of moral turpitude by gross negligence. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511. **[1a-c]**

Where respondent did not direct assistant to make misrepresentation to administrative tribunal on respondent's behalf, but took no steps to correct record after learning of misrepresentation, respondent was not culpable of violating section 6068(d), because he did not act with specific intent to deceive tribunal. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[2a, b]**

Misrepresentation of fact to court for purpose of obtaining continuance violates attorney's duty not to mislead courts. For this purpose, administrative tribunal acting in quasi-judicial capacity is not distinct from court. Where respondent directed assistant to make material misrepresentation to administrative tribunal on

respondent's behalf, and then took no steps to correct record despite notice that tribunal had relied on misrepresentation, respondent was culpable of intentional act of moral turpitude and of misleading tribunal, but violations were treated as single offense involving moral turpitude, and no additional weight was assigned to duplicative charge. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[3a-f]**

To prove failure to obey court order, evidence must establish attorney knew what he or she was doing or not doing, and intended to act or abstain from acting. Where attorney was aware of orders requiring him to provide documentation and pay sanctions, and neither complied nor sought relief, attorney was culpable of disobeying court order. *In the Matter of Moriarty* (Review Dept. 2017)5 Cal. State Bar Ct. Rptr. 511 **[4]**

Decisions by criminal and appellate courts finding respondent's misconduct as prosecutor intentional and deliberate were entitled to strong presumption of validity and prima facie weight in State Bar Court, even though respondent was not technically party to criminal case, because disciplinary charges arose from same prosecutorial misconduct. Review Department affords hearing judge's factual findings great weight, but must independently assess record and may make different findings or conclusions. Where hearing judge failed to give proper weight to court decisions in criminal case, and record demonstrated validity of other courts' findings, Review Department rejected hearing judge's conclusion that respondents misconduct was grossly negligent, and found it intentional. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[1a-e]**

Where respondent practiced law while suspended for non-payment of child support, OCTC was not required to establish that respondent knowingly committed unauthorized practice of law in order to prove respondent violated sections 6125 and 6126. It was sufficient to prove respondent's conduct was willful. Under standard 2.10(b), knowledge is simply a factor in determining degree of discipline. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[3a, b]**

204.90 Substantive Issues in Disciplinary Matters Generally – Culpability – General substantive issues re culpability – Other general substantive issues re culpability

Attorney's duty to client depends on existence of attorney-client relationship created by contract, express or implied. Implied-in-fact contract arises from parties' conduct that shows relationship despite absence of formal agreement. Attorney-client relationship may be informally created by parties' acts without written contract. There are several indicia of attorney-client relationship, but parties' intent and conduct are critical to attorney-client relationship formation. Although no written agreement memorialized attorney-client relationship, where attorney met with family representative – who was aware of family's involvement with environmental issues at former place of business – and discussed usual aspects of representation in environmental remediation matters, including securing insurance coverage and occasional need for lawsuit; family representative authorized attorney to begin working on environmental remediation matter for family; no evidence that after meeting family representative took further action regarding remediation; family representative did not contact insurer to make claim or contact another attorney to deal with remediation – even though family representative knew of insurance policies' existence and was experienced real estate professional; and after meeting attorney began working to establish coverage and discharge family from liability, conduct of both parties was consistent with finding attorney-client relationship. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[2a, b]**

Business and Professions Code section 6106 provides, in part, that commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Where respondent believed (1) claim was issued by governmental agency targeting clients, and (2) that even if clients had not already been targeted by governmental agency, they would be soon, it was reasonable to believe attorney simply mistaken regarding existence of governmental claim against clients, and no clear and convincing evidence supported conclusion attorney made material misrepresentation amounting to either grossly negligent or intentional moral turpitude when he wrote letter to insurance company stating governmental entity was implicated in matter. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[4a-d]**

Where attorney stated in deposition that he estimated he had "five to ten" telephone conversations with client after meeting, but attorney actually had not communicated with client at all during relevant period,

deposition statement was not intentional or grossly negligent misrepresentation in violation of Business and Professions Code section 6106, as attorney had not reviewed case file before appearing at deposition; attorney asserted testimony was based on attorney's experience with these cases generally – not specific memory of speaking with client; and at trial, attorney characterized statement as "guess" at time of deposition, which attorney later corrected in interview with New Jersey Office of Attorney Ethics. Record therefore supported reasonable inference attorney was simply mistaken when attorney testified, and testimony reflected attorney's recollection of case at that time. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[8]**

Business and Professions Code section 6068, subdivision (a), provides that attorney has duty to support Constitution and laws of United States and California. Office of Chief Trial Counsel failed to establish that attorney's actions related to form which reflected client was responsible for remediation at site amounted to breach of attorney's fiduciary duties or duty of loyalty to client where (1) record showed clients had some responsibility for premises' remediation; (2) attorney's representation strategy was to engage governmental agency, involve insurer, and obtain insurance coverage for remediation; (3) attorney asserted form did not admit sole responsibility – as site owners also had responsibility – rather, form simply indicated who was taking charge of conducting remediation, which is not indication of sole liability; (4) governmental agency was already aware of attorney's clients, as property owners stated in remediation timeframe extension request that owners were working to find insurance coverage from attorney's clients as they were previous tenant and also responsible for remediation; and (5) review of record points to reasonable inference that attorney was acting in clients' best interests and was following representation strategy discussed with client at meeting. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[10a-c]**

Office of Chief Trial Counsel (OCTC) failed to prove by clear and convincing evidence that attorney made misrepresentations to client's attorney in related matter regarding insurer's objection to settlement agreement in violation of Business and Professions Code section 6106. Where one email to client's attorney in related matter did not mention insurer at all; second email summarized attorney's report to judge at settlement status conference, disclosed that insurer had been provided copy of proposed settlement agreement, and did not mention insurer's response; attorney believed settlement agreement did not contain insurer's position, as attorney had not carefully read drafts with erroneous statement; and attorney had no indication that would lead attorney to believe that client's attorney in related matter thought insurer had not objected, it could not be determined attorney's omission in email to client's attorney in related matter constituted intentional misrepresentation, especially as one email was only summary of status conference and attorney asserted insurer's position was not discussed at status conference. Reasonable factual interpretation is attorney was unaware client's attorney in related matter believed insurer had not objected. Attorney therefore had no reason to mention insurer's objection in emails. Review department therefore held OCTC did not prove by clear and convincing evidence that attorney made misrepresentations to client's attorney in related matter regarding insurer's objection to settlement agreement by omitting this fact from emails. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[15]**

Attorney-client relationship can only be created by express or implied contract. Where record established respondent was hired to, and did, legal work at business (including negotiating lease, drafting lease terms, and agreeing to hold money in escrow); business officials considered respondent to be acting as company attorney; respondent referred to himself as counsel in letter agreement; respondent filed form as escrow holder; and respondent declared in civil litigation respondent performed legal work for business, respondent and business had attorney-client relationship. Review Department rejected respondent's arguments that (1) respondent was not doing work for business but rather respondent's professional law corporation was doing work as business's "contractor;" and (2) respondent's professional law corporation was hired by other named business entity, but business that employed respondent was family-owned and associated with several different named entities, including other named business. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[1]**

Where respondent misrepresented case settled when it was actually dismissed, respondent's failure to inform client about dismissal was factually joined with misrepresentation respondent was working on case and getting client settlement money. Review Department therefore treated moral turpitude violation and violation of failing to inform client of significant developments as single offense involving moral turpitude

for discipline purposes. No additional disciplinary weight was given to Business and Professions Code section 6068(m) violation because respondent's misconduct underlying section 6068(m) charge was factually same as misconduct underlying moral turpitude charge. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[2a, b]**

Knowledge of the violated provision is not required for violation of clear-cut professional responsibilities in Business and Professions Code (e.g., sections 6068(o)(3) [duty to report to State Bar imposition of judicial sanctions], 6103 [duty to obey court orders], 6103.5 [requirement that attorney communicate settlement offer], 6104 [attorney cannot appear without authority], 6105 [lending name to person who is not attorney], and 6106.9 [sexual relations between attorney and client].) *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[5a-b]**

If disciplinary proceeding is based solely on complainant's allegations of violation of State Bar Act or Rules of Professional Conduct, rule of limitations (Rules of Proc. of State Bar, rule 5.21) provides that proceeding must begin within five years from date of violation. Normally, a statute or rule is violated when every element of violation has occurred. However, rule of limitations is tolled during period that attorney acts in fiduciary relationship with complainant or related party, even if it is other than an attorney-client relationship. Moreover, if disciplinary charge is based on continuing violation of duty, violation is deemed committed at termination of entire course of conduct. Where respondent allegedly breached fiduciary duty to investor under movie financing agreement requiring respondent to hold funds in escrow until close of movie production, rule of limitations was tolled as long as fiduciary relationship continued, and respondent's alleged diversion of funds created continuing violation lasting until completion of purpose of fiduciary duty. Accordingly, where initial notice of disciplinary charges was filed within five years after completion of movie production, misappropriation charge was timely even though diversion of funds occurred more than five years earlier. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[2a-h]**

Attorney's commission of any act involving moral turpitude, dishonesty, or corruption is cause for disbarment whether the act is committed in the course of his relations as an attorney or otherwise. Attorney who accepts responsibility of a fiduciary nature is held to high standards of legal profession whether or not acting in capacity of attorney. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[4]**

The definition of law practice is largely derived from case law, and includes representation of others in court proceedings, legal advice and counsel, and preparation of legal instruments and contracts by which legal rights are secured, regardless of whether a court proceeding is pending. Even when services may be performed by non-lawyers, they are not non-legal activities if a lawyer performs them. Moreover, lawyers acting in any capacity must conform to professional standards, including the prohibition against practicing law while suspended. Where respondent, while suspended from practice, made legal demands on opposing parties' counsel in arbitration proceedings, and briefed and advocated numerous legal issues, respondent was unquestionably engaged in law practice. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[1a-d]**

Prior discipline is considered in most cases only as aggravating circumstance in determining discipline in a later proceeding, but prior discipline may also be considered if it tends to prove a fact in issue in determining culpability. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[4]**

Where respondent failed to withdraw from stipulation in prior disciplinary proceeding, or to timely request correction or modification of stipulation, and permitted stipulation's approval by State Bar Court and Supreme Court, respondent waived right to argue for first time in subsequent disciplinary proceeding that stipulation did not accurately reflect his agreement. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[5]**

Attorney who is trustee of trust must comply with Rules of Professional Conduct as well as directives of trust instrument. Attorney entering into business transaction arising from attorney's duties as trustee must comply with rule 3-300. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[1]**

When attorney is trustee of trust, trust's beneficiaries are not attorney's clients, but attorney may nevertheless be disciplined as if beneficiaries were clients, because of attorney's fiduciary relationship with beneficiaries. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[2]**

Substantial compliance with disciplinary probation conditions is not a defense to probation violations. Where disciplined attorney did not timely schedule initial meeting with Probation Department, and did not timely submit first two required quarterly reports, attorney was culpable of violating probation, despite his belated compliance with both requirements. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[2a, b]**

Even when a service may be performed by non-lawyers, when such services are rendered by an attorney or in an attorney's office, they constitute the practice of law. Where customers of loan modification business jointly operated by respondent and non-lawyer were told they were receiving attorney services, business constituted practice of law. Accordingly, respondent was culpable of forming a partnership with a non-lawyer. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[3a, b]**

Business and Professions Code section allowing any person to file complaint with State Bar for false, misleading, or deceptive legal advertising, and allowing State Bar to require attorney to withdraw advertising on 72 hours' notice if such complaint is supported by substantial evidence, is completely separate from attorneys' duty under Rules of Professional Conduct not to use deceptive or misleading advertising. Accordingly, respondent who employed misleading advertising was properly found culpable of violating Rules of Professional Conduct even though no such complaint was filed, and State Bar did not give him 72 hours' notice to withdraw advertising. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[7]**

Where disciplinary statute defined violation of specified Civil Code sections as constituting attorney misconduct, and statute was amended to delete reference to one of such Civil Code sections, pre-amendment version of statute applied to misconduct that respondent committed prior to effective date of amendment. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[8]**

Where disciplinary statute defined violation of specified Civil Code section as constituting attorney misconduct, attorney was properly found culpable of violating disciplinary statute even though notice of disciplinary charges charged violation of disciplinary statute only, and did not expressly charge violation of Civil Code section. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[9]**

Where respondent was culpable of committing act of moral turpitude and of violating rule of professional conduct based on same misconduct underlying respondent's culpability of violating Business and Professions Code section 6068(a), hearing judge was correct in giving other violations no additional weight in culpability. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[4a, b]**

Where disciplinary statute defined violation of specified Civil Code sections as constituting attorney misconduct, and statute was amended to delete reference to one of such Civil Code sections, pre-amendment version of statute applied to misconduct that respondent committed prior to effective date of amendment. *In the Matter of Golden* (Review Dept. 2018) 5 Cal State Bar Ct. Rptr. 593. **[1a, b]**

Involuntary inactive enrollment proceedings are abbreviated proceedings in which the principal issue is whether OCTC can establish exigent circumstances sufficient to justify enrolling an attorney involuntarily inactive before a formal disciplinary proceeding. Any subsequent disciplinary proceedings are separate proceedings, and neither the involuntary inactive enrollment order itself nor any of the findings made in the underlying proceedings is binding or has any probative value in the formal disciplinary case. Such an order also is not a final decision on the merits, and thus does not fulfill the requirements of collateral estoppel. Accordingly, Review Department considering disciplinary proceedings declined to consider hearing judge's analysis of statute as set forth in order denying involuntary inactive enrollment. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[4a, b]**

Neither employees of State Bar nor fellow attorneys can give an attorney permission to violate duties under statutes or ethics rules. Accordingly, it was not a valid defense to disciplinary charges that respondent relied on information in a State Bar flyer, and on advice from OCTC, in determining that his actions did not violate statute. *In the Matter of Golden* (Review Dept. 2018) 5 Cal State Bar Ct. Rptr. 593. **[6]**

Order denying OCTC's petition for involuntary inactive enrollment was judicially noticeable in subsequent disciplinary proceeding involving same respondent. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[6]**

Stipulated facts in disciplinary proceedings are binding on parties under State Bar rule 5.58(G). Where respondent stipulated that that he was obligated to pay monetary sanctions awarded against his law firm; law firm name did not indicate it was a corporation or limited liability partnership, as would be required by State Bar Rules 3.152(B) and 3.174(B); and even if it were, respondent could not thereby escape personal liability for his own professional malfeasance and still would have been required to report sanctions award against him, record and law supported respondent's stipulation, and hearing judge erred in exonerating respondent and dismissing disciplinary proceeding based on conclusion that respondent was not individually responsible for paying sanctions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[2a, b]**

Where respondent represented clients before administrative tribunal, respondent's activity constituted practice of law because application of legal knowledge and technique was required. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[5]**

Scope of section 6103 is not limited to courts or constitutional administrative agencies; it enforces standards governing attorneys' conduct before all tribunals. Statutes specifying powers of Office of Administrative Hearings (OAH), and giving its administrative law judges (ALJs) authority to issue orders, contemplate that OAH should be treated as a court, and attorneys must obey its orders. Accordingly, where respondent willfully failed to comply with orders of an OAHALJ, respondent was culpable of violating section 6103. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 513 **[6a-e]**

Good faith, or even ignorance of the law, is no defense to a charged violation of statute requiring attorneys to report judicial sanctions to State Bar. Particularly where respondent did not establish that his failure to report sanctions imposed by administrative tribunal was attributable to his belief at the time that statute did not require reporting such sanctions, respondent was culpable of violating section 6068(o)(3). *In the Matter of Moriarty* (Review Dept. 2037)5 Cal. State Bar Ct. Rptr. 511 **[9]**

Reliance on advice of counsel is not a defense in a discipline case. Where respondent, while acting as fiduciary, disregarded advice of counsel regarding administration of trust, and committed acts of misconduct after counsel stopped representing her, respondent's misconduct was not excused by reliance on advice of counsel. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494 **[5]**

Even where an attorney is not practicing law, she is required to conform to ethical standards required of attorneys. An attorney who breaches fiduciary duties that would justify discipline if there were an attorney-client relationship may properly be disciplined for misconduct. Respondent's misconduct was not excused because she was acting as trustee for family estate, not as attorney. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 494. **[6a, b]**

Prosecutors have no First Amendment right to engage in speech that creates substantial likelihood of material prejudice to criminal proceeding or to parties' rights to a fair trial. Where prosecutor's misconduct prejudiced criminal defendant's right to fair trial, State Bar Court would not entertain First Amendment free speech defense to resulting disciplinary charges. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479 **[3]**

Where respondent was the owner and sole supervising attorney of a firm, respondent owed non-delegable fiduciary duty to each client accepted and could not avoid culpability by shifting responsibility onto employees. Accordingly, where respondent's firm took over loan modification matter, and respondent's employees then collected fees before performing services, respondent was culpable of violating statute

precluding collection of advance fees in loan modification matters. *In the Matter of DeClue* (Review Dept. 2016) 5 Cal State Bar Ct Rptr. 437**. [2a-c]**

212.00 Substantive Issues in Disciplinary Matters Generally – Culpability – State Bar Act Violations – Section 6067

Mistake of law made in good faith may be defense to Business and Professions Code section 6067 charge, as attorneys are not infallible and cannot be expected to know all law. But section 6103.7 charge is different, as it does not pertain to attorney performance and knowledge of law. Prohibition from threatening immigration status in section 6103.7 establishes a clear ethical standard for conduct that attorneys must uphold. Only willful breach is required for discipline, not knowledge of rule or intent to violate it. Where respondent mentioned illegal immigration status of opposing party in letters and telephone calls to opposing counsel and in civil case management statement, those constituted threats in violation of Business and Professions Code section 6103.7, and respondent's purported ignorance of section 6103.7 was not a defense**.** *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[3a-d]**

213.10 Substantive Issues in Disciplinary Matters Generally—Culpability—State Bar Act Violations—Section 6068(a) (support Constitution and laws)

Amended Notice of Disciplinary Charges (NDC) charged assortment of actions that, taken together, alleged overreaching and breach of fiduciary duties. However, failure to communicate allegations were already alleged under more specific Business and Professions Code subsection – section 6068, subdivision (m) – in separate Amended NDC count. Before enactment of subdivision (m), which was added in 1986 and became effective in 1987, there was "common law" duty to communicate and proper to base culpability under subdivision (a). Now, improper to find violations for same facts under both subdivisions (a) and (m) of Business and Professions Code section 6068. Specific statute should be charged instead of using broader subdivision (a*). In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911**. [12a,b]**

Business and Professions Code section 6068, subdivision (a), provides that attorney has duty to support Constitution and laws of United States and California. Office of Chief Trial Counsel failed to establish that attorney's actions related to form which reflected client was responsible for remediation at site amounted to breach of attorney's fiduciary duties or duty of loyalty to client where (1) record showed clients had some responsibility for premises' remediation; (2) attorney's representation strategy was to engage governmental agency, involve insurer, and obtain insurance coverage for remediation; (3) attorney asserted form did not admit sole responsibility – as site owners also had responsibility – rather, form simply indicated who was taking charge of conducting remediation, which is not indication of sole liability; (4) governmental agency was already aware of attorney's clients, as property owners stated in remediation timeframe extension request that owners were working to find insurance coverage from attorney's clients as they were previous tenant and also responsible for remediation; and (5) review of record points to reasonable inference that attorney was acting in clients' best interests and was following representation strategy discussed with client at meeting. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[10a-c]**

Business and Professions Code section 6068, subdivision (a), provides that attorney has duty to support Constitution and laws of United States and California. Where trial showed attorney acted in best interests of clients by obtaining release of liability to property owners and finding coverage for environmental remediation; attorney's actions aligned with attorney's presentation at client meeting; attorney negotiated settlement, then handed matter to client's attorney in related matter to discuss with client who approved settlement agreement; no evidence of deceit or that attorney negotiated terms of settlement agreement to clients' detriment, no evidence demonstrated attorney overstepped bounds of attorney's representation or overreached in way that was unfair to clients. While attorney violated ethical obligations by failing to inform client of significant developments, this failure alone did not equate to overreaching where attorney did not stop working on case or abandon clients; rather, attorney competently completed representation. Accordingly, there was no overreaching or breach of fiduciary duties in violation of Business and Professions Code section 6068, subdivision (a). *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[11a-e]**

Business and Professions Code section 6068(a) provides it is attorney's duty to support Constitution and laws of United States and California. Escrow holder owes fiduciary duties to escrow parties and must strictly

comply with parties' instructions. Where respondent agreed to act as escrow holder, deposited funds into business account, and used money to make personal, unauthorized purchases, rather than safekeeping funds, respondent violated fiduciary duties when respondent distributed money in way not contemplated by parties. Review Department held respondent culpable of violating Business and Professions Code section 6068(a) but assigned no additional disciplinary weight as respondent's breach of fiduciary duties was based on same facts underlying moral turpitude violations. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[12a, b]**

As fiduciary, trustee has duty to act with utmost good faith, to administer trust according to its terms, and to act with reasonable care, skill and caution as prudent person in similar circumstances. Under Probate Code, trustees must administer trusts solely in interest of beneficiaries, and must not use trust property for trustee's own profit or purpose unconnected with trust. However, these obligations do not override provisions of trust itself. Where terms of trust gave respondent, as trustee, broad management powers, including ability to enter into transactions such as self-dealing that would otherwise violate trustee's statutory duties, respondent was not culpable of violating section 6068(a), through Probate Code violations, by lending money to herself from trust, where loan was secured by respondent's real property and provided for five percent interest rate, and respondent paid off loan in full after request by beneficiary. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[4a, b]**

Probate Code section 16004 applies to fiduciary relationship between attorney and client, and is statutory complement to rule 3-300. Probate Code establishes rebuttable presumption that trustee has violated fiduciary duties when trustee obtains advantage from beneficiary in transaction between them. When attorney trustee enters into transaction with trust, transaction will be set aside unless attorney can show that beneficiaries had full knowledge of facts connected with transaction and fully understood its effect. Where respondent, as trustee, obtained loan from trust which benefited her, and did not fully inform beneficiaries of terms or risks of loan transaction, respondent violated her duties under Probate Code, and thereby violated section 6068(a). *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[5a, b]**

Where same acts of misconduct by respondent violated both section 6068(a) and rule 3-300, hearing judge erred by dismissing section 6068(a) charge with prejudice. Better approach was to find both violations, but assign duplicative violation no additional weight in determining discipline. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[6]**

Where respondent, as prosecutor in criminal case, failed to disclose discoverable evidence to defense counsel 30 days before trial, in violation of Penal Code section 1054.1, Review Department found respondent culpable of violating section 6068(a) (failure to support laws), concluding that whether evidence in question was exculpatory or material did not affect culpability, because statute required disclosure of all written witness statements. Trial continuances also did not affect culpability, because statute required disclosure 30 days before any trial date set by court, even if continuance of trial was expected and did in fact occur. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[1a-d]**

Where respondent misused her authority and discretion as trustee of her family's trust, intentionally violated numerous fiduciary duties set forth in the Probate Code by means infused with dishonesty and/or concealment, made repeated misrepresentations to the court and third parties in documents filed which falsely represented her as trustee after she had been removed, and intentionally violated court orders, respondent was culpable of multiple intentional acts of moral turpitude. Respondent was also culpable of violating section 6068(a), but Review Department assigned these violations no additional weight because they were duplicative of section 6306 violations, *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494. **[3a, b]**

Where charge against respondent prosecutor of failing to comply with Constitution and laws, based on respondent's willful violation of criminal defendant's constitutional rights, overlapped with moral turpitude charge based on same misconduct, charge of failing to comply with law was properly dismissed as duplicative. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[4]**

Where respondent prosecutor inserted false confession in criminal defendant's statement before disclosing statement to defense counsel, respondent at least violated spirit of statutory scheme governing discovery in criminal prosecutions. Nonetheless, where hearing judge dismissed disciplinary charge of failing to comply with law, on ground that prosecutor did not withhold items subject to disclosure, and Office of Chief Trial Counsel did not challenge dismissal on appeal, Review Department upheld dismissal. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[5]**

Where respondent signed and served discovery responses and made court appearance on client's behalf while suspended, respondent violated sections 6068, subdivision (a), 6125, and 6126, regardless of whether OCTC showed respondent knowingly committed unauthorized practice of law, because respondent acted purposefully when he created impression he was entitled to represent client. *In the Matter of Burke* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 448. **[4a, b]**

213.11 **Substantive Issues—Culpability—State Bar Act Violations—Section 6068(a) (support Constitution and laws)—Found**

In the Matter of Jones (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873.

In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698.

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Gordon (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610.

In the Matter of Nassar (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593.

In the Matter of Schooler (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494.

In the Matter of Carver (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427.

In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448.

213.15 Substantive Issues—Culpability—State Bar Act Violations—Section 6068(a) (support Constitution and laws)—Not Found

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479

213.20 Substantive Issues in Disciplinary Matters Generally – Culpability – State Bar Act Violations – Section 6068(b) (respect for courts and judges)

Business and Professions Code section 6068, subdivision (b), establishes attorney's duty to maintain respect due courts of justice and judicial officers. Where respondent told court it lacked backbone; repeatedly stated respondent did not respect court or its decision; and challenged judge to place respondent in custody, respondent's statements and action demonstrated disrespect to court in violation of Business and Professions Code section 6068, subdivision (b). *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[1]**

Where respondent failed to abide by judge's order to immediately step away from criminal defendant client while client was being remanded into custody, and where respondent subsequently stated to judge respondent was "embarrassed" for court, respondent violated Business and Professions Code section 6068, subdivision (b). *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[2]**

213.21 Substantive Issues—Culpability—State Bar Act Violations—Section 6068(b)

(respect for courts and judges)—Found

In the Matter of Respondent BB (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835.

213.30 State Bar Act Violations—Section 6068(c)—(Counsel only legal actions/defenses)

Business and Professions Code section 6068, subdivision (c), provides it is attorney's duty "[t]o counsel or maintain those actions, proceedings, or defenses only as appear . . . legal or just," except defense of person charged with public offense. Where respondent used abusive litigation tactics where he initiated and maintained multiple claims and defenses, at trial and appellate levels, which were foreclosed by legal authority, Review Department held respondent's claim that notices of appeal, briefs, and motions respondent filed did not qualify as "actions" under section 6068, subdivision (c), was meritless, and respondent was culpable of violating section 6068, subdivision (c). *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[6a,b]**

Where respondent filed multiple frivolous appeals that appellate court dismissed after finding respondent's arguments had no merit and resulted from subjective bad faith, and where appellate court's findings, which were entitled to great weight, were supported by clear and convincing evidence, respondent was culpable of violating section 6068(c). *In the Matter of Schooler* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 494 **[4]**

213.31 State Bar Act Violations—Section 6068(c) (counsel only legal actions/defenses) —Found

In the Matter of Fisher (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999.

In the Matter of Thomas (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944.

In the Matter of Schooler (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr.494

In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448

Where respondent refused to dismiss defendants after learning they were not parties to contract at issue; trial court awarded sanctions against respondent; and Court of Appeal affirmed, finding respondent's action was frivolous, Court of Appeal's finding of frivolousness was entitled to strong presumption of validity, and respondent was culpable of maintaining an unjust action. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. [**11 a, b]**

213.40 Substantive Issues—Culpability—State Bar Act Violations—Section 6068(d)— (do not mislead courts or judges)

Attorney must act with intent to deceive to violate Business and Professions Code section 6068(d). Where no evidence established that respondent's careless review of California Rules of Court, rule 9.20 compliance declaration his attorney prepared amounted to intentional deception absent other evidence, Review Department adopted hearing judge's dismissal of section 6068(d) charge. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[4]**

Where respondent did not direct assistant to make misrepresentation to administrative tribunal on respondent's behalf, but took no steps to correct record after learning of misrepresentation, respondent was not culpable of violating section 6068(d), because he did not act with specific intent to deceive tribunal. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[2a, b]**

213.41 Substantive Issues—Culpability—State Bar Act Violations—Section 6068(d)— (do not mislead courts or judges)—Found

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511

Misrepresentation of fact to court for purpose of obtaining continuance violates attorney's duty not to mislead courts. For this purpose, administrative tribunal acting in quasi-judicial capacity is not distinct from court. Where respondent directed assistant to make material misrepresentation to administrative tribunal on respondent's behalf, and then took no steps to correct record despite notice that tribunal had relied on misrepresentation, respondent was culpable of intentional act of moral turpitude and of misleading tribunal, but violations were treated as single offense involving moral turpitude, and no additional weight was assigned to duplicative charge. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511. **[3a–f]**

213.45 Substantive Issues—Culpability—State Bar Act Violations—Section 6068(d) (do not mislead courts and judges)—Not Found

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464

213.90 Culpability – State Bar Act – Section 6068(i) (cooperate in disciplinary proceedings)

Even though respondent was found culpable of failing to cooperate with the State Bar's pre-filing investigation of his misconduct, he was still entitled to significant mitigating credit for entering into a stipulation, after disciplinary charges were filed, which admitted to culpability on two counts and to several facts. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[3a, b]**

213.91 Section 6068(i) (cooperate in disciplinary proceedings)

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

Where section 6106 moral turpitude charge for making misrepresentations to a tribunal and section 6068, subdivision (d) charge for seeking to mislead a judge were based on the same misconduct, section 6068, subdivision (d) charge dismissed as *duplicative. In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[1]**

Where respondent intentionally deceived Workers' Compensation Appeals Board (WCAB) by making misrepresentations, omitting material facts, and presenting half-truths, and allowed WCAB to take action in reliance on misrepresentations, respondent was culpable of acts of moral turpitude. WCAB's eventual awareness of true facts did not negate respondent's culpability, because misleading a court or tribunal constitutes moral turpitude whether or not respondent succeeds in perpetrating fraud, and respondent had continuing, affirmative duty to timely advise WCAB of changed circumstances affecting pending cases. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[2a-f]**

214.10 Culpability — Business and Professions Code — Section 6068(k) (comply with disciplinary probation)

Probation matters do not require proof that respondent actually knew specifics of probation delinquencies, as long as respondent had notice of probation duties. Where respondent failed to schedule and attend meeting with assigned probation deputy and did not submit first quarterly report to Probation until six months after due date, despite email communications from Probation regarding probation duties, respondent willfully failed to comply with three probation conditions in violation of Business and Professions Code section 6068, subdivision (k). *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738 . [**2a-d]**

Substantial compliance with disciplinary probation conditions is not a defense to probation violations. Where disciplined attorney did not timely schedule initial meeting with Probation Department, and did not timely submit first two required quarterly reports, attorney was culpable of violating probation, despite his belated compliance with both requirements. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[2a, b]**

214.11 Section 6068(k) (comply with disciplinary probation)

In the Matter of Braun (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738.

In the Matter of Amponsah (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646.

214.30 Substantive Issues in Disciplinary Matters Generally – Culpability – State Bar Act – Section 6068(m) (communicate with clients)

Business and Professions Code section 6068, subdivision (m), required attorney to keep clients reasonably informed of significant developments in matters with regard to which attorney has agreed to provide legal services. Where attorney failed to inform client (1) regarding insurer's denial of coverage; (2) that 2012 environmental lawsuit was filed; and (3) that attorney filed answer and third-party complaint, which attorney also dismissed, attorney failed to communicate significant developments in violation of Business and Professions Code section 6068, subdivision (m). *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[9]**

Amended Notice of Disciplinary Charges (NDC) charged assortment of actions that, taken together, alleged overreaching and breach of fiduciary duties. However, failure to communicate allegations were already alleged under more specific Business and Professions Code subsection – section 6068, subdivision (m) – in separate Amended NDC count. Before enactment of subdivision (m), which was added in 1986 and became effective in 1987, there was "common law" duty to communicate and proper to base culpability under subdivision (a). Now, improper to find violations for same facts under both subdivisions (a) and (m) of Business and Professions Code section 6068. Specific statute should be charged instead of using broader subdivision (a*). In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[12a,b]**

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Where client testified client was not aware case dismissed, and respondent's text messages to client misled client regarding respondent's ongoing work on case and settlement of matter and showed client not aware case dismissed, Review Department concluded respondent culpable of failing to keep client reasonably informed of significant developments in client's legal matter and reversed hearing judge, who credited respondent's testimony over client's and dismissed with prejudice Business and Professions Code section 6068, subdivision (m), charge. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[1a-e]**

Notice of Disciplinary Charges must (1) cite statutes or rules attorney allegedly violated; (2) contain facts comprising violation in sufficient detail to permit preparation of defense; and (3) relate stated facts to authorities attorney allegedly violated. Where facts charged in Notice of Disciplinary Charges were very specific, charge cannot be interpreted broadly so other facts not alleged constitute misconduct; such would infringe on respondent's right to fair proceeding as respondent is entitled to adequate notice of rule or statute violated and manner respondent allegedly violated it. Review Department rejected Office of Chief Trial Counsel's argument that respondent received notice that respondent's overall communication with clients was being charged. As Notice of Disciplinary Charges was narrowly drafted and was not amended to conform to proof, Review Department did not consider other allegations by Office of Chief Trial Counsel on review that respondent failed to communicate in other instances. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 [3a, b]

Where respondent misrepresented case settled when it was actually dismissed, respondent's failure to inform client about dismissal was factually joined with misrepresentation respondent was working on case and getting client settlement money. Review Department therefore treated moral turpitude violation and violation of failing to inform client of significant developments as single offense involving moral turpitude for discipline purposes. No additional disciplinary weight was given to Business and Professions Code section 6068(m) violation because respondent's misconduct underlying section 6068(m) charge was factually same as misconduct underlying moral turpitude charge. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[2a, b]**

Where evidence did not establish clearly and convincingly that respondent failed to communicate with client, in that client could not recall specific dates he called respondent's office, and OCTC did not present any documentary evidence of client's unsuccessful efforts to contact respondent, hearing judge correctly dismissed charge that respondent violated section 6068(m) based on failure to respond to client's telephone calls. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. [3]

Where clear and convincing evidence showed respondent failed to keep client informed of discovery requests, and of court orders stemming from respondent's failure to respond to discovery, respondent was culpable of failing to keep client reasonably informed of significant developments, in violation of section 6068(m). However, where OCTC did not present clear and convincing evidence that respondent's motivation for lack of communication was to cover up respondent's failure to perform competently, respondent was not culpable of act of moral turpitude in violation of section 6106. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. [4a, b]

214.31 Section 6068(m) (communicate with clients)

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

In the Matter of Edward Shkolnikov (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852.

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Khishaveh (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564.

214.35 Not Found - Section 6068(m)

In the Matter of Edward Shkolnikov (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852.

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

214.50 Substantive Issues—Culpability—State Bar Act Violations—Section 6068(o) (comply with reporting requirements)

Good faith, or even ignorance of the law, is not a defense to violation of Business and Profession Code section 6068(o)(3). No requirement that Office of Chief Trial Counsel prove bad faith or that respondent have actual knowledge of violating section 6068(o)(3). Where court ordered respondent sanctioned $2,335 for being unsuccessful in opposing motion for protective order, not for failing to make discovery, and respondent knew of court's sanctions order but failed to report sanctions to State Bar, respondent willfully violated section 6068(o)(3). *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[2a-d]**

Knowledge of the violated provision is not required for violation of clear-cut professional responsibilities in Business and Professions Code (e.g., sections 6068(o)(3) [duty to report to State Bar imposition of judicial sanctions], 6103 [duty to obey court orders], 6103.5 [requirement that attorney communicate settlement offer], 6104 [attorney cannot appear without authority], 6105 [lending name to person who is not attorney],

and 6106.9 [sexual relations between attorney and client].) *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[5a-b]**

Statutory duty to report sanctions to State Bar applies to sanctions issued by all administrative agencies acting in a judicial or quasi-judicial capacity. Accordingly, where respondent failed to timely report sanctions imposed by Office of Administrative Hearings, respondent was culpable of violating section 6068(o)(3). *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[8a, b]**

Good faith, or even ignorance of the law, is no defense to a charged violation of statute requiring attorneys to report judicial sanctions to State Bar. Particularly where respondent did not establish that his failure to report sanctions imposed by administrative tribunal was attributable to his belief at the time that statute did not require reporting such sanctions, respondent was culpable of violating section 6068(o)(3). *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[9]**

214.51 Substantive Issues—Culpability—State Bar Act Violations—Section 6068(o)(comply with reporting requirements)—Found

In the Matter of Thomas (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944.

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511

220 Substantive Issues in Disciplinary Matters Generally—Culpability—State Bar Act Violations—Section 6103 (disobedience of court order)

Business and Professions Code section 6103 provides, in pertinent part, that willful disobedience or violation of court order requiring attorney to do or forbear act connected with or in course of attorney's profession, which attorney ought in good faith do or forbear, constitutes cause for suspension or disbarment. Attorney willfully violates section 6103 when, despite being aware of final, binding court order, respondent knowingly chooses to violate order. Respondent asserted Office of Chief Trial Counsel failed to introduce evidence that respondent's disobedience of court orders caused harm to administration of justice, but that was not relevant to defense to misconduct under Business and Professions Code section 6103. Where respondent was aware of the court orders, admitted he had not complied with them, and had made no effort to comply, there was no evidence that this conduct was "negligence," and Review Department held respondent acted willfully and was culpable of violating Business and Professions Code section 6103 as charged. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[5a-c]**

Attorney willfully violates Business and Professions Code section 6103 when, despite being aware of final, binding court order, attorney knowingly chooses to violate order. Where respondent heard judge's oral orders to move away from criminal defendant client during client's remand into custody, and respondent failed to obey orders for several seconds when orders demanded immediate compliance, respondent willfully violated Business and Professions Code section 6103, but as same misconduct underlay section 6068, subdivision (b) violation, no additional weight assigned for section 6103 violation. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[3]**

Willful disobedience or violation of court order requiring attorney to do or forbear act connected with or in course of attorney's profession, which attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. Attorney acts willfully if attorney intends to commit the act or to abstain from committing it. Where attorney failed to pay court ordered sanctions and then appealed order's validity and lost, Review Department upheld hearing judge's culpability determination that respondent violated Business and Professions Code section 6103, as respondent had actual notice of order and requirement to pay sanctions; order was final and binding for disciplinary purposes as respondent's challenge of order was exhausted; sanctions order remained in effect even though entire case was appealed; and failing to pay sanctions until over a year and a half after knowledge of obligation was unreasonable and a violation of order. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[1a-c]**

Knowledge of the violated provision is not required for violation of clear-cut professional responsibilities in Business and Professions Code (e.g., sections 6068(o)(3) [duty to report to State Bar imposition of judicial

sanctions], 6103 [duty to obey court orders], 6103.5 [requirement that attorney communicate settlement offer], 6104 [attorney cannot appear without authority], 6105 [lending name to person who is not attorney], and 6106.9 [sexual relations between attorney and client].) *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[5a-b]**

An attorney violates section 6103 when, despite being aware of a final, binding court order, the attorney knowingly takes no action in response to the order or chooses to violate it. Where respondent was aware of motion for discovery sanctions, did not oppose it, and received notice of ruling from opposing counsel, fact that sanctions order was not formally served on respondent did not excuse his failure to comply. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[5a, b]**

Superior court orders are final and binding for disciplinary purposes once review is waived or exhausted in courts of record. Where respondent never sought to stay, vacate, modify, or challenge discovery sanctions order, fact that order was not immediately appealable, and opposing party ultimately agreed to waive discovery sanctions, did not absolve respondent of culpability of failing to obey court order under section 6103. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[6]**

To prove a violation of Business and Professions Code section 6103 based on an attorney's failure to obey court orders, OCTC must establish the attorney knew the orders were final and binding, and intended his acts or omissions. Where respondent was aware of and joined in client's tactical decision not to participate in discovery; was timely served with motions for discovery sanctions but chose not to respond or appear; was served with orders granting monetary sanctions against his client and his firm jointly and severally; and stipulated he was individually responsible for resulting obligation, respondent was obligated either to comply with orders or make formal motion or appeal explaining why he could not do so, and could not simply disregard orders, even under client's instructions. Respondent was therefore culpable of violating section 6103. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[1a-d]**

Stipulated facts in disciplinary proceedings are binding on parties under State Bar rule 5.58(G). Where respondent stipulated that that he was obligated to pay monetary sanctions awarded against his law firm; law firm name did not indicate it was a corporation or limited liability partnership, as would be required by State Bar Rules 3.152(B) and 3.174(B); and even if it were, respondent could not thereby escape personal liability for his own professional malfeasance and still would have been required to report sanctions award against him, record and law supported respondent's stipulation, and hearing judge erred in exonerating respondent and dismissing disciplinary proceeding based on conclusion that respondent was not individually responsible for paying sanctions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[2a, b]**

When attorney has actual notice of court order, and does not object, move for reconsideration, or seek appellate review, attorney forfeits right to challenge order based on inadequate notice, and is obligated to comply with order. For due process and notice purposes, discovery sanctions orders are not distinguishable from other types of sanctions orders. Where respondent stipulated he had actual notice of orders imposing monetary discovery sanctions, and did not comply with orders, hearing judge erred in finding respondent not culpable of violating orders because he was not personally named in underlying motions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[3a-c]**

For disciplinary purposes, superior court orders are final and binding once review in courts of record is waived or exhausted. Attorneys cannot wait until State Bar disciplinary proceedings commence to collaterally challenge legitimacy of superior court orders. State Bar Court does not have jurisdiction to determine validity of civil court orders. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[4a-c]**

Where respondent was culpable of disobeying court orders by failing to pay monetary sanctions, payment of the sanctions was imposed as condition of respondent's disciplinary probation. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[7]**

To prove failure to obey court order, evidence must establish attorney knew what he or she was doing or not doing, and intended to act or abstain from acting. Where attorney was aware of orders requiring him

to provide documentation and pay sanctions, and neither complied nor sought relief, attorney was culpable of disobeying court order, *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511. **[4]**

Where respondent represented clients before administrative tribunal, respondent's activity constituted practice of law because application of legal knowledge and technique was required. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511. **(5)**

Scope of section 6103 is not limited to courts or constitutional administrative agencies; it enforces standards governing attorneys' conduct before all tribunals. Statutes specifying powers of Office of Administrative Hearings (OAH), and giving its administrative law judges (ALJs) authority to issue orders, contemplate that OAH should be treated as a court, and attorneys must obey its orders. Accordingly, where respondent willfully failed to comply with orders of an OAHALJ, respondent was culpable of violating section 6103. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr, 511. **[6a-c]**

Attorneys must obey a tribunal's orders unless they take steps to have them modified or vacated. Where respondent never sought relief from administrative tribunal's orders on basis of inability to comply or impossibility of compliance, Review Department rejected respondent's arguments that failure to comply was not willful, and that it would have been a waste of time to seek modification because his ability to comply was so uncertain. Fact that tribunal's orders were submitted to a board for final action also did not excuse respondent's noncompliance, where respondent never disputed finality or validity of orders, and did not seek stay of enforcement or appellate relief. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511. **[7a-d]**

When sanctions order does not specify due date, there is no bright-line test for "reasonableness" that applies to elapsed time of payment after issuance of sanctions order. Instead, timing of payment is just one factor among others to be considered. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[6]**

Where considerable efforts were required by opposing counsel to collect sanctions over ten-and-a-half-month period, including constantly sending letters and emails to respondent requesting payment of sanctions, calling respondent, and, after several unsuccessful requests, filing liens, respondent's failure to pay sanctions for nearly 11 months was not reasonable and respondent was culpable of violating section 6103. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[7]**

220.01 Substantive Issues—Culpability—State Bar Act Violations—Section 6103, clause 1 (disobedience of court order)—Found

In the Matter of Thomas (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944.

Respondent BB (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835.

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

In the Matter of Collins (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551.

In the Matter of Moriarty (Review Dept. 2017)5 Cal. State Bar Ct. Rptr. 511.

220.20 Substantive Issues in Disciplinary Matters Generally – Culpability – State Bar Act Violations – Section 6103.5

Knowledge of the violated provision is not required for violation of clear-cut professional responsibilities in Business and Professions Code (e.g., sections 6068(o)(3) [duty to report to State Bar imposition of judicial sanctions], 6103 [duty to obey court orders], 6103.5 [requirement that attorney communicate settlement offer], 6104 [attorney cannot appear without authority], 6105 [lending name to person who is not attorney],

and 6106.9 [sexual relations between attorney and client].) *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[5a-b]**

220.30 Substantive Issues in Disciplinary Matters Generally – Culpability – State Bar Act Violations – Section 6104 (appearing without authority)

Willfully or corruptly and without authority appearing as attorney for party to action or proceeding constitutes cause for suspension or disbarment. Where attorney credibly testified possible litigation was discussed at meeting with family representative, who retained attorney at that meeting to represent him and his family in matters related to environmental remediation, and family was sued for remediation liability, attorney believed he had authority to act as family representative's attorney in litigation. Although attorney should have updated family representative on case status, this is not evidence of lack of authority. Attorney's failure to communicate did not limit authority he believed in good faith he had obtained from family representative to act as family's attorney. Accordingly, Office of Chief Trial Counsel failed to prove attorney corruptly or willfully appeared without authority in violation of Business and Professions Code section 6104 and hearing judge's culpability finding was reversed. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[5a-c]**

Knowledge of the violated provision is not required for violation of clear-cut professional responsibilities in Business and Professions Code (e.g., sections 6068(o)(3) [duty to report to State Bar imposition of judicial sanctions], 6103 [duty to obey court orders], 6103.5 [requirement that attorney communicate settlement offer], 6104 [attorney cannot appear without authority], 6105 [lending name to person who is not attorney], and 6106.9 [sexual relations between attorney and client].) *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[5a-b]**

220.35 Substantive Issues in Disciplinary Matters Generally – Culpability – State Bar Act Violations – Section 6104 (appearing with authority) – Not found

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

220.40 Substantive Issues in Disciplinary Matters Generally – Culpability – State Bar Act Violations – Section 6105

Knowledge of the violated provision is not required for violation of clear-cut professional responsibilities in Business and Professions Code (e.g., sections 6068(o)(3) [duty to report to State Bar imposition of judicial sanctions], 6103 [duty to obey court orders], 6103.5 [requirement that attorney communicate settlement offer], 6104 [attorney cannot appear without authority], 6105 [lending name to person who is not attorney], and 6106.9 [sexual relations between attorney and client].) *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[5a-b]**

220.50 Substantive Issues in Disciplinary Matters Generally – Culpability – State Bar Act Violations – Section 6103.7

Mistake of law made in good faith may be defense to Business and Professions Code section 6067 charge, as attorneys are not infallible and cannot be expected to know all law. But section 6103.7 charge is different, as it does not pertain to attorney performance and knowledge of law. Prohibition from threatening immigration status in section 6103.7 establishes a clear ethical standard for conduct that attorneys must uphold. Only willful breach is required for discipline, not knowledge of rule or intent to violate it. Where respondent mentioned illegal immigration status of opposing party in letters and telephone calls to opposing counsel and in civil case management statement, those constituted threats in violation of Business and Professions Code section 6103.7, and respondent's purported ignorance of section 6103.7 was not a defense**.** *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[3a-d]**

221 Substantive Issues in Disciplinary Matters Generally—Culpability—State Bar Act Violations—Section 6106 (moral turpitude, corruption, dishonesty)

Business and Professions Code section 6106 provides, in part, that commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Willful misappropriation of client's funds involves moral turpitude. Attorney who knowingly converts client funds for attorney's own purpose violates section 6106. When account balance drops below amount attorney required to hold for client, presumption of misappropriation arises. Burden then shifts to attorney to show misappropriation did not occur and that attorney was entitled to withdraw funds. Where letter agreement drafted by respondent contained acknowledgement and receipt signed by respondent which clearly stated respondent had placed non-client's $50,000 security deposit in CTA and funds were to be released only upon non-client's written consent; respondent acted intentionally by depositing $50,000 security fund check into business account instead of client trust account (CTA); respondent immediately began making personal withdrawals of funds; account dipped below $50,000; respondent knew at time respondent deposited money that respondent had agreed to keep funds in CTA, yet failed to do so; and respondent knew respondent was not authorized to use money for personal expenses, Review Department held respondent intentionally misappropriated $50,000 security deposit in violation of section 6106. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[8a-c]**

Where respondent deposited $75,000 for liquor license from non-client into business account rather than client trust account (CTA); failed to maintain that amount; failed to rebut presumption of misappropriation as business account dipped below $75,000; and respondent used money when respondent was not entitled to do so, Review Department held respondent culpable of intentional misappropriation of liquor license funds in violation of Business and Professions Code section 6106. As respondent deposited both security deposit funds and liquor license funds in business account instead of CTA, conduct not one-time mistake but repeated practice. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[10]**

Where respondent received non-client's check for furniture, fixtures, and equipment (FF&E) and negotiated check, but no evidence respondent deposited and kept funds in client trust account (CTA) as respondent had agreed to do; respondent could not rebut presumption that funds were misappropriated; and repayment of FF&E funds came from CTA respondent opened over year later and funds were transferred into CTA from non-CTA, Review Department held respondent culpable of intentionally misappropriating funds in violation of Business and Professions Code section 6106. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[11a, b]**

Where respondent correctly believed that trust of which she was trustee gave her authority to lend trust money to herself; respondent informed trust beneficiary of her intent to make loan and received no response; and respondent secured loan with deed of trust on respondent's property, respondent's actions were consistent with her belief she had authority to make loan, and inconsistent with intention to act with moral turpitude, dishonesty, or a correct motive. Finding that respondent intended to enter into loan transaction was incompatible with finding that respondent planned to misappropriate funds. Accordingly, facts did not show respondent misappropriated funds in such a way as to violate section 6106, and Review Department reversed finding of culpability and dismissed charge with prejudice. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[7a-d]**

Section 6106 applies to misrepresentations and concealment of material facts. Mere negligence in making a representation does not violate section 6106. Where respondent trustee's representations to counsel for trust beneficiary were consistent with respondent's own honestly held beliefs and understanding, and respondent did not attempt to conceal her actions or to mislead beneficiary's counsel, OCTC did not prove by clear and convincing evidence that respondent made misrepresentations, and Review Department therefore dismissed section 6106 charge with prejudice. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[9a-e]**

Where clear and convincing evidence showed respondent failed to keep client informed of discovery requests, and of court orders stemming from respondent's failure to respond to discovery, respondent was culpable of failing to keep client reasonably informed of significant developments, in violation of section 6068(m). However, where OCTC did not present clear and convincing evidence that respondent's motivation

for lack of communication was to cover up respondent's failure to perform competently, respondent was not culpable of act of moral turpitude in violation of section 6106. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[4a, b]**

Where hearing judge found that respondent, as prosecutor in criminal case, committed act of moral turpitude by improperly failing to disclose evidence to defense counsel in order to secure strategic trial advantage, Review Department deferred to hearing judge's determination that respondent's alternative explanation of her conduct lacked credibility. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[3]**

As officers of the court and representatives of the People, prosecutors must meet standards of candor and impartiality not demanded of other attorneys, and are held to an elevated standard of conduct. Respondent, a prosecutor, acted egregiously and outrageously, and committed an act of moral turpitude, when he intentionally altered a criminal defendant's statement to add a false confession, thereby prejudicing the defendant's right to fair trial, compromising the case, and bringing about the dismissal of the criminal charges. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479 **[a - c]**

Where charge against respondent prosecutor of failing to comply with Constitution and laws, based on respondent's willful violation of criminal defendant's constitutional rights, overlapped with moral turpitude charge based on same misconduct, charge of failing to comply with law was properly dismissed as duplicative. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[4]**

Where section 6106 moral turpitude charge for making misrepresentations to a tribunal and section 6068, subdivision (d) charge for seeking to mislead a judge were based on the same misconduct, section 6068, subdivision (d) charge dismissed as duplicative. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464**. [1]**

Where respondent intentionally deceived Workers' Compensation Appeals Board (WCAB) by making misrepresentations, omitting material facts, and presenting half-truths, and allowed WCAB to take action in reliance on misrepresentations, respondent was culpable of acts of moral turpitude. WCAB's eventual awareness of true facts did not negate respondent's culpability, because misleading a court or tribunal constitutes moral turpitude whether or not respondent succeeds in perpetrating fraud, and respondent had continuing, affirmative duty to timely advise WCAB of changed circumstances affecting pending cases. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[2a-f]**

Lack of clarity in hearing judge's decision, as to whether moral turpitude culpability finding was based on intentional or grossly negligent conduct, was problematic for purposes of ascertaining seriousness of misconduct and assessing corresponding discipline. Review Department clarified, based on misrepresentations in documents respondent drafted and filed, that respondent intentionally deceived tribunal. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[3]**

Where respondent was unaware of his suspension until last minute of three-minute telephonic case management conference and then provided three responses to judge's instructions during remaining very brief period (no more than one minute) and under circumstances where respondent did not have reasonable opportunity to withdraw, Review Department upheld hearing judge's finding that respondent was not culpable of moral turpitude because OCTC did not present clear and convincing evidence that respondent practiced law with requisite level of intent, guilty knowledge, or, at a minimum, gross negligence. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[5a-d]**

Where respondent knew he was suspended at time he entered into settlement negotiations, respondent was culpable of act of moral turpitude, even though, prior to attempting to settle case, respondent advised opposing counsel of respondent's suspension and contacted State Bar's Ethics Department. Contacting State Bar employee for advice is not a defense to a violation of rules or statutes governing attorney's professional responsibilities. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[9]**

Where respondent appeared at client's deposition two days after he learned of his suspension for failure to pay child support, respondent's knowing unauthorized practice of law constituted act of moral turpitude. Respondent was not entitled to assume he had been reinstated after becoming current on child support, because respondent knew his status could be confirmed on State Bar's website. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[10a, b]**

Respondent committed an act of moral turpitude in violation of section 6106 by practicing law while on inactive status. Although OCTC did not prove respondent knew he had been enrolled inactive, record established that respondent knew there was a high probability this would occur. Moreover, by changing his membership address, respondent purposely avoiding receiving notice from the State Bar regarding his membership status. He also failed to check his membership status before filing documents and appearing in court. Respondent's willful blindness was tantamount to having actual knowledge that he was ineligible to practice law. *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr, 427. **[2a, b]**

221.10 Substantive Issues in Disciplinary Matters Generally—Culpability—State Bar Act Violations—Section 6106 (moral turpitude, corruption, dishonesty)—Found

In the Matter of Nassar (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593.

221.11 Substantive Issues in Disciplinary Matters Generally—Culpability —State Bar Act Violations — Section 6106 (moral turpitude, corruption, dishonesty) —Found —Deliberate/dishonesty/fraud

Business and Professions Code section 6106 provides, in part, that commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Willful misappropriation of client's funds involves moral turpitude. Attorney who knowingly converts client funds for attorney's own purpose violates section 6106. When account balance drops below amount attorney required to hold for client, presumption of misappropriation arises. Burden then shifts to attorney to show misappropriation did not occur and that attorney was entitled to withdraw funds. Where letter agreement drafted by respondent contained acknowledgement and receipt signed by respondent which clearly stated respondent had placed non-client's $50,000 security deposit in CTA and funds were to be released only upon non-client's written consent; respondent acted intentionally by depositing $50,000 security fund check into business account instead of client trust account (CTA); respondent immediately began making personal withdrawals of funds; account dipped below $50,000; respondent knew at time respondent deposited money that respondent had agreed to keep funds in CTA, yet failed to do so; and respondent knew respondent was not authorized to use money for personal expenses, Review Department held respondent intentionally misappropriated $50,000 security deposit in violation of section 6106. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[8a-c]**

Where Notice of Disciplinary Charges alleged respondent made misrepresentations in letter regarding holding funds from non-client business in client trust account (CTA), Review Department rejected respondent's argument that there was no fiduciary duty to non-client business as non-client testified that non-client did not believe respondent agreed to act as fiduciary for non-client or non-client's business. What non-client believed about respondent's duties did not supersede duties respondent had under law as escrow holder and fiduciary. Furthermore, whether respondent was fiduciary to non-client business was not relevant to moral turpitude charge, as section 6106 prohibits any act of attorney dishonesty, whether committed while acting as attorney or not. Review Department held respondent culpable of violating Business and Professions Code section 6106, as respondent's deception about holding money in CTA rose to moral turpitude as misrepresentation was material and intentional. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[13a, b]**

Where respondent misrepresented case settled when it was actually dismissed, respondent's failure to inform client about dismissal was factually joined with misrepresentation respondent was working on case and getting client settlement money. Review Department therefore treated moral turpitude violation and violation of failing to inform client of significant developments as single offense involving moral turpitude for discipline purposes. No additional disciplinary weight was given to Business and Professions Code section 6068(m) violation because respondent's misconduct underlying section 6068(m) charge was factually

same as misconduct underlying moral turpitude charge. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[2a, b]**

Attorney's commission of any act involving moral turpitude, dishonesty, or corruption is cause for disbarment whether the act is committed in the course of his relations as an attorney or otherwise. Attorney who accepts responsibility of a fiduciary nature is held to high standards of legal profession whether or not acting in capacity of attorney. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[4]**

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

Where respondent's marketing materials and sales representatives indicated to potential clients that a lawyer would be working on their behalf, but respondent in fact delegated loan modification work to non-attorney employees, and respondent knew representations made to clients were false, respondent committed an act of moral turpitude despite his professed honest belief that what he was doing was legal. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[10a, b]**

Respondent committed misconduct involving moral turpitude by engaging in operation to collect illegal advance attorney fees and exploit vulnerable homeowners by using an aggressive marketing scheme under which clients were falsely informed that they were hiring a lawyer to sue banks, and misled to believe operation was affiliated with government entities, while respondent changed name of operation and its websites several times to distance himself from past complaints, and failed to identify himself on some websites as attorney responsible for solicitations. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[11]**

Misrepresentation of fact to court for purpose of obtaining continuance violates attorney's duty not to mislead courts. For this purpose, administrative tribunal acting in quasi-judicial capacity is not distinct from court. Where respondent directed assistant to make material misrepresentation to administrative tribunal on respondent's behalf, and then took no steps to correct record despite notice that tribunal had relied on misrepresentation, respondent was culpable of intentional act of moral turpitude and of misleading tribunal, but violations were treated as single offense involving moral turpitude, and no additional weight was assigned to duplicative charge. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[3a-f]**

Where respondent misused her authority and discretion as trustee of her family's trust, intentionally violated numerous fiduciary duties set forth in the Probate Code by means infused with dishonesty and/or concealment, made repeated misrepresentations to the court and third parties in documents filed which falsely represented her as trustee after she had been removed, and intentionally violated court orders, respondent was culpable of multiple intentional acts of moral turpitude. Respondent was also culpable of violating section 6068(a), but Review Department assigned these violations no additional weight because they were duplicative of section 6106 violations. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494, **[3a, b]**

As officers of the court and representatives of the People, prosecutors must meet standards of candor and impartiality not demanded of other attorneys, and are held to an elevated standard of conduct. Respondent, a prosecutor, acted egregiously and outrageously, and committed an act of moral turpitude, when he intentionally altered a criminal defendant's statement to add a false confession, thereby prejudicing the defendant's right to fair trial, compromising the case, and bringing about the dismissal of the criminal charges. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[2a-c]**

Where Review Department found that respondent acted intentionally in committing act of moral turpitude, it declined to give intentionality additional weight to aggravation. Factors giving rise to culpability for moral turpitude should not be given double weight by considering them again in aggravation. *In the Matter of Murray* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 479. **[7]**

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464

221.12 Substantive Issues in Disciplinary Matters Generally—Culpability—State Bar Act Violations—Section 6106 (moral turpitude, corruption, dishonesty)—Found—Gross negligence

Where respondent, who had not filed notices of suspension with courts and had not provided appropriate certified notices of suspension to opposing counsel or unrepresented parties in pending cases as required by California Rules of Court, rule 9.20, represented in rule 9.20 compliance declaration that respondent had notified all opposing counsel of suspension by certified or registered mail, return receipt requested, filed copy of suspension notice with courts where cases pending, and provided notice of suspension to clients by certified or registered mail, respondent's statements in rule 9.20 compliance declaration were grossly negligent misrepresentations amounting to moral turpitude. Respondent had duty to review compliance declaration pre-filled-out by his attorney for accuracy before signing it under penalty of perjury but failed to do so. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[3a-b]**

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

Where respondent, as prosecutor in criminal case, was obligated to disclose evidence to defense counsel, but failed to disclose it based on unreasonable belief, contrary to clear language of applicable statute, that disclosure was not required, respondent was culpable of committing act of moral turpitude through gross negligence. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593.**[2]**

Moral turpitude includes false or misleading statements to a court or tribunal. Actual intent to deceive is not necessary; gross negligence in creating a false impression is sufficient. Willful deceit violates section 6106. Where respondent took no steps to correct record despite notice that assistant made misrepresentation to administrative tribunal on respondent's behalf, on which tribunal had relied, respondent ratified assistant's misrepresentation, and thus was culpable of moral turpitude by gross negligence. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[1a-c]**

221.19 Substantive Issues in Disciplinary Matters Generally—Culpability—State Bar Act Violations—Section 6106 (moral turpitude, corruption, dishonesty) —Found —Other factual basis

Business and Professions Code section 6106 provides, in part, that commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Willful misappropriation of client's funds involves moral turpitude. Attorney who knowingly converts client funds for attorney's own purpose violates section 6106. When account balance drops below amount attorney required to hold for client, presumption of misappropriation arises. Burden then shifts to attorney to show misappropriation did not occur and that attorney was entitled to withdraw funds. Where letter agreement drafted by respondent contained acknowledgement and receipt signed by respondent which clearly stated respondent had placed non-client's $50,000 security deposit in CTA and funds were to be released only upon non-client's written consent; respondent acted intentionally by depositing $50,000 security fund check into business account instead of client trust account (CTA); respondent immediately began making personal withdrawals of funds; account dipped below $50,000; respondent knew at time respondent deposited money that respondent had agreed to keep funds in CTA, yet failed to do so; and respondent knew respondent was not authorized to use money for personal expenses, Review Department held respondent intentionally misappropriated $50,000 security deposit in violation of section 6106. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[8a-c]**

Where respondent deposited $75,000 for liquor license from non-client into business account rather than client trust account (CTA); failed to maintain that amount; failed to rebut presumption of misappropriation as business account dipped below $75,000; and respondent used money when respondent was not entitled to do so, Review Department held respondent culpable of intentional misappropriation of liquor license funds in violation of Business and Professions Code section 6106. As respondent deposited both security deposit funds and liquor license funds in business account instead of CTA, conduct not one-time mistake but repeated practice. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[10]**

Where respondent received non-client's check for furniture, fixtures, and equipment (FF&E) and negotiated check, but no evidence respondent deposited and kept funds in client trust account (CTA) as respondent had agreed to do; respondent could not rebut presumption that funds were misappropriated; and repayment of FF&E funds came from CTA respondent opened over year later and funds were transferred

into CTA from non-CTA, Review Department held respondent culpable of intentionally misappropriating funds in violation of Business and Professions Code section 6106. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[11a, b]**

Attorney's practice of issuing insufficiently funded checks involves moral turpitude. Where respondent issued three checks when there were insufficient funds in bank accounts to cover checks, resulting in two checks returned for insufficient funds, respondent culpable of moral turpitude. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[14a, b]**

Where respondent had stipulated in earlier disciplinary proceeding that he was unreasonable in believing he could represent party in arbitration while suspended, respondent's subsequent practice of law in three arbitration matters while on notice of his suspension was an intentional act of moral turpitude, not merely grossly negligent. Finding of moral turpitude did not violate respondent's due process rights, because earlier stipulation put respondent on notice that continuing to appear for parties in arbitration while suspended could involve moral turpitude. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[6a-d]**

In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448

In the Matter of Carver (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427

221.50 Substantive Issues in Disciplinary Matters Generally—Culpability—State Bar Act Violations—Section 6106 (moral turpitude, corruption, dishonesty) —Not Found

Business and Professions Code section 6106 provides, in part, that commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Where respondent believed (1) claim was issued by governmental agency targeting clients, and (2) that even if clients had not already been targeted by governmental agency, they would be soon, it was reasonable to believe attorney simply mistaken regarding existence of governmental claim against clients, and no clear and convincing evidence supported conclusion attorney made material misrepresentation amounting to either grossly negligent or intentional moral turpitude when he wrote letter to insurance company stating governmental entity was implicated in matter. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[4a-d]**

Where attorney reasonably believed he had authority to represent family representative in environmental remediation; attorney understood from meeting with family representative that he was authorized to try to ensure remediation was paid for without cost to family; and possibility of lawsuit to be filed against family to trigger coverage from insurer was probable outcome discussed at meeting, attorney did not commit act involving moral turpitude, dishonesty, or corruption within meaning of Business and Professions Code section 6106 by claiming he represented family representative on four separate occasions in two environmental lawsuits. Review department reversed hearing judge's culpability finding based on finding attorney unreasonably believed he had authority to represent family representative in litigation and committed misrepresentation to court through gross negligence by appearing on family representative's behalf. Even if attorney was mistaken by authority to act – which review department did not conclude – attorney's actions would not rise to grossly negligent moral turpitude as attorney sincerely believed conduct was justified. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[6a, b]**

Where attorney settled third-party complaint involving claims related to insurer's duty to pay defense costs for environmental lawsuit, Office of Chief Trial Counsel failed to show attorney's actions amounted to settlement of claim without authority, involving moral turpitude, as it was not settlement agreement and did not bind parties; rather, it was interim agreement regarding payment of attorney fees that could be further negotiated and finalized later; there was no enforceable settlement agreement affecting attorney's clients; ultimate agreement regarding insurer's liability had not been reached; and attorney's actions showed attorney was furthering client's interests by trying to find money to fund attorney's representation. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[7]**

Where attorney stated in deposition that he estimated he had "five to ten" telephone conversations with client after meeting, but attorney actually had not communicated with client at all during relevant period,

deposition statement was not intentional or grossly negligent misrepresentation in violation of Business and Professions Code section 6106, as attorney had not reviewed case file before appearing at deposition; attorney asserted testimony was based on attorney's experience with these cases generally – not specific memory of speaking with client; and at trial, attorney characterized statement as "guess" at time of deposition, which attorney later corrected in interview with New Jersey Office of Attorney Ethics. Record therefore supported reasonable inference attorney was simply mistaken when attorney testified, and testimony reflected attorney's recollection of case at that time. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[8]**

Where attorney and opposing counsel credibly testified multiple versions of agreement were used, accidentally sending attorney for client in related matter wrong version which incorrectly stated insurer did not object to settlement agreement, and attorney did not notice oversight and maintained not aware version being provided contained erroneous statement, no violation of Business and Professions Code section 6106 for misrepresentation. Conduct simple negligence and not disciplinable offense. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[14a, b]**

Office of Chief Trial Counsel (OCTC) failed to prove by clear and convincing evidence that attorney made misrepresentations to client's attorney in related matter regarding insurer's objection to settlement agreement in violation of Business and Professions Code section 6106. Where one email to client's attorney in related matter did not mention insurer at all; second email summarized attorney's report to judge at settlement status conference, disclosed that insurer had been provided copy of proposed settlement agreement, and did not mention insurer's response; attorney believed settlement agreement did not contain insurer's position, as attorney had not carefully read drafts with erroneous statement; and attorney had no indication that would lead attorney to believe that client's attorney in related matter thought insurer had not objected, it could not be determined attorney's omission in email to client's attorney in related matter constituted intentional misrepresentation, especially as one email was only summary of status conference and attorney asserted insurer's position was not discussed at status conference. Reasonable factual interpretation is attorney was unaware client's attorney in related matter believed insurer had not objected. Attorney therefore had no reason to mention insurer's objection in emails. Review department therefore held OCTC did not prove by clear and convincing evidence that attorney made misrepresentations to client's attorney in related matter regarding insurer's objection to settlement agreement by omitting this fact from emails. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[15]**

When trust account balance drops below amount attorney is required to hold for client, presumption of misappropriation arises. Burden then shifts to attorney to show misappropriation did not occur and attorney entitled to withdraw funds. Moral turpitude can be found when attorney's actions constitute gross carelessness and negligence violating fiduciary duty to client. Where balance in respondent's trust account fell below amount respondent required to hold for client on two occasions over three day period, which respondent explained was due to careless bookkeeping, and after realizing discrepancy, respondent deposited personal funds to cover discrepancy, misconduct did not rise to level of misappropriation by gross negligence as it was isolated, aberrational occurrence and respondent quickly restored funds. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[6a-b]**

Section 6106 applies to misrepresentations and concealment of material facts. Mere negligence in making a representation does not violate section 6106. Where respondent trustee's representations to counsel for trust beneficiary were consistent with respondent's own honestly held beliefs and understanding, and respondent did not attempt to conceal her actions or to mislead beneficiary's counsel, OCTC did not prove by clear and convincing evidence that respondent made misrepresentations, and Review Department therefore dismissed section 6106 charge with prejudice. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[9a-e]**

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448

222.20 State Bar Act Violations—Section 6106.3 (violation of Civil Code § 2944.6 or 2944.7 re mortgage loan modifications)

Where disciplinary statute defined violation of specified Civil Code sections as constituting attorney misconduct, and statute was amended to delete reference to one of such Civil Code sections, pre-amendment version of statute applied to misconduct that respondent committed prior to effective date of amendment. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[8]**

Where disciplinary statute defined violation of specified Civil Code sections as constituting attorney misconduct, and statute was amended to delete reference to one of such Civil Code sections, pre-amendment version of statute applied to misconduct that respondent committed prior to effective date of amendment. *In the Matter of Golden* (Review Dept. 2018) 5 Cal State Bar Ct. Rptr. 574. **[1a, b]**

Civil Code section 2944.7 prohibits any person engaged in loan modifications from collecting any advance fees in advance of completing all contracted loan modification services, and an attorney's violation of the statute constitutes a disciplinable offense under section 6106.3. Section 2944.7 is not ambiguous, and does not permit an exception for attorneys who attempt to obtain loan modifications, but plan to file litigation if a modification request is denied. Where respondent stipulated that clients retained his services to keep their homes and properties; he discussed loan modification with them as an available remedy, along with litigation if loan modification applications were denied; he submitted loan modification applications for them and negotiated with their lenders; and he collected fees from them before completing all loan modification services, respondent was culpable of violating section 6106.3, even if the purpose of his litigation services was not just to obtain loan modifications. *In the Matter of Golden* (Review Dept. 2018) 5 Cal State Bar Ct. Rptr. 574. **[2a-h]**

California's statutory Homeowner Bill of Rights, which provides remedies for home mortgage borrowers including recovery of attorney fees against lenders, does not conflict with statutes prohibiting attorneys in loan modification proceedings from collecting any advance attorney fees, and does not permit attorneys to collect otherwise prohibited advance fees in order to prepare to litigate against a lender as a means to leverage a loan modification. . *In the Matter of Golden* (Review Dept. 2018) 5 Cal State Bar Ct. Rptr. 574. **[3a, b]**

Where respondent was the owner and sole supervising attorney of a firm, respondent owed non-delegable fiduciary duty to each client accepted and could not avoid culpability by shifting responsibility onto employees. Accordingly, where respondent's firm took over loan modification matter, and respondent's employees then collected fees before performing services, respondent was culpable of violating statute precluding collection of advance fees in loan modification matters. *In the Matter of DeClue* (Review Dept. 2016) 5 Cal State Bar Ct Rptr. 437. **[2a-c]**

Where record, including client's credible testimony, indicated that client entered into fee agreement for sole purpose of securing loan modification or forbearance, litigation services performed by respondent were ancillary to ultimate purpose of loan modification. Accordingly, all services encompassed within fee agreement were subject to provision of Civil Code section 2944.7 precluding collection of fees prior to rendition of services. *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437. **[4a-c]**

Where Review Department found that respondent acted intentionally in committing act of moral turpitude, it declined to give intentionality additional weight to aggravation. Factors giving rise to culpability for moral turpitude should not be given double weight by considering them again in aggravation. *In the Matter of Murray* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 479. **[7]**

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464 **.**

222.21 State Bar Act Violations—Section 6106.3 (violation of Civil Code § 2944.6 or 2944.7 re mortgage loan modifications)—Found

In the Matter of Gordon (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610.

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437

222.90 State Substantive Issues in Disciplinary Matters Generally – Culpability – State Bar Act Violations – Section 6106.9

Knowledge of the violated provision is not required for violation of clear-cut professional responsibilities in Business and Professions Code (e.g., sections 6068(o)(3) [duty to report to State Bar imposition of judicial sanctions], 6103 [duty to obey court orders], 6103.5 [requirement that attorney communicate settlement offer], 6104 [attorney cannot appear without authority], 6105 [lending name to person who is not attorney], and 6106.9 [sexual relations between attorney and client].) *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[5a-b]**

230 State Bar Act Violations—Section 6125 (practice of law while not active member)

The definition of law practice is largely derived from case law, and includes representation of others in court proceedings, legal advice and counsel, and preparation of legal instruments and contracts by which legal rights are secured, regardless of whether a court proceeding is pending. Even when services may be performed by non-lawyers, they are not non-legal activities if a lawyer performs them. Moreover, lawyers acting in any capacity must conform to professional standards, including the prohibition against practicing law while suspended. Where respondent, while suspended from practice, made legal demands on opposing parties' counsel in arbitration proceedings, and briefed and advocated numerous legal issues, respondent was unquestionably engaged in law practice. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[1a-d]**

Code of Civil Procedure sections permitting persons not otherwise entitled to practice law in California to represent parties to certain types of arbitrations did not authorize suspended California attorney to practice law by representing party to arbitration. Statute permitting out-of-state attorneys in good standing to represent parties in arbitrations could not be construed to permit suspended California attorneys to practice law in violation of section 6126. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[2a, b]**

Where respondent was unaware of his suspension until last minute of three-minute telephonic case management conference and then provided three responses to judge's instructions during remaining very brief period (no more than one minute) and under circumstances where respondent did not have reasonable opportunity to withdraw, Review Department upheld hearing judge's finding that respondent was not culpable of moral turpitude because OCTC did not present clear and convincing evidence that respondent practiced law with requisite level of intent, guilty knowledge, or, at a minimum, gross negligence. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[5a-d]**

Where respondent, after learning that he was suspended from practice, attempted to negotiate settlement of clients' case and appeared for a client at a deposition, respondent was culpable of violating section 6068(a) by his unauthorized practice of law, but this violation was given no weight, because respondent was also found culpable of moral turpitude based on same facts. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct Rptr. 448 **[8a-c]**

Where respondent appeared at client's deposition two days after he learned of his suspension for failure to pay child support, respondent's knowing unauthorized practice of law constituted act of moral turpitude. Respondent was not entitled to assume he had been reinstated after becoming current on child support, because respondent knew his status could be confirmed on State Bar's website. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[10a, b]**

Respondent committed unauthorized practice of law in violation of sections 6068(a), 6125, and 6126 by filing and serving court documents and making court appearances on his client's behalf while not an active member of the State Bar. *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427. **[1]**

230.01 State Bar Act Violations—Section 6125 (practice of law while not active member)—Found

In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698.

In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448

In the Matter of Carver (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427

231 State Bar Act Violations—Section 6126 (unauthorized practice —misdemeanor)

The definition of law practice is largely derived from case law, and includes representation of others in court proceedings, legal advice and counsel, and preparation of legal instruments and contracts by which legal rights are secured, regardless of whether a court proceeding is pending. Even when services may be performed by non-lawyers, they are not non-legal activities if a lawyer performs them. Moreover, lawyers acting in any capacity must conform to professional standards, including the prohibition against practicing law while suspended. Where respondent, while suspended from practice, made legal demands on opposing parties' counsel in arbitration proceedings, and briefed and advocated numerous legal issues, respondent was unquestionably engaged in law practice. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[1a-d]**

Code of Civil Procedure sections permitting persons not otherwise entitled to practice law in California to represent parties to certain types of arbitrations did not authorize suspended California attorney to practice law by representing party to arbitration. Statute permitting out-of-state attorneys in good standing to represent parties in arbitrations could not be construed to permit suspended California attorneys to practice law in violation of section 6126. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[2a, b]**

Where respondent practiced law while suspended for non-payment of child support, OCTC was not required to establish that respondent knowingly committed unauthorized practice of law in order to prove respondent violated sections 6125 and 6126. It was sufficient to prove respondent's conduct was willful. Under standard 2.10(b), knowledge is simply a factor in determining degree of discipline. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[3a, b]**

Where respondent signed and served discovery responses and made court appearance on client's behalf while suspended, respondent violated sections 6068, subdivision (a), 6125, and 6126, regardless of whether OCTC showed respondent knowingly committed unauthorized practice of law, because respondent acted purposefully when he created impression he was entitled to represent client. *In the Matter of Burke* (Review Dept. 2016) 5 Cal State Bar Ct. Rptr. 448. **[4a, b]**

Where respondent was unaware of his suspension until last minute of three-minute telephonic case management conference and then provided three responses to judge's instructions during remaining very brief period (no more than one minute) and under circumstances where respondent did not have reasonable opportunity to withdraw, Review Department upheld hearing judge's finding that respondent was not culpable of moral turpitude because OCTC did not present clear and convincing evidence that respondent practiced law with requisite level of intent, guilty knowledge, or, at a minimum, gross negligence. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[5a-d]**

Where respondent, after learning that he was suspended from practice, attempted to negotiate settlement of clients' case and appeared for a client at a deposition, respondent was culpable of violating section 6068(a) by his unauthorized practice of law, but this violation was given no weight, because respondent was also found culpable of moral turpitude based on same facts. *In the Matter of Burke* (Review Dept. 2016) 5 Cal State Bar Ct Rptr. 448. **[8a-c]**

Where respondent appeared at client's deposition two days after he learned of his suspension for failure to pay child support, respondent's knowing unauthorized practice of law constituted act of moral turpitude. Respondent was not entitled to assume he had been reinstated after becoming current on child support,

because respondent knew his status could be confirmed on State Bar's website. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[10a, b]**

Respondent committed unauthorized practice of law in violation of sections 6068(a), 6125, and 6126 by filing and serving court documents and making court appearances on his client's behalf while not an active member of the State Bar. *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427. **[1]**

231.01 State Bar Act Violations—Section 6126 (unauthorized practice—misdemeanor)—Found

In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct, Rptr. 448

In the Matter of Carver (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 42

252.20 State Bar Act Violations—Section 6126 (unauthorized practice—misdemeanor)—Found

Even when a service may be performed by non-lawyers, when such services are rendered by an attorney or in an attorney's office, they constitute the practice of law. Where customers of loan modification business jointly operated by respondent and non-lawyer were told they were receiving attorney services, business constituted practice of law. Accordingly, respondent was culpable of forming a partnership with a non-lawyer. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[3a, b]**

A partnership is an association of two or more persons to carry on as co-owners of a business for profit, whether or not the persons intend to form a partnership. Where respondent entered into agreement with non-lawyer to conduct business selling loan modification services to clients; non-lawyer's efforts were critical part of operation; respondent and non-lawyer carried out business as common enterprise; and business constituted practice of law, respondent was culpable of forming a partnership with a non-lawyer. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[4a, b]**

252.21 Rule 1-310 (Law partnership with non-lawyer) -- Found

In the Matter of Gordon (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610.

252.30 Culpability – Rules of Professional Conduct Violations – Sharing fee with non-lawyer

Where respondent shared revenue from advance attorney fees collected by loan modification services business with non-lawyer partner, and partner then paid sales representatives commissions out of partner's share of revenue, respondent was culpable of violating rule prohibiting sharing legal fees with a non-lawyer. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[5a, b]**

252.31 Rule 1-320(A) (Sharing fee with non-lawyer) -- Found

In the Matter of Gordon (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610.

253.10 Culpability – Rules of Professional Conduct Violations – False/misleading communication

Business and Professions Code section allowing any person to file complaint with State Bar for false, misleading, or deceptive legal advertising, and allowing State Bar to require attorney to withdraw advertising on 72 hours' notice if such complaint is supported by substantial evidence, is completely separate from attorneys' duty under Rules of Professional Conduct not to use deceptive or misleading advertising. Accordingly, respondent who employed misleading advertising was properly found culpable of violating Rules of Professional Conduct even though no such complaint was filed, and State Bar did not give him 72 hours' notice to withdraw advertising. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[7]**

Where respondent changed the name and website of his loan modification services operation numerous times to mislead public; used same client testimonials on different websites; failed to identify himself as attorney responsible for communications or solicitations; and mailed solicitations implying falsely that operation was affiliated with government entities, respondent was culpable of violating rule prohibiting attorneys from sending false, deceptive, or misleading communications or solicitations. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[6a, b]**

253.11 Rule 1-400(D)(2) (False/misleading communication)

In the Matter of Gordon (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610.

270.31 Incompetence (RPC 3-110(A))

In the Matter of Edward Shkolnikov (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852.

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Khishaveh (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564.

270.35 Incompetence (RPC 3-110(A)) – Not Found

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

271.01 Malicious/frivolous litigation (RPC 3-200(B)) – Found

In the Matter of Fisher (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999.

273 Culpability – Rules of Professional Conduct – Rule 3-300

Attorney who is trustee of trust must comply with Rules of Professional Conduct as well as directives of trust instrument. Attorney entering into business transaction arising from attorney's duties as trustee must comply with rule 3-300. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[1]**

Trustee of revocable trust owes fiduciary duty to settlor of trust. When settlor has become incompetent, trustee's fiduciary duty is to beneficiaries, and if trustee is an attorney, she is required to treat beneficiaries as clients for purposes of rule 3-300. Where respondent, as trustee, borrowed funds from trust whose settlor was incompetent, respondent violated rule 3-300 by failing to provide beneficiaries with written description of loan terms; failing to tell them they could seek advice of independent attorney; and failing to obtain their written consent to loan terms. Given these failures to comply with rule 3-300, respondent was culpable even if terms of loan were fair and reasonable. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[3a-c]**

Probate Code section 16004 applies to fiduciary relationship between attorney and client, and is statutory complement to rule 3-300. Probate Code establishes rebuttable presumption that trustee has violated fiduciary duties when trustee obtains advantage from beneficiary in transaction between them. When attorney trustee enters into transaction with trust, transaction will be set aside unless attorney can show that beneficiaries had full knowledge of facts connected with transaction and fully understood its effect. Where respondent, as trustee, obtained loan from trust which benefited her, and did not fully inform beneficiaries of terms or risks of loan transaction, respondent violated her duties under Probate Code, and thereby violated section 6068(a). *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[5a, b]**

Where same acts of misconduct by respondent violated both section 6068(a) and rule 3-300, hearing judge erred by dismissing section 6068(a) charge with prejudice. Better approach was to find both violations,

but assign duplicative violation no additional weight in determining discipline. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[6]**

273.01 Culpability Found, Rule 3-300

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

273.05 Improper transaction with client

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

273.30 Rules of Professional Conduct (RPC) Violations – Conflicts of interest (RPC 1.7 (except 1.7(c)(2)) & 1.9; 1989 RPC 3-310; 1975 RPC 4-101 & 5-102)

Former rule 3-310(C)(1) of Rules of Professional Conduct provides that attorney shall not, without informed written consent of each client, accept representation of more than one client in matter in which interests of clients potentially conflict. Where respondent represented two defendants in same lawsuit where damages were sought against both clients, respondent should have anticipated possible indemnity issues; thus, respondent's failure to inform clients about any potential conflicts and failure to obtain clients' informed written consent to representation was violation of former rule 3-310(C)(1). *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[10a-b]**

273.35 Rules of Professional Conduct (RPC) Violations – Conflicts of interest – Not Found

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

275.30 Substantive Issues in Disciplinary Matters Generally – Culpability – Rules of Professional Conduct Violations – Failure to communicate settlement offer

Rule 3-510 requires attorney to promptly communicate to client all written settlement offers, regardless of significance or whether binding under contract law. Where attorney did not communicate written settlement offers to client or client's attorney in related matter, but rather waited until settlement agreement was ready for signature before sending to client's attorney to share with client, attorney violated rule 3-510 of the former California Rules of Professional Conduct by failing to communicate settlement offers. While attorney reported significant settlement developments to clients' insurer, insurer was not attorney's client. Attorney was required to inform client of written offer regardless of whether it was significant or likely to be accepted. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[13a, b]**

275.31 Substantive Issues in Disciplinary Matters Generally – Culpability – Rules of Professional Conduct Violations – Failure to communicate settlement offer – Found

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

277.20 Substantive Issues in Disciplinary Matters Generally – Culpability – Rules of Professional Conduct Violations – Prejudicial withdrawal

Where respondent did not take any action on clients' case after hearing where case dismissed and did not tell clients respondent had stopped working on matter, but more than year after hearing told client respondent was working on setting aside dismissal, respondent's failure to take any action resulted in constructive termination of employment. As respondent failed to give notice to clients that respondent was no longer working on case, respondent was culpable of violating former rule 3-700(A)(2). *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[4a, b]**

277.21 Prejudicial withdrawal (RPC 3-700(A)(2))

In the Matter of Edward Shkolnikov (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Khishaveh (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564.

277.60 Culpability – Rules of Professional Conduct Violations – Failure to refund unearned fees

Where respondent spent 50-60 hours working on a client's case; OCTC did not prove by clear and convincing evidence that there were outstanding unearned fees that respondent failed to refund; and charge of failure to refund unearned fees in that case was dismissed with prejudice, Review Department did not recommend that respondent be required to make restitution to that client. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[6]**

277.61 Failure to refund unearned fees – Found

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

277.65 Failure to refund unearned fees – Not Found

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

280 Rules of Professional Conduct (RPC) Violations – Trust account/commingling

Attorney can create fiduciary relationship with non-client when attorney receives money on behalf of non-client. Attorney must then comply with same fiduciary duties in dealing with such funds as if attorney-client relationship existed. Attorney who breached fiduciary duties that would justify discipline if there was attorney-client relationship may be disciplined for such misconduct. Where respondent agreed to hold money from non-client for lease and keep it in client trust account (CTA) until appropriate to release it to proper parties, but failed to do so, respondent violated his fiduciary duties to non-client and violated former rule 4-100(A) of Rules of Professional Conduct. But Review Department assigned no additional weight in discipline as culpability based on same facts underlying Business and Professions Code section 6106 violation. Review Department rejected respondent's argument there was no written agreement regarding $50,000 security deposit's use at time of alleged misconduct, as conduct of parties, when viewed in light of later letter agreement, was strong evidence respondent was to keep security deposit in CTA. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[9a-c]**

Former Rule 4-100(A) of Rules of Professional Conduct provides, in part, that client funds held by attorney must be deposited in client trust account and maintained until amount owed to client is settled. Where respondent's client trust account dipped $4,098.97 below amount respondent was to hold in trust for client, respondent violated former rule 4-100(A) by failing to maintain $37,617.09 in client trust account on behalf of client. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[8]**

Former rule 4-100(A) of Rules of Professional Conduct prohibits attorneys from commingling personal funds with client funds held in trust account. Ignorance of rules governing client trust accounts is no defense to commingling charge. Where personal loan funds were wired directly into respondent's client trust account, and respondent repaid loan with check from client trust account, respondent was culpable of willful violation of former rule 4-100(A), even if respondent believed at time that payment could be made from client trust account. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[11]**

An improper reason for depositing non-client funds in client trust account is not required to establish culpability for commingling. Where respondent deposited four checks from his business venture into his client trust account, respondent commingled non-client funds in his client trust account in violation of former rule 4-100(A) of the Rules of Professional Conduct. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[12a-b]**

Former rule 4-100(A) absolutely bars use of trust account for personal purposes, even if client funds are not on deposit. Where respondent deposited personal funds in, and paid personal expenses from, client trust account, respondent was culpable of willful violations of former rule 4-100(A), even though no client funds were in trust account. *In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753. **[1a, b]**

Language of former rule 4-100(A) is explicit that personal funds cannot be deposited into client trust account. Where respondent interpreted language of rule to permit respondent to deposit personal funds in client trust account that held no client funds; interpretation was unreasonable given entire language of rule; and respondent did not research case law after receiving letters from State Bar regarding NSF checks and containing copy of former rule 4-100, Review Department rejected respondent's argument that language of rule and case law failed to give adequate notice that using client trust account to hold and disburse personal funds was improper even though account never held client funds. *In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753. **[3]**

Good faith is not defense to commingling charge. Even if respondent had good faith belief that respondent was not violating rule 4-100(A) in depositing personal funds in, and paying personal expenses from, client trust account that held no client funds, good faith belief does not excuse culpability. *In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753. **[4]**

An attorney is required in all circumstances to properly handle a client's settlement. Where respondent received settlement check made out jointly to respondent, client, and statutory lienholder, and respondent did not deposit check for three years due to respondent's failure to obtain authorization from lienholder, and did not pay client's share of settlement to client for over two years, respondent was culpable of violating rule 4-100(A), requiring lawyers to deposit funds received for benefit of clients into client trust account, and rule 4-100(B)(4), requiring lawyers to promptly pay funds client is entitled to receive. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[1a-c]**

280.01 Trust account/commingling — Culpability Found — (Rule 4-100(A))

In the Matter of Jones (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873.

In the Matter of Martin (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753.

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

280.40 Culpability—Rules of Prof. Conduct—Maintain records of client funds (RPC 4-100(B)(3))

Rule 4-100(B)(3) requires lawyers to maintain complete records of client funds in their possession and provide clients with proper accounting of funds, including date, amount, payee, and purpose of each disbursement. Respondent's disbursement sheet, which listed amount of settlement funds owed to each category of payee but contained no other information, was not an adequate accounting under this rule. Respondent was obligated to provide client with proper accounting whether or not client requested further information. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[2a, b]**

280.41 Maintain records of client funds

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

280.50 Rules of Professional Conduct (RPC) Violations – Pay client funds on request (RPC 1.15(d)(7); 1989 RPC 4-100(B)(4); 1975 RPC 8-101(B)(4))

Former rule 4-100(B)(4) of Rules of Professional Conduct requires attorneys to promptly pay or deliver, as requested by client, any funds in attorney's possession which client is entitled to receive. Where client made several requests for funds, but respondent did not disburse funds for almost three months, respondent culpable of violating rule 4-100(B)(4). *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[9a-b]**

An attorney is required in all circumstances to properly handle a client's settlement. Where respondent received settlement check made out jointly to respondent, client, and statutory lienholder, and respondent did not deposit check for three years due to respondent's failure to obtain authorization from lienholder, and did

not pay client's share of settlement to client for over two years, respondent was culpable of violating rule 4-100(A), requiring lawyers to deposit funds received for benefit of clients into client trust account, and rule 4-100(B)(4), requiring lawyers to promptly pay funds client is entitled to receive. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[1a-c]**

280.51 Culpability Found - Rule 4-100(B)(4)

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

294.90 Substantive Issues – Culpability – Other general substantive issues re culpability

Where respondent's marketing materials and sales representatives indicated to potential clients that a lawyer would be working on their behalf, but respondent in fact delegated loan modification work to non-attorney employees, and respondent knew representations made to clients were false, respondent committed an act of moral turpitude despite his professed honest belief that what he was doing was legal. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[10a, b]**

300.01 Improper threat to bring charges (RPC 5-100) – Found

In the Matter of Thomas (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944.

325.00 Culpability — Rules of Professional Conduct — Suppression of Evidence

Where respondent, as prosecutor in criminal case, was obligated by statute to disclose certain evidence to defense counsel, respondent violated rule 5-220 by withholding that evidence. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[5]**

325.01 Suppression of evidence (rule 5-220)

In the Matter of Nassar (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593.

410.00 Common Law/Other Statutory Violations—Failure to Communicate with Client (pre-or non-6068(m))

Amended Notice of Disciplinary Charges (NDC) charged assortment of actions that, taken together, alleged overreaching and breach of fiduciary duties. However, failure to communicate allegations were already alleged under more specific Business and Professions Code subsection – section 6068, subdivision (m) – in separate Amended NDC count. Before enactment of subdivision (m), which was added in 1986 and became effective in 1987, there was "common law" duty to communicate and proper to base culpability under subdivision (a). Now, improper to find violations for same facts under both subdivisions (a) and (m) of Business and Professions Code section 6068. Specific statute should be charged instead of using broader subdivision (a). *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[12a,b]**

420.00 Common Law/Other Statutory Violations—Misappropriation

Business and Professions Code section 6106 provides, in part, that commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Willful misappropriation of client's funds involves moral turpitude. Attorney who knowingly converts client funds for attorney's own purpose violates section 6106. When account balance drops below amount attorney required to hold for client, presumption of misappropriation arises. Burden then shifts to attorney to show misappropriation did not occur and that attorney was entitled to withdraw funds. Where letter agreement drafted by respondent contained acknowledgement and receipt signed by respondent which clearly stated respondent had placed non-client's $50,000 security deposit in CTA and funds were to be released only upon non-client's written consent; respondent acted intentionally by depositing $50,000 security fund check into business account instead of client trust account (CTA); respondent immediately began making personal withdrawals of funds; account dipped below $50,000; respondent knew at time respondent deposited money that respondent had agreed to keep funds in CTA, yet failed to do so; and respondent knew respondent was not authorized to use money for personal expenses, Review Department held respondent intentionally misappropriated $50,000 security deposit in violation of section 6106. *In the Matter Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[8a-c]**

Where respondent deposited $75,000 for liquor license from non-client into business account rather than client trust account (CTA); failed to maintain that amount; failed to rebut presumption of misappropriation as business account dipped below $75,000; and respondent used money when respondent was not entitled to do so, Review Department held respondent culpable of intentional misappropriation of liquor license funds in violation of Business and Professions Code section 6106. As respondent deposited both security deposit funds and liquor license funds in business account instead of CTA, conduct not one-time mistake but repeated practice. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[10]**

Where respondent received non-client's check for furniture, fixtures, and equipment (FF&E) and negotiated check, but no evidence respondent deposited and kept funds in client trust account (CTA) as respondent had agreed to do; respondent could not rebut presumption that funds were misappropriated; and repayment of FF&E funds came from CTA respondent opened over year later and funds were transferred into CTA from non-CTA, Review Department held respondent culpable of intentionally misappropriating funds in violation of Business and Professions Code section 6106. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[11a, b]**

Where respondent correctly believed that trust of which she was trustee gave her authority to lend trust money to herself; respondent informed trust beneficiary of her intent to make loan and received no response; and respondent secured loan with deed of trust on respondent's property, respondent's actions were consistent with her belief she had authority to make loan, and inconsistent with intention to act with moral turpitude, dishonesty, or a correct motive. Finding that respondent intended to enter into loan transaction was incompatible with finding that respondent planned to misappropriate funds. Accordingly, facts did not show respondent misappropriated funds in such a way as to violate section 6106, and Review Department reversed finding of culpability and dismissed charge with prejudice. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[7a-d]**

420.12 Common Law/Other Statutory Violations – Misappropriation – Found – Gross negligence

When trust account balance drops below amount attorney is required to hold for client, presumption of misappropriation arises. Burden then shifts to attorney to show misappropriation did not occur and attorney entitled to withdraw funds. Moral turpitude can be found when attorney's actions constitute gross carelessness and negligence violating fiduciary duty to client. Where balance in respondent's trust account fell below amount respondent required to hold for client on two occasions over three day period, which respondent explained was due to careless bookkeeping, and after realizing discrepancy, respondent deposited personal funds to cover discrepancy, misconduct did not rise to level of misappropriation by gross negligence as it was isolated, aberrational occurrence and respondent quickly restored funds. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[6a-b]**

420.52 Common Law/Other Statutory Violations – Misappropriation –Not Found – Excusable

When trust account balance drops below amount attorney is required to hold for client, presumption of misappropriation arises. Burden then shifts to attorney to show misappropriation did not occur and attorney entitled to withdraw funds. Moral turpitude can be found when attorney's actions constitute gross carelessness and negligence violating fiduciary duty to client. Where balance in respondent's trust account fell below amount respondent required to hold for client on two occasions over three day period, which respondent explained was due to careless bookkeeping, and after realizing discrepancy, respondent deposited personal funds to cover discrepancy, misconduct did not rise to level of misappropriation by gross negligence as it was isolated, aberrational occurrence and respondent quickly restored funds. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[6a-b]**

420.54 Common Law/Other Statutory Violations – Misappropriation –Not Found – Overall failure of proof

When trust account balance drops below amount attorney is required to hold for client, presumption of misappropriation arises. Burden then shifts to attorney to show misappropriation did not occur and attorney entitled to withdraw funds. Moral turpitude can be found when attorney's actions constitute gross carelessness and negligence violating fiduciary duty to client. Where balance in respondent's trust account fell below amount respondent required to hold for client on two occasions over three day period, which respondent explained was due to careless bookkeeping, and after realizing discrepancy, respondent deposited personal funds to cover discrepancy, misconduct did not rise to level of misappropriation by gross negligence

as it was isolated, aberrational occurrence and respondent quickly restored funds. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[6a-b]**

420.55 Misappropriation – Valid claim of right to funds

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

430 Common Law/Other Statutory Violations—Breach of Fiduciary Duty

Moral turpitude includes deficiency in any character trait necessary for practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such serious breach of duty owed to another or to society, or such flagrant disrespect for law or societal norms, that knowledge of attorney's conduct would be likely to undermine public confidence in and respect for legal profession. Attorney who accepts responsibility of fiduciary nature held to legal profession's high standards whether or not attorney acts in capacity of attorney. Where respondent, who worked as company's computer network consultant, assumed fiduciary role in company based on job responsibilities, and knowingly and without permission used position of trust in company to restrict authorized users' access to computer system, though for only brief time period, and who, when confronted refused to reset passwords so users could regain access which forced employer to hire another technology consultant to remedy issue, even though respondent eventually made restitution to company, respondent's actions demonstrated character deficiencies including lack of trustworthiness and fidelity to fiduciary duties, which evidenced moral turpitude. Furthermore, where respondent's testimony that he acted with company president's permission was contrary to his guilty plea, Review Department would not consider claims that would negate elements of crime to which respondent pled guilty. Additionally, where, due to respondent's testimony which was unsupported by record and was inconsistent, confusing, and contradicted other evidence in record, including his own admissions, Review Department affirmed hearing judge's conclusions that respondent's testimony lacked credibility and candor; and where respondent's statements to police, superior court, and Bureau of Criminal Information and Analysis were false and done with intent to cover up and minimize criminal conduct, Review Department held respondent was culpable of moral turpitude. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[4a-f]**

Business and Professions Code section 6068, subdivision (a), provides that attorney has duty to support Constitution and laws of United States and California. Office of Chief Trial Counsel failed to establish that attorney's actions related to form which reflected client was responsible for remediation at site amounted to breach of attorney's fiduciary duties or duty of loyalty to client where (1) record showed clients had some responsibility for premises' remediation; (2) attorney's representation strategy was to engage governmental agency, involve insurer, and obtain insurance coverage for remediation; (3) attorney asserted form did not admit sole responsibility – as site owners also had responsibility – rather, form simply indicated who was taking charge of conducting remediation, which is not indication of sole liability; (4) governmental agency was already aware of attorney's clients, as property owners stated in remediation timeframe extension request that owners were working to find insurance coverage from attorney's clients as they were previous tenant and also responsible for remediation; and (5) review of record points to reasonable inference that attorney was acting in clients' best interests and was following representation strategy discussed with client at meeting. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[10a-c]**

Business and Professions Code section 6068, subdivision (a), provides that attorney has duty to support Constitution and laws of United States and California. Where trial showed attorney acted in best interests of clients by obtaining release of liability to property owners and finding coverage for environmental remediation; attorney's actions aligned with attorney's presentation at client meeting; attorney negotiated settlement, then handed matter to client's attorney in related matter to discuss with client who approved settlement agreement; no evidence of deceit or that attorney negotiated terms of settlement agreement to clients' detriment, no evidence demonstrated attorney overstepped bounds of attorney's representation or overreached in way that was unfair to clients. While attorney violated ethical obligations by failing to inform client of significant developments, this failure alone did not equate to overreaching where attorney did not stop working on case or abandon clients; rather, attorney competently completed representation. Accordingly, there was no overreaching or breach of fiduciary duties in violation of Business and Professions

Code section 6068, subdivision (a). *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[11a-e]**

Attorney can create fiduciary relationship with non-client when attorney receives money on behalf of non-client. Attorney must then comply with same fiduciary duties in dealing with such funds as if attorney-client relationship existed. Attorney who breached fiduciary duties that would justify discipline if there was attorney-client relationship may be disciplined for such misconduct. Where respondent agreed to hold money from non-client for lease and keep it in client trust account (CTA) until appropriate to release it to proper parties, but failed to do so, respondent violated his fiduciary duties to non-client and violated former rule 4-100(A) of Rules of Professional Conduct. But Review Department assigned no additional weight in discipline as culpability based on same facts underlying Business and Professions Code section 6106 violation. Review Department rejected respondent's argument there was no written agreement regarding $50,000 security deposit's use at time of alleged misconduct, as conduct of parties, when viewed in light of later letter agreement, was strong evidence respondent was to keep security deposit in CTA. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[9a-c]**

Where Notice of Disciplinary Charges alleged respondent made misrepresentations in letter regarding holding funds from non-client business in client trust account (CTA), Review Department rejected respondent's argument that there was no fiduciary duty to non-client business as non-client testified that non-client did not believe respondent agreed to act as fiduciary for non-client or non-client's business. What non-client believed about respondent's duties did not supersede duties respondent had under law as escrow holder and fiduciary. Furthermore, whether respondent was fiduciary to non-client business was not relevant to moral turpitude charge, as section 6106 prohibits any act of attorney dishonesty, whether committed while acting as attorney or not. Review Department held respondent culpable of violating Business and Professions Code section 6106, as respondent's deception about holding money in CTA rose to moral turpitude as misrepresentation was material and intentional. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[13a, b]**

If disciplinary proceeding is based solely on complainant's allegations of violation of State Bar Act or Rules of Professional Conduct, rule of limitations (Rules Proc. of State Bar, rule 5.21) provides that proceeding must begin within five years from date of violation. Normally, a statute or rule is violated when every element of violation has occurred. However, rule of limitations is tolled during period that attorney acts in fiduciary relationship with complainant or related party, even if it is other than an attorney-client relationship. Moreover, if disciplinary charge is based on continuing violation of duty, violation is deemed committed at termination of entire course of conduct. Where respondent allegedly breached fiduciary duty to investor under movie financing agreement requiring respondent to hold funds in escrow until close of movie production, rule of limitations was tolled as long as fiduciary relationship continued, and respondent's alleged diversion of funds created continuing violation lasting until completion of purpose of fiduciary duty. Accordingly, where initial notice of disciplinary charges was filed within five years after completion of movie production, misappropriation charge was timely even though diversion of funds occurred more than five years earlier. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[2a-h]**

Attorney's commission of any act involving moral turpitude, dishonesty, or corruption is cause for disbarment whether the act is committed in the course of his relations as an attorney or otherwise. Attorney who accepts responsibility of a fiduciary nature is held to high standards of legal profession whether or not acting in capacity of attorney. *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 **[4]**

When attorney is trustee of trust, trust's beneficiaries are not attorney's clients, but attorney may nevertheless be disciplined as if beneficiaries were clients, because of attorney's fiduciary relationship with beneficiaries. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[2]**

Probate Code section 16004 applies to fiduciary relationship between attorney and client, and is statutory complement to rule 3-300. Probate Code establishes rebuttable presumption that trustee has violated fiduciary duties when trustee obtains advantage from beneficiary in transaction between them. When attorney trustee enters into transaction with trust, transaction will be set aside unless attorney can show that beneficiaries had full knowledge of facts connected with transaction and fully understood its effect. Where respondent, as

trustee, obtained loan from trust which benefited her, and did not fully inform beneficiaries of terms or risks of loan transaction, respondent violated her duties under Probate Code, and thereby violated section 6068(a). *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[5a, b]**

Even where an attorney is not practicing law, she is required to conform to ethical standards required of attorneys. An attorney who breaches fiduciary duties that would justify discipline if there were an attorney-client relationship may properly be disciplined for misconduct. Respondent's misconduct was not excused because she was acting as trustee for family estate, not as attorney. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494**.[6 a, b]**

490 Substantive Issues in Disciplinary Matters Generally – Culpability – Common Law/Other Statutory Violations—Miscellaneous

Business and Professions Code section 6068, subdivision (a), provides that attorney has duty to support Constitution and laws of United States and California. Office of Chief Trial Counsel failed to establish that attorney's actions related to form which reflected client was responsible for remediation at site amounted to breach of attorney's fiduciary duties or duty of loyalty to client where (1) record showed clients had some responsibility for premises' remediation; (2) attorney's representation strategy was to engage governmental agency, involve insurer, and obtain insurance coverage for remediation; (3) attorney asserted form did not admit sole responsibility – as site owners also had responsibility – rather, form simply indicated who was taking charge of conducting remediation, which is not indication of sole liability; (4) governmental agency was already aware of attorney's clients, as property owners stated in remediation timeframe extension request that owners were working to find insurance coverage from attorney's clients as they were previous tenant and also responsible for remediation; and (5) review of record points to reasonable inference that attorney was acting in clients' best interests and was following representation strategy discussed with client at meeting. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[10a-c]**

Business and Professions Code section 6068, subdivision (a), provides that attorney has duty to support Constitution and laws of United States and California. Where trial showed attorney acted in best interests of clients by obtaining release of liability to property owners and finding coverage for environmental remediation; attorney's actions aligned with attorney's presentation at client meeting; attorney negotiated settlement, then handed matter to client's attorney in related matter to discuss with client who approved settlement agreement; no evidence of deceit or that attorney negotiated terms of settlement agreement to clients' detriment, no evidence demonstrated attorney overstepped bounds of attorney's representation or overreached in way that was unfair to clients. While attorney violated ethical obligations by failing to inform client of significant developments, this failure alone did not equate to overreaching where attorney did not stop working on case or abandon clients; rather, attorney competently completed representation. Accordingly, there was no overreaching or breach of fiduciary duties in violation of Business and Professions Code section 6068, subdivision (a). *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[11a-e]**

510 Aggravation—Prior Record of Discipline

Prior discipline is considered in most cases only as aggravating circumstance in determining discipline in a later proceeding, but prior discipline may also be considered if it tends to prove a fact in issue in determining culpability. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[4]**

Where respondent's prior record of discipline included stipulation admitting misconduct, and after stipulation was filed, respondent committed same type of misconduct in current matter, record showed respondent committed repeated acts in defiance of duty to comply with requirements of law license while suspended. Respondent's prior record of discipline thus had substantial weight in aggravation. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[7a, b]**

Under rule 5.106(D) of Rules of Procedure, prior record of discipline was properly considered for purposes of aggravation and level of discipline after respondent's culpability was established. Hearing judge therefore properly denied respondent's request to strike evidence of prior discipline record pursuant to rule 1260 of the State Bar Court Rules of Practice. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[5a, b]**

Where misconduct underlying present proceeding occurred before charges were filed in respondent's other two disciplinary proceedings, Review Department afforded less weight to aggravating force of respondent's discipline history. Prior, not subsequent, discipline is considered indicative of recidivist attorney's inability to conform conduct to ethical norms. Under such circumstances, Review Department considered totality of respondent's misconduct to determine appropriate aggravating weight. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[6a, b]**

For purposes of analyzing respondent's prior record as aggravation, date OCTC filed notice of disciplinary charges in prior disciplinary proceeding is most relevant. As of that date, respondent is put on notice that charged conduct is disciplinable. Accordingly, where respondent committed additional misconduct after filing of notice in prior proceeding, hearing judge erred in giving diminished weight to prior discipline because it overlapped with present misconduct. Rather, respondent's current misconduct was significantly aggravated by prior records demonstrating continuing unwillingness or inability to conform conduct to ethical norms, especially where prior and present misconduct both involved unauthorized practice of law and repeated violations of sanctions orders. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[12a-c]**

Under rule 5.106(A), hearing judge should have considered previous disciplinary order as a prior record of discipline even though it was not yet final. *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct Rptr. 427. **[3]**

511 Aggravation—Prior record of discipline (1.5(a))—Found

Where attorney had two prior records of discipline and second disciplinary matter involved misconduct similar to that in present matter, including failure to promptly pay client funds and disobedience of court order, and probation condition in second disciplinary matter required respondent to have accountant certify that respondent properly maintained client funds records and client trust account, prior disciplines did not rehabilitate respondent causing concern about further misconduct, and therefore substantial aggravating weight given for respondent's two prior records of discipline. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[13a-c]**

Where respondent committed moral turpitude offense in both his prior disciplinary matter and present case, and respondent committed same misconduct in both cases by failing to obey court orders, substantial aggravating weight given to respondent's prior record of discipline. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[7]**

In the Matter of Braun (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738.

Where respondent was culpable of violating his disciplinary probation, and his prior record of discipline involved one count of commingling that merited a 90-day suspension and was not similar to his present misconduct, hearing judge properly deemed respondent's prior record to be a serious, but not significant, aggravating factor. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646**. [3]**

Where respondent committed most of the misconduct involved in his third disciplinary matter after signing a stipulation in his first disciplinary matter and after the filing of his second disciplinary matter (a motion to revoke his probation), it was inconceivable that respondent did not know his conduct in his third disciplinary matter was unethical. The similarity of respondent's past misconduct to the wrongdoing charged in his third disciplinary matter demonstrated that he was a recidivist offender. Accordingly, his prior record of discipline was entitled to significant weight in aggravation, and hearing judge erred in diminishing that weight somewhat. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[1a, b]**

Purpose of disciplinary standard calling for greater discipline in second case is to address recidivist misconduct. Nature of misconduct in second case need not be more serious than in prior case in order to warrant increased discipline. Where respondent's multiple acts of misconduct in second case significantly harmed client, and occurred when respondent should have been aware of ethical duties because prior disciplinary proceeding had been initiated when misconduct in second case occurred, nothing in record

warranted departure from standard requiring greater discipline for subsequent misconduct, even though misconduct in second case was less serious. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564.**[7]**

Where respondent's prior misconduct was serious, and was similar to some of respondent's present wrongdoing, commonalities rendered respondent's prior record particularly serious, and hearing judge correctly assigned it significant aggravating weight. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564.**[1a, b]**

Where respondent committed most of current misconduct after commencement of disciplinary proceedings regarding respondent's prior misconduct, Review Department did not apply general principle that aggravating force of prior discipline is diminished if misconduct leading to prior discipline occurred during same time period as current misconduct. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[2]**

Where respondent continued to commit misconduct of same nature after stipulating to discipline in prior matter, prior discipline warranted significant aggravating weight even though some of current and prior misconduct overlapped. *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437. **[5]**

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511.

In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448.

In the Matter of Carver (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427.

511.90 Aggravation — Prior record of discipline — Found but discounted — Other reason

Where respondent was culpable of violating his disciplinary probation, and his prior record of discipline involved one count of commingling that merited a 90-day suspension and was not similar to his present misconduct, hearing judge properly deemed respondent's prior record to be a serious, but not significant, aggravating factor. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[3]**

513.10 Aggravation—Prior record of discipline—Found but discounted—Contemporaneous with current misconduct

Where respondent committed most of current misconduct after commencement of disciplinary proceedings regarding respondent's prior misconduct, Review Department did not apply general principle that aggravating force of prior discipline is diminished if misconduct leading to prior discipline occurred during same time period as current misconduct. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[2]**

513.90 Aggravation—Prior record of discipline (1.5(a))—Found but discounted or not relied on—Other reason

Where discipline in respondent's prior disciplinary matter was stipulated to several years after misconduct in current matter started, respondent did not have full opportunity to heed importance of earlier discipline, even though similarities existed between prior discipline and current matter which was concerning. However, considering totality of respondent's misconduct, Review Department assigned limited aggravation for respondent's prior record of discipline, rather than no aggravation as found by hearing judge. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[5a-c]**

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464.

521 Aggravation—Multiple acts of misconduct (1.5(b))—Found

Where respondent repeatedly pursued unsupported legal claims in multiple legal proceedings, made improper threats, disobeyed four court orders, and failed to report sanctions order, Review Department held acts sufficiently established multiple acts of misconduct under standard 1.5(b). Furthermore, where respondent was told by court he was wrong and pleadings were frivolous and harassing, but respondent did not stop repeatedly advancing arguments without legal basis; began putting forth frivolous arguments in 2013

in interpleader action, appeal of that action, another civil matter, appeal of other civil matter, has also done so twice in federal court; and appeal of second federal lawsuit was still pending, Review Department agreed with hearing judge that aggravation also warranted under standard 1.5(c) for respondent's pattern of serious misconduct which spanned several years. Review Department assigned substantial aggravation under standards 1.5(b) and (c) for respondent's multiple acts and pattern of misconduct. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[7a-c]**

Where attorney failed to keep client informed of significant developments, including that (1) clients had been sued; (2) attorney filed and dismissed third-party complaint; (3) attorney received written settlement offers; and (4) attorney filed several pleadings and participated in court hearings without informing client, such numerous failures to communicate over several years warranted moderate weight in aggravation under standard 1.5(b). For aggravation purposes under standard 1.5(b), it did not matter multiple acts were done in single client matter. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[16]**

Moderate weight in aggravation given for multiple acts of wrongdoing where respondent on three separate occasions was required to deposit funds into his client trust account but failed to do so and, instead, misappropriated funds; was culpable of three violations for moral turpitude misrepresentations; and issued three non-sufficient funds checks, two which were returned. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[15]**

Even though respondent's rule 9.20(c) and probation violations all arose from failing to comply with one Supreme Court order, respondent's violations of three separate probation duties and separate duty to comply with rule 9.20(c) were still multiple acts and entitled to substantial aggravating weight. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[3a, b]**

In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698.

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Gordon (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610.

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

Where respondent was found culpable of three disciplinary violations, but committed at least 25 acts of wrongdoing over two-year period by repeatedly failing to respond to letters from insurer regarding client's claim, hearing judge erred in assigning only minimal aggravating weight to respondent's multiple acts of wrongdoing. Multiple acts of wrongdoing are not limited to the counts pled, and respondent's recurring ethical violations were assigned significant aggravating weight. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[3]**

In the Matter of Collins (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551.

In the Matter of Schooler (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494.

In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448.

523 Aggravation—Multiple acts of misconduct (1.5(b))—Found but discounted or not relied on

Where respondent was found culpable of three ethical violations (fourth violation involved same misconduct as another violation so was not considered a separate violation for disciplinary purposes), Review Department gave limited weight in aggravation for multiple acts of misconduct. Despite Office of Chief Trial Counsel's argument that respondent should receive significant aggravation for multiple acts of misconduct because misconduct spanned multiple years and caused significant harm, Review Department did not find it appropriate to consider significant harm in assigning aggravation weight for multiple acts of misconduct, as doing so would double count harm in evaluating aggravation for multiple acts of wrongdoing

and harm to client, public, or administration of justice. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[5]**

Whether an attorney engaged in multiple acts of misconduct in aggravation is not limited to counts pleaded. Where respondent's culpability of two counts of violating former rule 4-100(A) encompassed 168 separate acts of misconduct, respondent committed multiple acts of misconduct. However, where misconduct lasted only 10 months, respondent's multiple acts did not warrant substantial aggravation. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[5]**

Where respondent failed to comply with Supreme Court order requiring him to give notice of his suspension under rule 9.20 of the California Rules of Court, and also violated two terms of his disciplinary probation, only modest aggravating weight was appropriate for respondent's multiple acts of misconduct. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[4]**

Where respondent committed two acts of moral turpitude and also violated four orders issued by an administrative tribunal, and failed to report two judicial sanctions, respondent committed multiple acts of wrongdoing, a factor that was assigned moderate aggravating weight. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[10]**

525 Aggravation—Multiple acts of misconduct (1.5(b))—Declined to find

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

Where finding that respondent was culpable of moral turpitude already accounted for respondent's pattern of telling half-truths, Review Department rejected OCTC's request for finding of aggravation under either multiple acts of wrongdoing or pattern of misconduct. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[7]**

531 Aggravation—Pattern of misconduct(1.5(c))—Found

Where respondent repeatedly pursued unsupported legal claims in multiple legal proceedings, made improper threats, disobeyed four court orders, and failed to report sanctions order, Review Department held acts sufficiently established multiple acts of misconduct under standard 1.5(b). Furthermore, where respondent was told by court he was wrong and pleadings were frivolous and harassing, but respondent did not stop repeatedly advancing arguments without legal basis; began putting forth frivolous arguments in 2013 in interpleader action, appeal of that action, another civil matter, appeal of other civil matter, has also done so twice in federal court; and appeal of second federal lawsuit was still pending, Review Department agreed with hearing judge that aggravation also warranted under standard 1.5(c) for respondent's pattern of serious misconduct which spanned several years. Review Department assigned substantial aggravation under standards 1.5(b) and (c) for respondent's multiple acts and pattern of misconduct. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **7a-c]**

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

535.90 Aggravation—Pattern of misconduct(1.5(c))—Declined to find—Other reason

In the Matter of Fisher (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999.

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

Where finding that respondent was culpable of moral turpitude already accounted for respondent's pattern of telling half-truths, Review Department rejected OCTC's request for finding of aggravation under either multiple acts of wrongdoing or pattern of misconduct. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[7]**

541 Aggravation—Intentional misconduct, bad faith, dishonesty, misrepresentation, concealment (15(d), (e), (f))—Found

In the Matter of Carver (Review Dept. 2016)5 Cal. State Bar Ct, Rptr. 427

543.10 Aggravation—Intentional misconduct—Found but discounted or not relied on—Duplicative of section 6106 charge

Where Review Department found that respondent acted intentionally in committing act of moral turpitude, it declined to give intentionality additional weight in aggravation. Factors giving rise to culpability for moral turpitude should not be given double weight by considering them again in aggravation. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[7]**

543.90 Aggravation — Intentional misconduct, bad faith, etc. (1.5 (d), (e), (f)) — Found but discounted or not relied on — Other reason

Where respondent's concealment and false statements to law enforcement were relied upon in finding respondent's felony conviction involved moral turpitude, no additional aggravation was warranted for concealment, bad faith, or dishonesty. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[3]**

545 Aggravation – Intentional misconduct, bad faith (1.5(d), (e), (f)) – Declined to find

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

Where OCTC argued for first time in closing trial brief that respondent engaged in dishonesty and bad faith in seeking continuance of disciplinary trial, Review Department declined to assign bad faith as aggravating factor, because respondent did not have opportunity to respond to OCTC's bad faith allegation, and OCTC did not establish by clear and convincing evidence that respondent deliberately attempted to mislead court. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[7a-c]**

551 Overreaching

Respondent's procedures for dealing with complaining clients constituted overreaching, where respondent attempted to intimidate such clients by sending them draft civil complaints that accused them of extortion, claimed they were required to arbitrate, and alleged that respondent had completed necessary work to earn his fee. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[12]**

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

561 Aggravation—Uncharged violations(1.5(h))—Found

In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437

563.10 Aggravation – Uncharged violations – Found but discounted or not relied on – Procedural impropriety

Evidence of uncharged misconduct can be considered in aggravation if respondent's due process rights are not violated. Where OCTC was or should have been aware of uncharged misconduct before disciplinary charges were filed, misconduct should have been charged. Nonetheless, where respondent stipulated to conduct constituting uncharged misconduct; uncharged misconduct was elicited for relevant purpose and based on respondent's own representations; and hearing judge granted motion to conform charges to proof at trial, hearing judge correctly assigned nominal weight in aggravation for uncharged misconduct. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[7a-c]**

565 Aggravation – Uncharged violations – Declined to find

Aggravating circumstances may include uncharged violations of Business and Professions Code or Rules of Professional Conduct. However, hearing judge erred in finding significant aggravation based on uncharged violation of former rule 4-100(A) based on erroneous factual conclusion from respondent's testimony, where

State Bar never raised uncharged misconduct during trial or in posttrial closing brief, and respondent consequently did not have opportunity to defend during trial against uncharged violation. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[6a, b]**

582.10 Aggravation—Harm to client(1.5(j))—Found

Where respondent failed to serve defendant in one matter for over three years and failed to oppose demurrer in another matter, causing court to dismiss clients' cases, and thereafter respondent falsely led clients to believe respondent was working on cases, and clients were distressed to learn years later their cases could no longer be pursued, Review Department agreed with hearing judge that respondent caused significant client harm and assigned substantial weight in aggravation. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[6]**

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

Where respondent exploited clients' financial desperation by illegally charging advance fees for loan modification, and pushed them to the brink of foreclosure by encouraging his employees to tell them to stop communicating with lenders and paying their mortgages, respondent's conduct warranted substantial weight in aggravation. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[15]**

Where respondent illegally charged advance fees to financially distressed clients, and gave clients advice that served to worsen their already bad financial situations, hearing judge properly found that respondent's misconduct significantly harmed his clients, despite respondent's contentions that he obtained good results in clients' cases. . *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[8]**

Where respondent's misconduct deprived injured client of cause of action, causing client's loss of faith in legal community, continued physical pain, and difficulty in driving, hearing judge correctly found significant harm to client as aggravating circumstance. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[4]**

In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437

582.32 Aggravation —Harm – To client – Found but discounted or not relied on – Harm otherwise slight

Where respondent's misconduct, which deprived client of funds for approximately three months and burdened client with fear of not complying with fiduciary duties as trustee of trust, caused client significant harm due to mental suffering, but client's worry was for relatively short time period and no additional facts suggested severe monetary injury, limited weight in aggravation given for significant harm to client. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[14]**

582.39 Aggravation —Harm – To client – Found but discounted or not relied on – Other reason

Where respondent's misconduct, which deprived client of funds for approximately three months and burdened client with fear of not complying with fiduciary duties as trustee of trust, caused client significant harm due to mental suffering, but client's worry was for relatively short time period and no additional facts suggested severe monetary injury, limited weight in aggravation given for significant harm to client. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[14]**

582.50 Significant harm to client (1.5(j)) - Aggravation - Not Found

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

584.10 Aggravation—Harm(1.5(j))—To Public -- Found

Where respondent's relentless litigation campaign caused courts and parties to expend excessive time and money, shown by $188,350.64 in sanctions against respondent, including $8,500 for reimbursement to court of appeal for administrate costs; frivolous litigation caused courts to consider and rule on meritless motions, which wasted judicial resources; respondent's misconduct caused stress and emotional harm to certain parties and opposing counsel, as they were repeatedly forced to defend against respondent's meritless claims and appeals, Review Department held respondent's misconduct caused significant harm to public and administration of justice, warranting substantial aggravation under standard 1.5(j). *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[8a-c]**

In the Matter of Peters (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536.

Where respondent criminal prosecutor falsified evidence in pending criminal matter, resulting in dismissal of criminal charges, respondent's misconduct caused significant harm to victim, defendant, and administration of justice. Such egregious prosecutorial misconduct violates basic notions of ethics, integrity, and fairness; erodes confidence in law enforcement and criminal justice system, and puts public at risk. Accordingly, respondent's misconduct was aggravated by significant harm he caused. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[6]**

584.30 Aggravation – Harm – To Public – Found but discounted or not relied on

Where respondent was involved in vehicular accident while under influence of excessive alcohol which caused some harm to owners of destroyed or damaged property, and caused city to expend emergency response resources, but respondent repaid costs and damages promptly, hearing judge erred in finding significant harm as aggravating circumstance. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[4a, b]**

584.50 Aggravation—Harm(1.5(J))—To public—Declined to find

Where respondent's misconduct merely created additional work for superior court, as opposing counsel sought protective order resulting in sanctions against respondent, Review Department did not conclude that respondent's actions significantly harmed public or administration of justice. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[15]**

Where record did not establish that action brought by respondent's clients was unjust or unjustified, fact that opposing party had to pay attorney fees to defend itself did not establish that respondent's conduct caused significant harm to that party. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct Rptr. 448. **[14]**

586.10 Aggravation—Harm to administration of justice (1.5(j))—Found

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464

586.11 Aggravation — Harm — To administration of justice — Inherent in nature of misconduct

Where respondent, as prosecutor in criminal case, failed to disclose evidence to defense counsel as required by law, respondent's misconduct eroded confidence in law enforcement and the criminal justice system. Respondent's misconduct thus significantly harmed the administration of justice, and warranted substantial weight in aggravation. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[6a, b]**

586.12 Aggravation—Found—Harm (1.5(j))—To Administration of Justice —Specific interference with justice

Where respondent, as prosecutor in criminal case, failed to disclose evidence to defense counsel as required by law, respondent's misconduct eroded confidence in law enforcement and the criminal justice system. Respondent's misconduct thus significantly harmed the administration of justice, and warranted substantial weight in aggravation. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[6a, b]**

Where respondent criminal prosecutor falsified evidence in pending criminal matter, resulting in dismissal of criminal charges, respondent's misconduct caused significant harm to victim, defendant, and administration of justice. Such egregious prosecutorial misconduct violates basic notions of ethics, integrity, and fairness; erodes confidence in law enforcement and criminal justice system, and puts public at risk. Accordingly, respondent's misconduct was aggravated by significant harm he caused. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[6]**

586.19 Aggravation—Found—Harm (1.5(j))—To Administration of Justice —Other basis

Where respondent's relentless litigation campaign caused courts and parties to expend excessive time and money, shown by $188,350.64 in sanctions against respondent, including $8,500 for reimbursement to court of appeal for administrate costs; frivolous litigation caused courts to consider and rule on meritless motions, which wasted judicial resources; respondent's misconduct caused stress and emotional harm to certain parties and opposing counsel, as they were repeatedly forced to defend against respondent's meritless claims and appeals, Review Department held respondent's misconduct caused significant harm to public and administration of justice, warranting substantial aggravation under standard 1.5(j). *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[8a-c]**

586.30 Aggravation—Found—Harm (1.5(j))—To Administration of Justice —Found but discounted or not relied on

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511

586.50 Aggravation – Harm – To administration of justice – Declined to find

In the Matter of Fisher (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999.

Speculative harm does not satisfy clear and convincing standard required for aggravation. Although very brief moment of disorder in courtroom occurred between respondent and bailiffs, that did not by itself establish aggravation for significant harm. Where Office of Chief Trial Counsel did not establish that specific, cognizable, and significant harm occurred which could be directly attributed to respondent's actions beyond respondent's violation of judge's orders to move away from client who was criminal defendant, Review Department did not affirm hearing judge's finding of substantial harm as aggravating circumstance. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[5a, b]**

Although respondent was reprimanded for his conduct by San Francisco Public Defender's Office, where any interruption to jury selection due to respondent's conduct was brief and record did not establish significant judicial time or resources were used, no aggravation for significant harm. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[6]**

No aggravation for significant harm where respondent asserted his rights in defending against or appealing court's contempt order; unclear respondent's actions caused bailiff's injury; and no evidence existed regarding severity of injury. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[7]**

Where respondent's misconduct merely created additional work for superior court, as opposing counsel sought protective order resulting in sanctions against respondent, Review Department did not conclude that respondent's actions significantly harmed public or administration of justice. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[15]**

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

588.10 Aggravation—Harm (1.5(j))—To all of the above (or unspecified, or other) —Found

In the Matter of Schooler (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494

588.50 Aggravation—Harm (1.5(j))— To all of the above (or unspecified, or other)—Decline to find

To be aggravating factor, harm to court, client, or administration of justice must be "significant." Where respondent unlawfully accessed company's computer system and caused interruption which affected business operations for no more than one day, and respondent's refusal to restore computer password caused company to hire technical expert resulting in $1,500 in expenses, Office of Chief Trial Counsel did not establish significant harm as aggravating circumstance. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[6a,b]**

In the Matter of Carver (Review Dept. 20 3 6) 5 Cal. State Bar Ct. Rptr. 427

590 Aggravation—Indifference to rectification/atonement (1.5(k))

Where respondent continued to engage in UPL in multiple matters after stipulating to those offenses in prior disciplinary proceeding, and in current disciplinary proceeding, respondent denied culpability of that misconduct in his prior proceeding despite his clear, written contrary admissions, respondent's lack of insight into wrongdoing constituted serious aggravating circumstance. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[8]**

Where respondent's lack of insight into the seriousness of her misconduct and repeated and continuing failure to appreciate the importance of her professional responsibilities raised additional concerns about the potential for future misconduct, Review Department recommended actual suspension of 18 months and until respondent establishes her rehabilitation, fitness to practice, and present learning and ability in the law. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[10a, b]**

591 Aggravation—Indifference to rectification/atonement (1.5(k))—Found

Where respondent continued to perceive himself as victim and denied full responsibility for criminal conduct by maintaining he acted under company president's authority when he disrupted company's computer system, even though respondent initially admitted to police he acted intentionally and pleaded guilty and was convicted of knowingly disrupting computer network without permission, record supported finding that respondent lacked insight into wrongfulness of misconduct and had refused to accept full responsibility. Respondent's failure to accept responsibility for misconduct led Review Department to conclude respondent did not truly understand wrongfulness of misconduct and suggested risk for future misconduct. Review Department therefore assigned substantial weight in aggravation to respondent's indifference. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[8a, b]**

Where respondent blamed others; testified his conduct was moral and correct; characterized himself as victim; made no payments towards court-ordered sanctions; asserted he did not understand why disciplinary charges were brought and intended to continue to pursue litigation related to underlying misconduct; in closing argument at trial said he was "going to stick by [his] guns;" announced at oral argument he would appeal to Supreme Court if discipline not overturned; refused to acknowledge actions were wrong and harmed courts and others; and continued to raise same unsuccessful arguments already struck down by several courts; respondent's gross lack of insight into wrongfulness of actions merited substantial aggravation. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[9a-c]**

Law does not require false penitence, but it does require that attorney accept responsibility for wrongful acts and show some understanding of culpability. Where respondent (1) attempted to skirt responsibility by testifying respondent not hired as attorney for business when record showed respondent was and did legal work while there; (2) claimed even if respondent did legal work for business, work was done by respondent's professional law corporation which limited respondent's liability; (3) failed to comprehend culpability for misappropriation, referring to respondent's actions in reply brief as "clumsy accounting mistakes," believed charges were so implausible that no "Hollywood studio" would buy screenplay, and referred to proceedings as an "absurd scenario;" (4) attempted to place blame on complainant for disciplinary proceedings; and (5) attempted to emphasize that "no harm resulted" from disciplinary violations, but did not admit any failure of respondent's professional responsibilities, respondent's indifference toward rectification or atonement for consequences of misconduct warranted substantial aggravation. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[16a-d]**

Attorney who does not accept responsibility for actions and instead seeks to shift it to others demonstrates indifference and lack of remorse. Law does not require false penitence but does require that attorney accept responsibility for wrongful acts and come to grips with culpability. Where respondent exhibited insight as to some behavior but continued to describe violations as technicalities or made other excuses, and continued to insist conduct did not amount to threatening to report suspected immigration status by arguing never made direct threats and failed to acknowledge wrongfulness of conduct without considering import of comments on phone, in letters, and in court filings, respondent's actions continued to display indifference and Review Department assigned substantial consideration to this in aggravation. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[16a-b]**

Where respondent continued to collect advance fees for loan modification services despite cease and desist orders from several states; ceased his wrongdoing only after temporary restraining order was issued; and continued to insist his coduct was legal even after his operation was shut down by consumer protection agency, respondent's indifference toward rectification and inability to recognize wrongfulness of his misconduct warranted substantial consideration in aggravation. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[13a, b]**

Where respondent continued to operate law firm in unlawful manner despite plain language of statute, disciplinary investigation, and disciplinary proceedings, and respondent's attitude revealed lack of understanding of attorneys' ethical responsibilities, his lack of insight made him an ongoing danger to public and legal profession, and hearing judge properly found respondent's indifference to rectification or atonement to be aggravating factor. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[9]**

Attorneys accused of misconduct have the right to defend themselves vigorously. However, where respondent adhered throughout disciplinary proceedings to erroneous belief that she did not commit misconduct, based on her unreasonable interpretation of clearly worded statutes, respondent's failure to fully acknowledge her wrongdoing constituted lack of insight and warranted moderate weight in aggravation. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[7a, b]**

Where respondent contended there was no need to clarify record after he obtained continuances of hearings based on misrepresentations, and opined that statutory duty to report sanctions to State Bar was "low on the food chain with respect to reportability," respondent's failure to appreciate wrongfulness of his conduct, and his lack of insight, made him a danger to public and legal profession, and were assigned significant weight in aggravation. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[11]**

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511

In the Matter of Schooler (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464

595 Aggravation—Indifference to rectification/atonement—Declined to find

Indifference toward rectification or atonement for consequences of misconduct is aggravating circumstance. While law does not require false penitence, it does require attorney to accept responsibility for wrongful acts and show some understanding of attorney's culpability. Where attorney admitted he should have used written retainer agreement with family representative; should have regularly reported to family representative on case status; and admitted to failure to communicate, no clear and convincing evidence of indifference because attorney accepted responsibility for actions. Review department therefore did not assign aggravation under standard 1.5(k). *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[17]**

Where respondent asserted that his failure to pay sanctions was due to clients' failure to adhere to agreement to pay, and that in practicing while suspended, he relied on statements of State Bar employees as

to his status, these statements did not clearly and convincingly establish indifference toward rectification or atonement in aggravation of his misconduct. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[13]**

595.10 Aggravation- Indifference (Std. 1.5(k)) – Belated restitution efforts - not Found

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

595.90 Aggravation—Indifference to rectification/atonement—Declined to find—Other reason

Indifference not established as aggravating circumstance where, although respondent testified she did not consider her probate filings in South Carolina case underlying her reprimand frivolous, respondent (1) credibly testified respecting finality of South Carolina discipline; (2) has brought increased level of care to law practice; and (3) has paid in full South Carolina disciplinary cost assessment incident to her disciplinary proceeding in that state, which showed she had appropriately accepted her culpability. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[3]**

Attorneys who fail to accept responsibility for their actions and instead seek to shift responsibility to others demonstrate indifference to misconduct and lack of remorse. However, where respondent's testimony at disciplinary trial unequivocally acknowledged his wrongdoing and took full responsibility, admitted his alcoholism, and showed he had taken concrete steps toward recovery, Review Department declined to find indifference to rectification based on respondent's initial refusal, years earlier, to pay for repair of property damage caused by misconduct. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[6a, b]**

Where respondent's failure to comply with rule 9.20 of the California Rules of Court was considered in establishing his culpability, and he had made several failed attempts to file a compliance declaration and reasonably understood, based on communications from Probation Department, that further attempts would be futile, respondent's failure to file the compliance declaration did not demonstrate continuing misconduct or indifference toward rectification and atonement, and did not constitute an aggravating factor. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[1a-c]**

Where OCTC did not raise issue of indifference toward rectification or atonement at trial, thus depriving respondent of opportunity to provide rebuttal evidence, and record was unclear regarding relevant facts, Review Department declined to assign aggravation based on respondent's alleged failure to make amends to client by paying for medical treatment. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[5]**

601 Aggravation – Lack of candor/cooperation with victim – Found

Where respondent's explanations were unbelievable, uncorroborated, and implausible, no other reasonable inference could be drawn from respondent's testimony other than finding that respondent was dishonest. Review Department concluded respondent deliberately presented false testimony in State Bar Court and affirmed hearing judge's finding of substantial weight in aggravation for this circumstance. Aggravation assigned was based on respondent's dishonesty during disciplinary trial, rather than misconduct and dishonesty surrounding respondent's conviction which was used in finding moral turpitude. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[7a-c]**

611 Aggravation— Lack of candor/cooperation with Bar – Found

Where respondent not only failed to cooperate with OCTC, but made repeated threats against OCTC employees, resulting in the issuance of restraining orders against him, respondent's behavior was reprehensible and constituted extremely serious aggravation. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[14a-c]**

615 Aggravation—Lack of candor/cooperation with Bar (1.5(1))—Declined to find

Where trial was hard-fought and at times somewhat contentious and judge reprimanded respondent regarding respondent's volume and tone, but judge was able to adequately manage trial so as to avoid any extreme behavioral issues, Review Department did not conclude that respondent's actions rose to level warranting aggravation for lack of candor and cooperation to State Bar. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[17]**

Aggravation for lack of candor in disciplinary proceedings must be supported by express finding that testimony lacked candor or was dishonest. Where record contained some incongruities in witnesses' testimony, but Office of Chief Trial Counsel had not presented clear and convincing evidence to establish respondent's testimony lacked candor, Review Department adopted hearing judge's finding that respondent testified credibly and declined to find aggravation for lack of candor. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[5]**

Great weight is given to hearing judge's findings on candor because judge who hears and sees witness testify is best positioned to make this determination. Where hearing judge heard respondent testify over multiple days and did not find lack of candor despite OCTC's request, Review Department declined to find dishonest testimony as additional aggravating factor. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494. **[7]**

616.10 Aggravation—Failure to make restitution (1.5(m))—Found

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437.

616.59 Aggravation—Failure to make restitution (1.5(m)) – Declined to find – Other reason

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

618.10 Aggravation— High level of vulnerability of victim – Found

Where the clients harmed by respondent's misconduct were an incarcerated criminal defendant and four immigrants subject to possible deportation, the clients were highly vulnerable victims, and the harm respondent caused to them warranted significant aggravation. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[2]**

618.50 Aggravation—Vulnerable Victim (Std. 1.5(n)) - Not Found

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

620 Aggravation — Lack of remorse/failure to appreciate seriousness

Where respondent continued to engage in UPL in multiple matters after stipulating to those offenses in prior disciplinary proceeding, and in current disciplinary proceeding, respondent denied culpability of that misconduct in his prior proceeding despite his clear, written contrary admissions, respondent's lack of insight into wrongdoing constituted serious aggravating circumstance. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[8]**

625.20 Aggravation – Lack of remorse – Declined to find – Failure of proof

Attorneys who fail to accept responsibility for their actions and instead seek to shift responsibility to others demonstrate indifference to misconduct and lack of remorse. However, where respondent's testimony

at disciplinary trial unequivocally acknowledged his wrongdoing and took full responsibility, admitted his alcoholism, and showed he had taken concrete steps toward recovery, Review Department declined to find indifference to rectification based on respondent's initial refusal, years earlier, to pay for repair of property damage caused by misconduct. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[6a, b]**

710.10 Mitigation—Long practice with no prior discipline (1.6(a))—Found

Where attorney admitted culpability for failing to communicate, and testified he would do things differently, review department did not agree misconduct would likely recur and held attorney established he was entitled to substantial weight in mitigation for 21-year discipline-free practice. Review department considered attorney's period of post-misconduct practice without further misconduct in determining under standard 1.6(a) that further misconduct was unlikely to recur, rather than giving attorney mitigation for period of post-misconduct practice without further misconduct. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[18a, b]**

No prior record of discipline over many years of practice, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. Where record reflected 15 years of discipline-free practice; hearing judge's finding of shorter period was based on erroneous factual conclusion; and record reflected that respondent's misconduct was aberrational and unlikely to recur, respondent's 15 years of discipline-free practice were entitled to substantial weight in mitigation. *In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753. **[7a, b]**

Current version of standard 1.6(a) provides that absence of prior record of discipline over many years of practice, coupled with present misconduct not likely to recur, is a mitigating factor. Unlike prior version of standard, current version does not include analysis of seriousness of misconduct. Under current version of standard, where respondent's misconduct was limited to single incident for which respondent apologized, and no facts suggested misconduct would be repeated, hearing judge erred in relying on former version of standard and giving respondent only minimal mitigation credit for 15 years of discipline-free practice based on seriousness of misconduct and lack of insight. Respondent was entitled to substantial weight in mitigation. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[10a, b]**

In the Matter of Collins (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551.

In the Matter of Schooler (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494.

In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479.

710.33 Mitigation—Long practice with no prior discipline record—Found but discounted or not relied on—Not in practice long enough—Prior to commission of misconduct

Under standard 1.6(a), mitigation includes absence of any prior discipline record over many years coupled with present misconduct which is not likely to recur. Where respondent had practiced law discipline-free for seven years; showed some understanding of misconduct; admitted to clients mistakes made; told clients to pursue malpractice insurance claim; did not contest hearing judge's culpability determinations; attributed misconduct to personal issues affecting focus; and showed some insight into misconduct, Review Department concluded both prongs of standard 1.6(a) were met as there was (1) absence of prior discipline record over many years; and (2) record supported finding respondent's misconduct was aberrational. Review Department, however, assigned minimal mitigation as respondent had only practiced for seven years, minimum amount without misconduct to obtain mitigating credit. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[7a, b]**

710.35 Mitigation – Long practice with no prior discipline record – Found but discounted or not relied on – Present misconduct too serious

Where misconduct is serious, prior record of discipline-free practice is most relevant for mitigation when misconduct was aberrational. Where respondent had decades-long history of alcohol abuse and multiple assaults, and had not shown that alcohol abuse problem underlying his assault conviction was resolved,

Review Department was unable to find that misconduct was unlikely to recur, and gave only some weight to respondent's 27-year record of discipline-free practice. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[7a, b]**

710.36 Mitigation — Long practice with no prior discipline — Found but discounted or not relied on — Present misconduct likely to recur

Where respondent practiced law for nearly 35 years without discipline before misconduct commenced but had complete lack of insight into misconduct, only nominal weight in mitigation given for respondent's absence of prior discipline record. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[10]**

Only nominal weight in mitigation given for respondent's nine years of discipline-free practice where respondent's misconduct likely to recur as respondent completely lacked insight into misconduct as respondent failed to acknowledge any wrongdoing or demonstrated respondent had learned how to properly handle entrusted funds. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[17]**

Mitigating circumstances may include absence of prior disciplinary record over many years of practice when coupled with present misconduct not likely to recur. Where, despite respondent's acknowledgement of wrongdoing, his awareness of dangers of driving under influence of alcohol, and compliance with criminal court obligations, respondent testified drinking and driving was problem for him, professed need for considerable behavioral change by declaring he did not plan to drive anymore, prior DUI did not serve to rehabilitate him, he diminished seriousness of his actions by downplaying their consequences, and had not identified other measures he planned to take to address alcohol problem, Review Department was not fully assured respondent's misconduct was unlikely to recur and assigned only moderate mitigating weight to respondent's 26 years of discipline-free practice. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[3a,b]**

Where misconduct is serious, prior record of discipline-free practice is most relevant for mitigation when misconduct was aberrational. Where respondent had decades-long history of alcohol abuse and multiple assaults, and had not shown that alcohol abuse problem underlying his assault conviction was resolved, Review Department was unable to find that misconduct was unlikely to recur, and gave only some weight to respondent's 27-year record of discipline-free practice. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[7a, b]**

Where respondent failed to give adequate attention to client's case for almost two years, did not pay client until two years after case settled, and did not pay lienholder until even later, fact that misconduct occurred over significant period of time gave rise to concern that misconduct could recur, so respondent's 10-year record of discipline-free practice warranted only moderate mitigation credit. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[8]**

Absence of a prior record of discipline over many years, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. Where respondent completely lacked insight into his misconduct, it could not be viewed as unlikely to recur, so his 11 years of discipline-free practice was assigned only nominal mitigation credit. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[16]**

Where respondent testified in disciplinary proceedings that she had fully complied with her legal and ethical duties and would act in the same manner again, respondent did not establish that her misconduct was unlikely to recur, thus reducing the mitigating weight of her lack of a prior disciplinary record. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[8]**

Where respondent had 17 years of discipline-free practice, but respondent's misconduct involved 11 client matters over more than a five-year period, and respondent evinced indifference to rectification and persisted in operating his practice unlawfully, misconduct was not aberrational or unlikely to recur. Accordingly, respondent's record of discipline-free practice was entitled to only minimal mitigating weight. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[10a, b]**

Attorney's absence of prior discipline over many years of practice should not be assigned significant mitigating weight unless misconduct is not likely to recur. Where respondent had not shown that the substance abuse problems involved in her misconduct had been resolved, her 19 years of discipline-free practice deserved only some mitigating weight. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[4a, b]**

710.39 Long practice with no prior discipline record (1.6(a); 1986 Standard 1.2(e)(i)) – Not in practice long enough – Found but discounted or not relied on – Other Reason

In the Matter of Fisher (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999.

710.53 Long Practice with no prior discipline record – Not in practice long enough –Prior to commission of misconduct

In the Matter of Caplin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768.

715.50 Mitigation — Good faith — Declined to find

Mitigation includes good faith belief that was honestly held and objectively reasonable. Where attorney unreasonably ignored ethical responsibilities in failing to communicate with clients, no weight in mitigation given for attorney's assertion of good faith belief. Attorney's regular communications with insurer did not absolve attorney of obligation to inform clients of significant developments. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[19]**

Good faith belief honesty held and objectively reasonable may be mitigating circumstance. Where respondent's belief that judge's remand order of criminal defendant client was illegal, even if honestly held, did not mitigate respondent's actions of interfering with defendant client's arrest; no reasonable justification existed for respondent's failure to immediately move away from defendant client once judge ordered respondent to do so, and Review Department therefore did not assign mitigating credit. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[8]**

An attorney may be entitled to mitigation credit if the attorney establishes a good faith belief that is honestly held and objectively reasonable. Where respondent acknowledged receiving copy of relevant ethics rule with State Bar investigative letter, and reviewed rule after receiving it, even if respondent honestly believed his conduct did not violate rule, it was objectively unreasonable for respondent to continue to violate clear language of rule for over six months after receipt of investigative letter, and Review Department assigned no mitigating credit for good faith. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[9a, b]**

Although respondent, as trustee of trust that permitted self-dealing, correctly believed she had authority to borrow from trust, respondent was not entitled to mitigation for good faith because in making loan, respondent did not follow duties under Rules of Professional Conduct and Probate Code. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[14]**

Where respondent prosecutor believed that her conduct in delaying statutorily required disclosure of evidence to defense counsel was justified, but her belief was not objectively reasonable based on clear wording of applicable statute, respondent was not entitled to mitigating credit for acting in good faith. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[11]**

720.10 Mitigation – Lack of harm to client/public/justice - Found

Mitigation can be given where lack of harm to clients, public, or administration of justice is established. Where record demonstrated that respondent's use of client trust account as personal checking account did not cause any harm to clients or otherwise, and State Bar's argument that it had potential for harm was speculative, lack of harm was entitled to substantial weight. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[8]**

720.50 Mitigation – Lack of harm to client/public/justice – Declined to Find

In the Matter of Jones (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873.

720.59 Mitigation – Passage of time and rehabilitation – Declined to Find – Other Reason

In the Matter of Jones (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873.

725.11 Mitigation —Emotional/physical disability/illness – Found – Without expert testimony

Some mitigation for extreme emotional difficulties may be available for extremely stressful family circumstances even when no expert testimony established emotional difficulties as directly responsible for misconduct. Where no expert testimony but respondent presented evidence about emotional difficulties; friend corroborated respondent very distraught after mother's death; respondent submitted medical records documenting family members' diagnoses with serious medical issues; but problems did not fully explain respondent's misconduct as family medical issues did not begin until years after respondent took on one client matter; and respondent had not demonstrated when faced with personal problems in future he would handle them differently to avoid future misconduct, Review Department assigned minimal mitigation for respondent's emotional difficulties that coincided with misconduct but such did not mitigate misconduct that did not coincide with emotional difficulties. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[9a, b]**

Where hearing judge found that respondent and his therapist testified credibly regarding respondent's emotional difficulties at the time of his misconduct and his subsequent recovery, these findings were entitled to great weight. Where that testimony and other evidence established that respondent had recovered from his emotional difficulties, and respondent had repeatedly attempted to rectify part of his misconduct, respondent established that he had recovered, and his emotional difficulties were properly considered in mitigation. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[6a, b]**

Mitigation may be assigned for extreme emotional difficulties or physical or mental disabilities if respondent suffered from them at time of misconduct, expert testimony establishes they were directly responsible for misconduct, and they no longer pose a risk that respondent will commit future misconduct. Where testimony of respondent and his therapist established that extreme emotional distress was directly responsible for respondent's misconduct, and that respondent had recovered, Review Department assigned substantial weight in mitigation, given persuasive quality of respondent's evidence. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[5a-c]**

Where expert evidence failed to establish that respondent's mini-strokes were directly responsible for his misconduct, respondent was not entitled to any mitigation for physical or mental disabilities, except as to subsequent act of misconduct that occurred shortly after respondent suffered major stroke. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[4a-c]**

725.12 Mitigation —Emotional/physical disability/illness – Found – With expert testimony

725.32 Mitigation — Emotional/physical disability/illness – Found but discounted or not relied on – Lack of causal relation to misconduct

Some mitigation for extreme emotional difficulties may be available for extremely stressful family circumstances even when no expert testimony established emotional difficulties as directly responsible for misconduct. Where no expert testimony but respondent presented evidence about emotional difficulties; friend corroborated respondent very distraught after mother's death; respondent submitted medical records documenting family members' diagnoses with serious medical issues; but problems did not fully explain respondent's misconduct as family medical issues did not begin until years after respondent took on one client matter; and respondent had not demonstrated when faced with personal problems in future he would handle them differently to avoid future misconduct, Review Department assigned minimal mitigation for respondent's emotional difficulties that coincided with misconduct but such did not mitigate misconduct that

did not coincide with emotional difficulties. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[9a, b]**

Where expert evidence failed to establish that respondent's mini-strokes were directly responsible for is misconduct, respondent was not entitled to any mitigation for physical or mental disabilities, except as to subsequent act of misconduct that occurred shortly after respondent suffered major stroke. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[4a-c]**

725.36 Mitigation — Emotional/physical disability/illness — Found but discounted or not relied on — Inadequate showing of rehabilitation

Some mitigation for extreme emotional difficulties may be available for extremely stressful family circumstances even when no expert testimony established emotional difficulties as directly responsible for misconduct. Where no expert testimony but respondent presented evidence about emotional difficulties; friend corroborated respondent very distraught after mother's death; respondent submitted medical records documenting family members' diagnoses with serious medical issues; but problems did not fully explain respondent's misconduct as family medical issues did not begin until years after respondent took on one client matter; and respondent had not demonstrated when faced with personal problems in future he would handle them differently to avoid future misconduct, Review Department assigned minimal mitigation for respondent's emotional difficulties that coincided with misconduct but such did not mitigate misconduct that did not coincide with emotional difficulties. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[9a, b]**

Where respondent's uncontradictory testimony established that misconduct was caused by long-standing depression and prescription drug abuse, respondent was entitled to some mitigation for emotional difficulties or physical or mental disabilities. However, where respondent had a years-long history of abuse, and had started but not completed rehabilitation, she did not show complete, sustained recovery and rehabilitation, and full mitigation was not warranted. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[5a-c]**

Where respondent's misconduct was related to prescription drug abuse, Review Department permitted respondent to augment record with evidence of rehabilitation occurring after trial in disciplinary proceedings. Evidence of post-trial rehabilitation was not entitled to full evidentiary weight, however, because it was not subject to cross-examination. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[6a, b]**

Review Department assigns some mitigating weight to attorney's rehabilitation activities while on criminal probation, but gives far greater weight to activities after probation has ended. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[7]**

725.50 Mitigation—Emotional/physical disability/illness (1.6(d))—Declined to find

In the Matter of Carver (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427.

725.51 Mitigation – Emotional/physical disability/illness – Declined to find – Lack of expert testimony

Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties if (1) respondent suffered from them at time of misconduct; (2) expert testimony established them as directly responsible for respondent's misconduct; and (3) emotional difficulties no longer pose risk that respondent will commit future misconduct. Where psychologists who opined on respondent's depressive symptoms at time of misconduct did not do so as experts and gave limited information of respondent's condition and treatment; expert evidence did not establish that, and hearing judge did not focus on whether, extreme emotional difficulties were directly responsible for respondent's misconduct; and respondent's record of incomplete participation in disciplinary proceedings cast doubt on hearing judge's summary conclusion that respondent had adequately recovered, Review Department could not give any mitigating weight to respondent's emotional difficulties. *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[7a-h]**

725.56 Mitigation – Emotional/physical disability/illness – Declined to find – Inadequate showing of rehabilitation

Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties if (1) respondent suffered from them at time of misconduct; (2) expert testimony established them as directly responsible for respondent's misconduct; and (3) emotional difficulties no longer pose risk that respondent will commit future misconduct. Where psychologists who opined on respondent's depressive symptoms at time of misconduct did not do so as experts and gave limited information of respondent's condition and treatment; expert evidence did not establish that, and hearing judge did not focus on whether, extreme emotional difficulties were directly responsible for respondent's misconduct; and respondent's record of incomplete participation in disciplinary proceedings cast doubt on hearing judge's summary conclusion that respondent had adequately recovered, Review Department could not give any mitigating weight to respondent's emotional difficulties. *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[7a-h]**

Extreme emotional difficulties or physical or mental disabilities may be mitigating factor under Standard 1.6(d) if (1) attorney suffered from them at time of misconduct, (2) expert testimony establishes that they were directly responsible for misconduct, and (3) they no longer pose risk that attorney will commit future misconduct. Where respondent had continuously abused alcohol for more than 30 years and had only maintained sobriety for six-month period before trial, record did not clearly establish that respondent's alcoholism and other disorders no longer posed risk of future misconduct, despite expert testimony that respondent's emotional condition was directly responsible for violent behavior and that respondent no longer posed risk of future misconduct unless sobriety not maintained. Accordingly, respondent was not entitled to mitigation for extreme emotional difficulties. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[8a, b]**

725.59 Mitigation—Emotional/physical disability/illness (1.6(d))—Declined to find —Other reason

Some mitigation for extreme emotional difficulties may be available for extremely stressful family circumstances even when no expert testimony established emotional difficulties as directly responsible for misconduct. Where no expert testimony but respondent presented evidence about emotional difficulties; friend corroborated respondent very distraught after mother's death; respondent submitted medical records documenting family members' diagnoses with serious medical issues; but problems did not fully explain respondent's misconduct as family medical issues did not begin until years after respondent took on one client matter; and respondent had not demonstrated when faced with personal problems in future he would handle them differently to avoid future misconduct, Review Department assigned minimal mitigation for respondent's emotional difficulties that coincided with misconduct but such did not mitigate misconduct that did not coincide with emotional difficulties. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[9a, b]**

Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties if (1) respondent suffered from them at time of misconduct; (2) expert testimony established them as directly responsible for respondent's misconduct; and (3) emotional difficulties no longer pose risk that respondent will commit future misconduct. Where psychologists who opined on respondent's depressive symptoms at time of misconduct did not do so as experts and gave limited information of respondent's condition and treatment; expert evidence did not establish that, and hearing judge did not focus on whether, extreme emotional difficulties were directly responsible for respondent's misconduct; and respondent's record of incomplete participation in disciplinary proceedings cast doubt on hearing judge's summary conclusion that respondent had adequately recovered, Review Department could not give any mitigating weight to respondent's emotional difficulties. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[7a-h]**

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511.

730.10 Candor and cooperation with Victim (1.6(e); 1986 Standard 1.2(e)(v)) – Found

Where respondent stated in pretrial statement that she had committed all acts of misconduct of which Review Department found her culpable, as well as stipulating to certain facts, respondent was entitled to

considerable weight in mitigation under standard 1.6(e) for cooperation with State Bar. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[11]**

In the Matter of Collins (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551.

735.10 Mitigation—Candor and cooperation with Bar (1.6(e); 1986 Standard 1.2(e)(v)) —Found

In the Matter of Respondent BB (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835.

Although facts were easy to prove, where respondent entered into detailed stipulation which conserved judicial time and resources, and respondent stipulated to facts that formed basis of culpability findings in one count, substantial mitigation was assigned for respondent's cooperation for entering into detailed Stipulation. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[9]**

Where respondent stipulated to certain facts and circumstances related to conviction that were not easily provable and which formed basis of moral turpitude finding, substantial mitigation was warranted for cooperation with State Bar. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[7]**

Where respondent's answer to disciplinary charges and subsequent stipulation admitted his culpability of willful violation of rule 9.20(c); respondent admitted facts of uncharged misconduct; and respondent did not dispute culpability of violating statutory duty even though stipulation was technically limited to facts of offenses, respondent was entitled to significant mitigating credit for cooperation with State Bar, even though facts in probation and rule 9.20 matters are generally easily provable and stipulations do not save significant time. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[5]**

Where respondent cooperated with State Bar by waiving finality of criminal conviction and stipulating to facts and admission of documents, several of which were evidentiary basis of moral turpitude finding, respondent was entitled to substantial mitigation for cooperation with State Bar under Standard 1.6(e). *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[9]**

In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698.

In the Matter of Amponsah (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646.

Even though respondent was found culpable of failing to cooperate with the State Bar's pre-filing investigation of his misconduct, he was still entitled to significant mitigating credit for entering into a stipulation, after disciplinary charges were filed, which admitted to culpability on two counts and to several facts. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[3a, b]**

Where respondent cooperated with State Bar by waiving finality of criminal conviction and stipulating to facts and admission of documents, several of which were evidentiary basis of moral turpitude finding, respondent was entitled to substantial mitigation for cooperation with State Bar under Standard 1.6(e). *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[9]**

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

Respondent's comprehensive stipulation regarding facts and culpability, which assisted prosecution and conserved judicial time and resources, was entitled to significant mitigation credit for cooperation with the State Bar. However, where respondent did not stipulate until shortly before trial, and record contained no evidence of prompt objective steps indicating remorse, respondent was not entitled to additional mitigation for remorse. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[6a, b]**

735.30 Mitigation—Candor and cooperation with Bar (1.6(e))—Found but Discounted or not relied on

In the Matter of Jimenez (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965.

In the Matter of Edward Shkolnikov (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852.

Respondent entitled to mitigation for cooperation with State Bar for entering into stipulation to facts and admission of documents, as respondent admitted facts beyond plea and stipulations saved judicial time and resources. But Review Department concluded respondent was not entitled to full mitigation and assigned only moderate weight for cooperation, as respondent did not admit culpability (i.e., that actions amounted to other misconduct warranting discipline). *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[4a, b]**

Mitigation may be assigned for cooperation with State Bar. Where respondent stipulated only to facts and admission of documents, and not to culpability, however, hearing judge erred in affording significant mitigation, and Review Department only gave moderate weight to respondent's cooperation. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[11]**

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

Where respondent stipulated only to short set of easily provable facts, hearing judge correctly gave minimal consideration to respondent's cooperation as mitigating factor. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[9]**

In the Matter of Peters (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536.

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511.

In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479.

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464.

In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448.

735.50 Mitigation—Candor and cooperation with Bar (1.6(e))—Declined to find

Cooperation in communicating with State Bar investigator does not merit mitigation on its own since attorneys are required to do so. Where respondent failed to show actions were spontaneous or otherwise displayed cooperation, Review Department assigned no mitigation under standard 1.6(e). *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[19]**

Where respondent did not enter into stipulation until trial, stipulated to facts that were easy to prove, and did not admit culpability, hearing judge properly declined to assign respondent mitigation credit for cooperation. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494 **[8]**

740.10 Mitigation—Good character references (1.6(f))—Found

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

Where good character evidence included 44 people who were aware of respondent's misconduct and who testified or attested to respondent's good character, including current San Francisco Public Defender, 17 other public defenders, former member of Board of Supervisors for City and County of San Francisco, captain and Assistant Sheriff with San Francisco County Sheriff's Office, former City Attorney for Santa Cruz and Capitola, current and several former clients, two assistant district attorneys, two other attorneys, priest, and 12 others from respondent's personal life, Review Department assigned compelling mitigating weight to respondent's extraordinary good character due to breath of evidence which was wide-ranging and extensive. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[9a-e]**

Where six witnesses and one declarant had known respondent from 20 to 40 years, spoke highly of respondent's character – describing respondent as honest, trustworthy, person with "one-in-a-million type of character" and had served as mentor to other attorneys and had deep commitment to community, Review Department held that even though many witnesses did not have detailed knowledge of respondent's misconduct, totality of impressive good character evidence merited substantial weight in mitigation. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[8a-b]**

In the Matter of Smart (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713.

Where Review Department found respondent borrowed money from client's trust rather than misappropriating it, Review Department did not discredit testimony of respondent's character witnesses for agreeing with respondent that funds were a loan. Where respondent's character witnesses included wide range of people who had known respondent for a long time; each witness had basic understanding of charges against respondent; and witnesses believed respondent had strong moral character, respondent was entitled to substantial weight for good character evidence under standard 1.6(f). *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[12a, b]**

In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479.

740.31 Mitigation—Good character references (1.6(1))—Found but discounted or not relied on — Insufficient number or range of References

Limited weight in mitigation for good character where three witnesses, including two attorneys, who had known respondent for at least 10 years and had read notice of disciplinary charges, testified and described respondent as honest and trustworthy, but character witnesses were not from "a wide range" of references as required by standard 1.6(f), Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[18]**

Character evidence from attorneys and judges deserves great consideration because they have a strong interest in maintaining the honest administration of justice. However, for mitigation purposes in disciplinary proceedings, weight of this evidence is tempered by absence of wide range of references. Where respondent offered no character evidence from general community, Review Department assigned less than full mitigation weight to respondent's good character evidence. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[10]**

In the Matter of Peters (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536.

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464.

In the Matter of Carver (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427.

740.32 Mitigation—Good character references—Found but discounted or not relied on — References unfamiliar with misconduct

Good character evidence, consisting of 10 letters, including from attorneys, former clients, employee, respondent's wife, and friends, four of whom also testified on respondent's behalf, entitled to moderate weight in mitigation as most character references did not demonstrate full awareness of extent of respondent's misconduct as required by standard l.6(f). *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[9]**

Respondent may obtain mitigation for extraordinary good character attested to by wide range of references in legal and general communities who are aware of full extent of misconduct. Where character references included three attorneys, former client, friend, and doctor with whom respondent worked when respondent worked as registered nurse; witnesses had known respondent between 12 and 29 years and spoke positively regarding respondent's character and abilities as attorney but were not aware of full extent of

misconduct, limited weight in mitigation given for extraordinary good character. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[8]**

Where good character evidence was presented from wide range of references, including from attorneys, friends, and clients, but most witnesses were unaware of full extent of respondent's misconduct, as declarants did not state awareness this was respondent's second DUI, Review Department assigned only moderate weight in mitigation. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[5a-d]**

Where character witnesses consisting of former employees, clients, attorneys, friend, and respondent's daughter testified on respondent's behalf, these established wide range of references, but several issues diminished strength of testimony including that other than respondent's daughter, only two character witnesses had known respondent for significant amount of time; no detailed testimony regarding respondent's daily conduct and mode of living; witnesses' testimony did not make clear they were aware of full extent of misconduct; and while three attorneys testified, one was respondent's daughter and other two had only known respondent a few years, Review Department assigned limited weight in mitigation to evidence of extraordinary good character. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[18a-c]**

Where six character references and testimony of two witnesses from broad spectrum of community established respondent's good character, but not all character references demonstrated full awareness of extent of respondent's misconduct, Review Department adopted hearing judge's conclusion that good character entitled to only moderate weight in mitigation. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[6a, b]**

Where respondent's good character and diligent representation of clients were attested to by five trial witnesses and 18 declarations, but most witnesses did not demonstrate general understanding of charges against respondent, respondent's character evidence was entitled to only moderate mitigating weight. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[4a, b]**

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464.

Where respondent failed to admit falsification of evidence until confronted by opposing counsel, and took no prompt remedial action despite opportunity to do so, respondent's subsequent expression of remorse for his wrongdoing was not entitled to significant weight in mitigation. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[8]**

740.33 Mitigation – Good character references – Found but discounted or not relied on – Inadequate showing generally

Where character witnesses consisting of former employees, clients, attorneys, friend, and respondent's daughter testified on respondent's behalf, these established wide range of references, but several issues diminished strength of testimony including that other than respondent's daughter, only two character witnesses had known respondent for significant amount of time; no detailed testimony regarding respondent's daily conduct and mode of living; witnesses' testimony did not make clear they were aware of full extent of misconduct; and while three attorneys testified, one was respondent's daughter and other two had only known respondent a few years, Review Department assigned limited weight in mitigation to evidence of extraordinary good character. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[18a-c]**

Attorneys are entitled to mitigation if extraordinary good character is attested to by wide range of references in legal and general communities who are aware of full extent of misconduct. Where respondent's three character witnesses, including his young adult son and two attorneys, were all fully aware of charges against respondent and praised respondent's excellent reputation as criminal defense attorney, hearing judge erred in discounting witnesses' testimony based on bias due to connections with respondent, and assigning only minimal mitigating weight. Witnesses' potential bias was not disqualifying but warranted consideration in weighing evidence. Nonetheless, given youth of respondent's son and attorney witnesses' having only

known respondent for 10 years and five years, respondent was entitled to moderate mitigation for good character. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[10a-c]**

740.39 Mitigation—Good character references (1.6(f))— Found but discounted or not relied on—Other reason

In the Matter of Fisher (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999.

Assigning limited weight to character witnesses solely because witnesses have financial or familial relationship with respondent not supported by case law. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[10]**

Where character witnesses consisting of former employees, clients, attorneys, friend, and respondent's daughter testified on respondent's behalf, these established wide range of references, but several issues diminished strength of testimony including that other than respondent's daughter, only two character witnesses had known respondent for significant amount of time; no detailed testimony regarding respondent's daily conduct and mode of living; witnesses' testimony did not make clear they were aware of full extent of misconduct; and while three attorneys testified, one was respondent's daughter and other two had only known respondent a few years, Review Department assigned limited weight in mitigation to evidence of extraordinary good character. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[18a-c]**

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464.

740.51 Mitigation—Good character references (1.6(f))—Declined to find—Insufficient number of References

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511

740.53 Mitigation—Good character references (1.6(f))—Declined to find—Inadequate showing generally

Where respondent's character evidence consisted of four witnesses who testified at trial (two of whom also submitted character letters) and two additional character letters; witnesses had known respondent for many years; witnesses reported respondent is honest, of good moral character, and dedicated to clients, but one witness revealed limitations as to respondent's interpersonal and legal skills, and witnesses were all former or current clients and were unaware of full extent of respondent misconduct, respondent failed to establish mitigation for extraordinary good character. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[11a, b]**

745 Mitigation—Remorse/restitution/atonement (1.6(g); 1986 Standard 1.2(e)(vii))

Mitigation may be found if misconduct remote in time and subsequent rehabilitation established. Where misconduct occurred three years earlier, which was remote in time, and respondent demonstrated in those years more than not engaging in additional misconduct, but provided evidence of professional growth and maturity, respondent's improved professional deportment displayed substantial rehabilitation from misconduct, and respondent entitled to substantial mitigation. Although hearing judge considered facts under standard 1.6(g) (remorse and recognition of wrongdoing), Review Department concluded facts more appropriately considered under standard 1.6(h) to show respondent's rehabilitation. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[11a-c]**

745.10 Mitigation—Remorse/restitution/atonement—Found

Mitigation may include prompt objective steps demonstrating spontaneous remorse and recognition of wrongdoing and timely atonement. Where respondent, who was new public defender (1) made disrespectful statements to one judge but apologized to judge shortly thereafter; and (2) failed to abide by another judge's order and made disrespectful statement to judge but did not immediately apologize to judge, as to do so would have put respondent at odds with San Francisco's Public Defenders Office and then-Public Defender, but

after being found guilty of contempt by judge paid fine, reported contempt order to State Bar, displayed remorse during disciplinary proceedings, and accepted responsibility, Review Department gave full mitigating weight to respondent's demonstration of remorse and acceptance of responsibility in both incidents, as much as one could reasonably expect under circumstances. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[10a-d]**

Respondents are entitled to mitigation credit for prompt objective steps, demonstrating spontaneous remorse and recognition of wrongdoing and timely atonement. Where respondent acknowledged regret for actions that caused harm and inconvenience; notified insurance company of fault; and paid damages to property owner for damage not covered by insurance company before any threat of State Bar disciplinary proceeding, substantial mitigation was afforded for respondent's remorse. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[8]**

745.32 Mitigation—-Remorse/restitution/atonement (1.6(g))— Found but discounted or not relied on – Inadequate showing generally

Where respondent expressed remorse; quickly admitted fault in civil matter resulting from accident caused by driving under influence of alcohol; and cooperated in disciplinary matter but made no other assurances or plans to address alcohol problem beyond abstaining from driving, which demonstrated failure to fully recognize wrongdoing, only some mitigating credit was deserved for prompt objective steps taken demonstrating spontaneous remorse and recognition of wrongdoing and timely atonement *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[7a-c]**

745.39 Mitigation— Remorse/restitution/atonement (1.6(g)) — Found But discounted or not relied on — Other reason

Since respondent's misconduct lasted decade, respondent's actions evidencing remorse were not prompt, as required for this mitigating factor, but based on (1) respondent's evidence of contrition; (2) increased care respondent now gives matters currently handled by her before courts; and (3) respondent satisfied in full costs assessed by South Carolina within three months of South Carlina reprimand becoming final, Review Department affirmed limited weight to mitigating factor of remorse given by hearing judge, which was consistent with decisions cited by hearing judge which did not normally accord remorse significant weight by itself. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[4]**

In the Matter of Peters (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536.

Where Review Department found that respondent acted intentionally in committing act of moral turpitude, it declined to give intentionality additional weight in aggravation. Factors giving rise to culpability for moral turpitude should not be given double weight by considering them again in aggravation. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479 **[7]**

745.52 Mitigation—Remorse/restitution/atonement—Declined to find—Inadequate showing generally

Where respondent sought additional mitigation for (1) prompt action that rectified ethical issues; (2) State Bar's more than one-year delay in bringing charges; and (3) respondent's voluntary cessation of misconduct before charges were brought, clear and convincing evidence did not support additional mitigation. Respondent's rectifying actions were not prompt where respondent continued to commit misconduct months after contact from State Bar; respondent showed neither delay nor prejudice from State Bar's 17-month delay in filing disciplinary charges; and respondent's having ceased misconduct before charges were filed did not qualify as mitigating circumstance under applicable standard. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[12]**

Respondent's comprehensive stipulation regarding facts and culpability, which assisted prosecution and conserved judicial time and resources, was entitled to significant mitigation credit for cooperation with the State Bar. However, where respondent did not stipulate until shortly before trial, and record contained no evidence of prompt objective steps indicating remorse, respondent was not entitled to additional mitigation for remorse. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[6a, b]**

745.59 Mitigation – Remorse/restitution/atonement – Declined to find – Other reason

Prompt objective steps, demonstrating spontaneous remorse and recognition of wrongdoing and timely atonement, qualify as mitigation. Where respondent claimed remorse and recognition of wrongdoing based on belated filings of rule 9.20(c) declaration, proof of Ethics School compliance, and delinquent quarterly probation report, but these steps were not taken spontaneously because respondent was aware Probation enforcement proceedings were underway, respondent was not entitled to mitigation. *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[6]**

750.10 Mitigation – Passage of time and rehabilitation – Found

Mitigation may be found if misconduct remote in time and subsequent rehabilitation established. Where misconduct occurred three years earlier, which was remote in time, and respondent demonstrated in those years more than not engaging in additional misconduct, but provided evidence of professional growth and maturity, respondent's improved professional deportment displayed substantial rehabilitation from misconduct, and respondent entitled to substantial mitigation. Although hearing judge considered facts under standard 1.6(g) (remorse and recognition of wrongdoing), Review Department concluded facts more appropriately considered under standard 1.6(h) to show respondent's rehabilitation. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[11a-c]**

750.52 Mitigation – Passage of time and rehabilitation – Declined to Find – Inadequate showing of rehabilitation

Mitigation under standard 1.6(h) requires both that misconduct be remote in time and that there be subsequent rehabilitation. Although respondent had practiced law for nine years without misconduct since conviction in underlying disciplinary matter, respondent's completion of criminal probation terms was not determinative of rehabilitation. Where respondent, during disciplinary proceedings had shown indifference, lack of truthfulness and candor, and unwillingness to accept full responsibility for criminal act, respondent had not established clear and convincing evidence of rehabilitation. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[12a, b]**

750.59 Mitigation – Passage of time and rehabilitation – Declined to Find – Other reason

In the Matter of Jones (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873.

755.51 Mitigation – Prejudicial delay in proceedings – Declined to find – Delay not sufficiently lengthy

Where respondent sought additional mitigation for (1) prompt action that rectified ethical issues; (2) State Bar's more than one-year delay in bringing charges; and (3) respondent's voluntary cessation of misconduct before charges were brought, clear and convincing evidence did not support additional mitigation. Respondent's rectifying actions were not prompt where respondent continued to commit misconduct months after contact from State Bar; respondent showed neither delay nor prejudice from State Bar's 17-month delay in filing disciplinary charges; and respondent's having ceased misconduct before charges were filed did not qualify as mitigating circumstance under applicable standard. *In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753. **[12]**

755.52 Mitigation – Prejudicial delay in proceedings – Declined to find – Inadequate showing of prejudice

Excessive delay by State Bar in conducting disciplinary proceedings causing prejudice to attorney is mitigating circumstance. For delay to constitute mitigating circumstance, attorney must demonstrate that delay impeded preparation or presentation of effective defense. Where respondent (1) was put on notice regarding potential disciplinary proceedings close in time to alleged misconduct; (2) argued bank records could have aided defense but failed to obtain and keep such records; and (3) did not present sufficient evidence to suggest that Office of Chief Trial Counsel's delay affected ability to present proper defense,

Review Department assigned no mitigation. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[19]**

Where respondent sought additional mitigation for (1) prompt action that rectified ethical issues; (2) State Bar's more than one-year delay in bringing charges; and (3) respondent's voluntary cessation of misconduct before charges were brought, clear and convincing evidence did not support additional mitigation. Respondent's rectifying actions were not prompt where respondent continued to commit misconduct months after contact from State Bar; respondent showed neither delay nor prejudice from State Bar's 17-month delay in filing disciplinary charges; and respondent's having ceased misconduct before charges were filed did not qualify as mitigating circumstance under applicable standard. *In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753. **[12]**

757.10 Mitigation – Restitution without threat or force – Found

Restitution is mitigating circumstance if made without threat or force of administrative, disciplinary, civil or criminal proceedings. Where respondent, upon learning of amount owed, promptly reimbursed city and property owner for damages resulting from vehicular accident caused by respondent while under influence of excessive alcohol, respondent was entitled to moderate weight in mitigation. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[9]**

757.51 Mitigation – Restitution made without threat or force of proceedings (1.6(j)) – Declined to find – Coerced or belated restitution

Under standard 1.6(j), restitution is a mitigating circumstance where made without threat of legal proceedings. Where respondent did not make full restitution until after complaint was filed with State Bar, respondent was not entitled to mitigation for restitution. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[13]**

765.10 Mitigation—Substantial Pro Bono work—Found

Where character witness testified to respondent's pro bono work, which was confirmed by respondent and corroborated by letters from two additional character witnesses, and declaration from respondent's wife contained summary of numerous community service activities respondent had engaged in, quantity and quality of services was commendable and supported finding of substantial weight in mitigation for community service. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[11]**

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479.

765.31 Mitigation—Substantial Pro Bono work—Found but discounted or not relied on—Insufficient evidence

Attorney's pro bono work and community service can be mitigating circumstance. Where there was lack evidence to support respondent's own claims of good deeds because respondent's testimony did not detail hours respondent had dedicated to community service or actual work for organization, Review Department afforded only limited weight in mitigation to respondent's pro bono and community service work. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[20]**

765.32 Mitigation — Substantial pro bono work — Found but discounted or not relied on — Pro bono work not substantial

Where respondent provided legal representation to two friends without payment, and respondent's testimony regarding recent pro bono case in which he devoted hundreds of work hours was corroborated by declaration from another attorney, Review Department assigned moderate mitigating weight to pro bono efforts, as respondent had not shown a prolonged dedication to pro bono work which would merit substantial mitigating weight. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[6a,b]**

765.39 Mitigation — Substantial pro bono work — Found but discounted or not relied on — Insufficient evidence

Pro bono work is a mitigating circumstance. Where two-character witnesses discussed respondent's pro bono work for client with serious drug problem; respondent worked for several years on client's various criminal cases and acted as client's mentor; and client credited respondent for client's two-year sobriety, Review Department concluded respondent's pro bono work was entitled to mitigation but assigned limited mitigating weight as respondent did not establish prolonged dedication to pro bono work. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[10]**

Where respondent provided legal representation to two friends without payment, and respondent's testimony regarding recent pro bono case in which he devoted hundreds of work hours was corroborated by declaration from another attorney, Review Department assigned moderate mitigating weight to pro bono efforts, as respondent had not shown a prolonged dedication to pro bono work which would merit substantial mitigating weight. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[6a,b]**

Respondents deserve mitigation credit for pro bono and community service activities, even if shown only by respondent's own testimony. Such work does not qualify for full mitigation credit, however, where respondent's testimony lacks specificity and is uncorroborated, so State Bar Court cannot evaluate full measure of respondent's dedication and zeal in such activities. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[8a, b]**

765.51 Mitigation—Substantial Pro Bono work—Declined to find—Insufficient evidence

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511.

795 Mitigation – Other mitigating factors – Declined to find

Where respondent did not prove by clear and convincing evidence that respondent reasonably relied on unclear statements from attorney who sought to assist respondent with California Rules of Court, rule 9.20 obligations, and who followed up conversation with respondent with email that provided instructions for rule 9.20 compliance, including pre-populated forms to file after respondent provided appropriate notices, Review Department declined to assign mitigation credit for reliance on attorney. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[10]**

Where respondent sought additional mitigation for (1) prompt action that rectified ethical issues; (2) State Bar's more than one-year delay in bringing charges; and (3) respondent's voluntary cessation of misconduct before charges were brought, clear and convincing evidence did not support additional mitigation. Respondent's rectifying actions were not prompt where respondent continued to commit misconduct months after contact from State Bar; respondent showed neither delay nor prejudice from State Bar's 17-month delay in filing disciplinary charges; and respondent's having ceased misconduct before charges were filed did not qualify as mitigating circumstance under applicable standard. *In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753. **[12]**

801.11 Application of Standards – General Issues – Effective date/retroactive application of interim Standards

Current version of standard 1.6(a) provides that absence of prior record of discipline over many years of practice, coupled with present misconduct not likely to recur, is a mitigating factor. Unlike prior version of standard, current version does not include analysis of seriousness of misconduct. Under current version of standard, where respondent's misconduct was limited to single incident for which respondent apologized, and no facts suggested misconduct would be repeated, hearing judge erred in relying on former version of standard and giving respondent only minimal mitigation credit for 15 years of discipline-free practice based on seriousness of misconduct and lack of insight. Respondent was entitled to substantial weight in mitigation. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[10a, b]**

801.13 General Issues re Application of Standards – Effective date/retroactive application of 2019 Standards

Where disciplinary standard in effect at time of respondent's misconduct made disbarment presumed discipline for felony convictions involving moral turpitude in surrounding facts and circumstances, that

version of standard applied to respondent's case, rather than later version adopted to reflect non-retroactive statutory change requiring summary disbarment. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[11]**

801.30 General Issues re Application of Standards—Effect of standards as guidelines

In analyzing standards, Review Department applies three-step analysis: first, determining which standard specifies the most severe sanction for the misconduct at issue; second, analyzing whether an exception exists; and third, determining and explaining whether there is any reason to depart from the presumptive discipline prescribed by the standard. Where respondent had two prior records of discipline, including one actual suspension; respondent's conduct demonstrated unwillingness or inability to conform to ethical responsibilities and disrespect for legal system, and respondent failed to show compelling mitigation or any reason to depart from presumptive discipline under standard 1.8, disbarment was appropriate under this analysis. *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427. **[4a-d]**

801.41 General Issues re Application of Standards—Deviation from standards—Found to be justified

Standards for Attorney Sanctions for Professional Misconduct do not apply to non-disciplinary dispositions such as admonitions. As Review Department ordered admonition, consideration of aggravating and mitigating circumstances was not required. However, analysis of aggravating and mitigating circumstances aided court in determining that deviation from standard was warranted. Although standard provided for actual suspension or disbarment, under case law and rule 5.126 of Rules of Procedure of State Bar, admonition was appropriate due to compelling mitigation and lack of aggravating circumstances. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[4a-d]**

Under standard 1.7(c), lesser sanction appropriate if misconduct minor; little or no injury occurred to client, public, legal system, or profession; and attorney willing and able to conform to ethical responsibilities in future. Where respondent stipulated to misconduct before one judge and immediately apologized for disrespectful comments which judge appeared to accept, and misconduct before another judge was very brief and resulted in no appreciable injury to client, public, legal system, or profession, Review Department concluded both incidents were "minor misconduct" under standard 1.7(c). Where respondent established rehabilitation by acknowledgement that respondent would act differently in future which indicated respondent willing and able to conform to ethical responsibilities in future, Review Department concluded, given circumstances, discipline unnecessary and would be punitive considering compelling mitigation, lack of aggravation, narrow extent of respondent's misconduct, and lack of consequential harm. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[12]**

Where applicable standard provided for presumed discipline of three-month actual suspension for commingling, but respondent's misconduct was minor and aberrational; there were multiple mitigating circumstances, including 15-year discipline-free record, no client harm or risk of harm, good character, and cooperation, candor, and honesty; mitigating circumstances clearly outweighed one aggravating circumstance of multiple acts; and respondent demonstrated ability to conform to ethical responsibilities in future, public reproval with conditions of State Bar Ethics School and Client Trust Accounting School was appropriate discipline under standard providing for lesser discipline under such circumstances. *In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753. **[13a-d]**

801.45 General Issues re Application of Standards—Deviation from standards—Found not to be justified

Standard 2.1(a), Standards for Attorney Sanctions for Professional Misconduct, provides for disbarment for intentional misappropriation of entrusted funds. Disbarment may be avoided if amount misappropriated is "insignificantly small" or "sufficiently compelling mitigating circumstances clearly predominate," but where respondent misappropriated $175,000 – a very significant amount of money – and there were no compelling mitigating circumstances, those conditions were not applicable. Furthermore, no reason existed to depart from discipline in standard 2.1(a) where respondent (1) failed to deposit $175,000 in client funds into client trust account (CTA), instead depositing portion of money in business account where respondent used money for personal expenses without authority; (2) failed to keep $175,000 in trust as respondent was required to do; (3) respondent was culpable of three moral turpitude violations for misrepresentations to non-client business, court and opposing counsel in litigation, and to Office of Chief Trial Counsel (OCTC); (4)

in trying to cover up mistakes by opening up CTA to disburse funds, respondent wrote checks when there were insufficient funds to cover the checks and two checks were returned; (5) attempted to shift blame which demonstrated failure to take responsibility for actions; (6) minimized behavior; (7) failed to appreciate fiduciary duties to client and non-client business; (8) defended actions by claiming money was returned, despite clear precedent that attorney who returned misappropriated funds is still culpable of misappropriation; (9) prevalent aspect of disciplinary proceeding was respondent's dishonesty, and respondent demonstrated indifference regarding misconduct which demonstrated respondent unfit to practice law, disbarment was appropriate and necessary to protect public, courts, and legal profession. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[21a-e]**

California Rules of Court, rule 9.20 provides that willful violation is cause for disbarment or suspension. Discipline less than disbarment has typically been imposed for rule 9.20 violations where attorney demonstrated good faith, made unsuccessful attempts to file compliance declaration, proved significant mitigation with little aggravation, or presented other extenuating circumstances. Where respondent failed to comply with notice requirements of rule 9.20; respondent's rule 9.20 compliance declaration contained false statements; respondent violated court orders in both his past and present disciplinary cases; and there was lack of compelling mitigation, respondent's attempt to comply with rule 9.20 and mitigation for extraordinary good character and cooperation made disbarment unduly punitive, and Review Department concluded appropriate progressive discipline was two years' actual suspension continuing until respondent provided proof of rehabilitation and fitness to practice law pursuant to standard 1.2(c)(1) to impress on respondent the seriousness of misconduct and consequences for failing to follow ethical duties as attorney. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[11a-e]**

Willful violation of rule 9.20 is considered serious ethical offense for which disbarment is generally appropriate. Standard 1.8(b) provides that disbarment is appropriate where respondent has two or more prior records of discipline if: (1) actual suspension was ordered in any prior disciplinary matter; (2) prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) prior and current disciplinary matters demonstrate respondent's unwillingness or inability to conform to ethical responsibilities. Where respondent who violated rule 9.20 had three prior records of discipline, including one-year actual suspension, and had repeatedly failed to comply with disciplinary probation conditions, and exceptions to standard 1.8(b) were not applicable, hearing judge erred in failing to analyze applicability of standard 1.8(b). Where no reasons existed to depart from discipline called for by standard 1.8(b), Review Department recommended disbarment to adequately ensure public protection. *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[8a-f]**

Prior to July 1, 2019, under former standard 2.15(b), disbarment was presumed sanction for felony conviction in which surrounding facts and circumstances involved moral turpitude, unless most compelling mitigating circumstances clearly predominated. Where respondent was convicted of felony assault and grossly negligent discharge of firearm, and moral turpitude was found, disbarment was warranted despite respondent's showing of good character, cooperation with State Bar, and discipline-free career, as those factors were not most compelling in light of seriousness of criminal misconduct. Moreover, respondent's rehabilitation from alcoholism was in early phase, and respondent had not presented persuasive evidence of being on path to full sobriety and full understanding of extent of alcohol problem. Accordingly, discipline less than disbarment would fail to protect public and courts, and would undermine confidence in the legal profession. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[10a-c]**

Where respondent repeatedly practiced law while suspended, despite having stipulated to suspension for the same misconduct in earlier disciplinary proceeding, respondent's prior and current misconduct established respondent's unwillingness or inability to conform to ethical norms, and disbarment was necessary to prevent future misconduct. Where disbarment or actual suspension was presumed sanction for respondent's current misconduct (act of moral turpitude and practicing while suspended), and respondent had two or more prior records of discipline including actual suspension, record disclosed no reason to deviate from Standards calling for respondent's disbarment. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[9a-e]**

Where presumed sanction applicable to respondent's mishandling of client funds was three months actual suspension, and mitigating circumstances did not sufficiently outweigh aggravating circumstance to justify deviation from standard, Review Department recommended 90-day actual suspension. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[10]**

When a respondent has two or more prior records of discipline, and an actual suspension was ordered in any of them, or the prior and current matters demonstrate either a pattern of misconduct or an unwillingness or inability to conform to ethical norms, disbarment is appropriate. Deviation from the presumptive discipline of disbarment must be based on clearly articulate reasons. Discipline short of disbarment is appropriate only if the most compelling mitigating circumstances clearly predominate, or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. Where respondent had two prior actual suspensions; the misconduct in his third disciplinary matter was similar to that in his first, showing his unwillingness or inability to fulfill his ethical duties; respondent violated his probation; and he did not present compelling mitigation, further suspension and probation would not prevent him from committing future misconduct that would endanger the profession and the public. Thus, hearing judge erred in recommending only a two-year suspension; disbarment was the appropriate discipline. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[5a-f]**

Where respondent committed most of current misconduct after commencement of disciplinary proceedings regarding respondent's prior misconduct, Review Department did not apply general principle that aggravating force of prior discipline is diminished if misconduct leading to prior discipline occurred during same time period as current misconduct. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[2]**

Purpose of disciplinary standard calling for greater discipline in second case is to address recidivist misconduct. Nature of misconduct in second case need not be more serious than in prior case in order to warrant increased discipline. Where respondent's multiple acts of misconduct in second case significantly harmed client, and occurred when respondent should have been aware of ethical duties because prior disciplinary proceeding had been initiated when misconduct in second case occurred, nothing in record warranted departure from standard requiring greater discipline for subsequent misconduct, even though misconduct in second case was less serious. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[7]**

Where respondent established substantial mitigation, and Office of Chief Trial Counsel sought only stayed suspension, Review Department nonetheless imposed 30-day actual suspension, because applicable Standard provided for actual suspension or disbarment; mitigation was not sufficient to justify deviation from Standard; respondent's misconduct in violating five separate court orders was serious, not minor; and respondent had not yet provided proof of payment of court-ordered monetary sanctions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[6a-d]**

Where (a) respondent had received brief actual suspensions in two prior disciplinary matters; (b) respondent's prior and current misconduct demonstrated his unwillingness or inability to conform to ethical norms; and (c) respondent's limited mitigation neither was compelling, nor predominated over significant aggravation, evidence presented no adequate reason to depart from standard making disbarment appropriate discipline after two priors involving actual suspension. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 **[12a-c]**

Where (a) respondent received 60-day actual suspension in first prior disciplinary matter and nine-month suspension in second prior disciplinary matter; (b) respondent's past and current misconduct demonstrated his unwillingness or inability to fulfill his ethical responsibilities; and (c) respondent's nominal mitigation was not compelling, nor did it predominate over the significant aggravation of respondent's two prior discipline records and his multiple acts of misconduct, disbarment was appropriate under standard 1.8(b). *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[15a, b]**

In analyzing standards, Review Department applies three-step analysis: first, determining which standard specifies the most severe sanction for the misconduct at issue; second, analyzing whether an exception exists;

and third, determining and explaining whether there is any reason to depart from the presumptive discipline prescribed by the standard. Where respondent had two prior records of discipline, including one actual suspension; respondent's conduct demonstrated unwillingness or inability to conform to ethical responsibilities and disrespect for legal system, and respondent failed to show compelling mitigation or any reason to depart from presumptive discipline under standard 1.8, disbarment was appropriate under this analysis. *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427. **[4a-d]**

801.47 General Issues re Application of Standards—Deviation from standards— Necessity to explain

Willful violation of rule 9.20 is considered serious ethical offense for which disbarment is generally appropriate. Standard 1.8(b) provides that disbarment is appropriate where respondent has two or more prior records of discipline if: (1) actual suspension was ordered in any prior disciplinary matter; (2) prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) prior and current disciplinary matters demonstrate respondent's unwillingness or inability to conform to ethical responsibilities. Where respondent who violated rule 9.20 had three prior records of discipline, including one-year actual suspension, and had repeatedly failed to comply with disciplinary probation conditions, and exceptions to standard 1.8(b) were not applicable, hearing judge erred in failing to analyze applicability of standard 1.8(b). Where no reasons existed to depart from discipline called for by standard 1.8(b), Review Department recommended disbarment to adequately ensure public protection. *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[8a-f]**

When a respondent has two or more prior records of discipline, and an actual suspension was ordered in any of them, or the prior and current matters demonstrate either a pattern of misconduct or an unwillingness or inability to conform to ethical norms, disbarment is appropriate. Deviation from the presumptive discipline of disbarment must be based on clearly articulate reasons. Discipline short of disbarment is appropriate only if the most compelling mitigating circumstances clearly predominate, or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. Where respondent had two prior actual suspensions; the misconduct in his third disciplinary matter was similar to that in his first, showing his unwillingness or inability to fulfill his ethical duties; respondent violated his probation; and he did not present compelling mitigation, further suspension and probation would not prevent him from committing future misconduct that would endanger the profession and the public. Thus, hearing judge erred in recommending only a two-year suspension; disbarment was the appropriate discipline. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[5a-f]**

Where (a) respondent had received brief actual suspensions in two prior disciplinary matters; (b) respondent's prior and current misconduct demonstrated his unwillingness or inability to conform to ethical norms; and (c) respondent's limited mitigation neither was compelling, nor predominated over significant aggravation, evidence presented no adequate reason to depart from standard making disbarment appropriate discipline after two priors involving actual suspension. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511. **[12a-c]**

In analyzing standards, Review Department applies three-step analysis: first, determining which standard specifies the most severe sanction for the misconduct at issue; second, analyzing whether an exception exists; and third, determining and explaining whether there is any reason to depart from the presumptive discipline prescribed by the standard. Where respondent had two prior records of discipline, including one actual suspension; respondent's conduct demonstrated unwillingness or inability to conform to ethical responsibilities and disrespect for legal system, and respondent failed to show compelling mitigation or any reason to depart from presumptive discipline under standard 1.8, disbarment was appropriate under this analysis. *In the Matter of Carver* (Review Dept. 2016)5 Cal. State Bar Ct. Rptr. 427. **[4a-d]**

802.10 Application of Standards – Part A – Standard 1.1 (Purposes and Scope of Standards)

In the Matter of Edward Shkolnikov (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852.

Standards for Attorney Sanctions for Professional Misconduct do not apply to non-disciplinary dispositions such as admonitions. As Review Department ordered admonition, consideration of aggravating and mitigating circumstances was not required. However, analysis of aggravating and mitigating

circumstances aided court in determining that deviation from standard was warranted. Although standard provided for actual suspension or disbarment, under case law and rule 5.126 of Rules of Procedure of State Bar, admonition was appropriate due to compelling mitigation and lack of aggravating circumstances. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[4a-d]**

802.20 Application of Standards—Standard 1.2 (Definitions)

In the Matter of Respondent BB (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835.

802.21 Application of Standards—Standard 1.2 (Definitions)—Prior record of discipline

Under rule 5.106(D) of Rules of Procedure, prior record of discipline was properly considered for purposes of aggravation and level of discipline after respondent's culpability was established. Hearing judge therefore properly denied respondent's request to strike evidence of prior discipline record pursuant to rule 1260 of the State Bar Court Rules of Practice. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[5a, b]**

Where misconduct underlying present proceeding occurred before charges were filed in respondent's other two disciplinary proceedings, Review Department afforded less weight to aggravating force of respondent's discipline history. Prior, not subsequent, discipline is considered indicative of recidivist attorney's inability to conform conduct to ethical norms. Under such circumstances, Review Department considered totality of respondent's misconduct to determine appropriate aggravating weight. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[6a, b]**

For purposes of analyzing respondent's prior record as aggravation, date OCTC filed notice of disciplinary charges in prior disciplinary proceeding is most relevant. As of that date, respondent is put on notice that charged conduct is disciplinable. Accordingly, where respondent committed additional misconduct after filing of notice in prior proceeding, hearing judge erred in giving diminished weight to prior discipline because it overlapped with present misconduct. Rather, respondent's current misconduct was significantly aggravated by prior records demonstrating continuing unwillingness or inability to conform conduct to ethical norms, especially where prior and present misconduct both involved unauthorized practice of Saw and repeated violations of sanctions orders. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[12a-c]**

Where respondent continued to commit misconduct of same nature after stipulating to discipline in prior matter, prior discipline warranted significant aggravating weight even though some of current and prior misconduct overlapped. *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437. **[5]**

Under rule 5.106(A), hearing judge should have considered previous disciplinary order as a prior record of discipline even though it was not yet final. *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct Rptr 427. **[3]**

802.29 Application of Standards—Standard 1.2— Other Definitions

In the Matter of Edward Shkolnikov (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852

802.50 Application of Standards — General Issues — Standard 1.4 (Conditions Attached to Sanctions)

Where respondent was culpable of disobeying court orders by failing to pay monetary sanctions, payment of the sanctions was imposed as condition of respondent's disciplinary probation. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[7]**

802.61 Application of Standards — General Issues — Standard 1.7(a) — Most severe applicable sanction to be used

Where respondent pursued unjust and frivolous actions in two superior court matters; pursued same arguments in state court actions; appealed both state court actions to appellate court, California Supreme

Court, and United States' Supreme Court; received significant sanctions in those actions but had not paid any money towards sanctions; repeated failed arguments in two federal lawsuits (both dismissed as improper collateral attacks on state court decisions); appealed both federal decisions to Ninth Circuit (where second action remained pending); appealed second federal lawsuit after Hearing Department's decision recommended his disbarment; and besides maintaining multiple unjust actions, respondent failed to obey four court orders, report judicial sanctions, and threatened charges to gain advantage in civil lawsuit, Review Department concluded respondent's misconduct serious, repetitive, and ongoing for over several years and held misconduct demonstrated pattern of wrongdoing and therefore appropriate under standard 2.9 to recommended disbarment. However, even if pattern of wrongdoing not found, disbarment would be appropriate discipline to recommend under standard 1.7(b), due to respondent's multiple instances of serious misconduct combined with several substantial aggravating factors that outweighed nominal mitigation. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[12a-f]**

In the Matter of Jones (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873.

Where respondent committed violation involving moral turpitude by misrepresenting to client that client's case settled; misled client to believe respondent was still working on case when case was actually dismissed; case's dismissal resulted from respondent's failure to perform competently by failing to serve defendant in client's case for nearly three years; respondent improperly withdrew from employment in another client matter by when respondent stopped providing services and then misled clients to believe respondent was working on clients' case, most severe applicable disciplinary standard and case law provided that respondent be actually suspended. Degree of recommended discipline, however, was informed by respondent's serious misconduct in two client matters; harm caused to both clients, including dismissal of clients' cases; and fact all misconduct related to respondent's practice of law. Based on review of case law, standards, and aggravation and mitigation, Review Department concluded six-month actual suspension was appropriate and necessary for protection of public, courts, and legal profession and would emphasize to respondent importance of ethical duties to clients. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[11a-c]**

In analyzing applicable standards, State Bar Court first determines which standard specifies most severe sanction for misconduct. Where respondent was charged with two counts of mishandling client funds, and hearing judge found respondent not culpable on those counts but Review Department reversed that finding, Review Department applied most severe standard applicable to those charges, which provided for greater minimum actual suspension than recommended by hearing judge. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[9a, b]**

Purpose of disciplinary standard calling for greater discipline in second case is to address recidivist misconduct. Nature of misconduct in second case need not be more serious than in prior case in order to warrant increased discipline. Where respondent's multiple acts of misconduct in second case significantly harmed client, and occurred when respondent should have been aware of ethical duties because prior disciplinary proceeding had been initiated when misconduct in second case occurred, nothing in record warranted departure from standard requiring greater discipline for subsequent misconduct, even though misconduct in second case was less serious. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[7]**

802.62 Application of Standards – Standard 1.7 – Effect of aggravation on appropriate sanction

Where respondent pursued unjust and frivolous actions in two superior court matters; pursued same arguments in state court actions; appealed both state court actions to appellate court, California Supreme Court, and United States' Supreme Court; received significant sanctions in those actions but had not paid any money towards sanctions; repeated failed arguments in two federal lawsuits (both dismissed as improper collateral attacks on state court decisions); appealed both federal decisions to Ninth Circuit (where second action remained pending); appealed second federal lawsuit after Hearing Department's decision recommended his disbarment; and besides maintaining multiple unjust actions, respondent failed to obey four court orders, report judicial sanctions, and threatened charges to gain advantage in civil lawsuit, Review Department concluded respondent's misconduct serious, repetitive, and ongoing for over several years and held misconduct demonstrated pattern of wrongdoing and therefore appropriate under standard 2.9 to

recommended disbarment. However, even if pattern of wrongdoing not found, disbarment would be appropriate discipline to recommend under standard 1.7(b), due to respondent's multiple instances of serious misconduct combined with several substantial aggravating factors that outweighed nominal mitigation. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[12a-f]**

Where respondent committed violation involving moral turpitude by misrepresenting to client that client's case settled; misled client to believe respondent was still working on case when case was actually dismissed; case's dismissal resulted from respondent's failure to perform competently by failing to serve defendant in client's case for nearly three years; respondent improperly withdrew from employment in another client matter by when respondent stopped providing services and then misled clients to believe respondent was working on clients' case, most severe applicable disciplinary standard and case law provided that respondent be actually suspended. Degree of recommended discipline, however, was informed by respondent's serious misconduct in two client matters; harm caused to both clients, including dismissal of clients' cases; and fact all misconduct related to respondent's practice of law. Based on review of case law, standards, and aggravation and mitigation, Review Department concluded six-month actual suspension was appropriate and necessary for protection of public, courts, and legal profession and would emphasize to respondent importance of ethical duties to clients. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[11a-c]**

802.63 Application of Standards – Standard 1.7 – Effect of mitigation on appropriate sanction

Under standard 1.7(c), lesser sanction appropriate if misconduct minor; little or no injury occurred to client, public, legal system, or profession; and attorney willing and able to conform to ethical responsibilities in future. Where respondent stipulated to misconduct before one judge and immediately apologized for disrespectful comments which judge appeared to accept, and misconduct before another judge was very brief and resulted in no appreciable injury to client, public, legal system, or profession, Review Department concluded both incidents were "minor misconduct" under standard 1.7(c). Where respondent established rehabilitation by acknowledgement that respondent would act differently in future which indicated respondent willing and able to conform to ethical responsibilities in future, Review Department concluded, given circumstances, discipline unnecessary and would be punitive considering compelling mitigation, lack of aggravation, narrow extent of respondent's misconduct, and lack of consequential harm. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[12]**

Disciplinary proceeding may be resolved by admonition if (1) it does not involve Client Security Fund (CSF) matter or serious offense; (2) violation either was not intentional or occurred under mitigating circumstances; and (3) no significant harm resulted. Where respondent's misconduct did not involve CSF matter; was not "serious offense" as defined by rule 5.126(B); both incidents of misconduct occurred under mitigating circumstances under standard 1.6 and other unique circumstances considered mitigating; and respondent acknowledged wrongdoing and demonstrated future misconduct unlikely to recur, admonition was appropriate. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835.**[13a-c]**

Where applicable standard provided for presumed discipline of three-month actual suspension for commingling, but respondent's misconduct was minor and aberrational; there were multiple mitigating circumstances, including 15-year discipline-free record, no client harm or risk of harm, good character, and cooperation, candor, and honesty; mitigating circumstances clearly outweighed one aggravating circumstance of multiple acts; and respondent demonstrated ability to conform to ethical responsibilities in future, public reproval with conditions of State Bar Ethics School and Client Trust Accounting School was appropriate discipline under standard providing for lesser discipline under such circumstances. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[13a-d]**

Where respondent, as trustee, borrowed money from client's trust; loan was authorized by trust but respondent did not comply with rule 3-300 and breached fiduciary duty under Probate Code; respondent's misconduct was serious but aberrational, involving only one client matter; mitigation was considerable, and Review Department found no aggravation or moral turpitude, respondent's misconduct warranted actual suspension, but not disbarment. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[15a, b]**

802.64 Application of Standards — Standard 1.7 (Determination of Appropriate Sanctions) — Limits on effect of mitigating circumstances

Where respondent established substantial mitigation, and Office of Chief Trial Counsel sought only stayed suspension, Review Department nonetheless imposed 30-day actual suspension, because applicable Standard provided for actual suspension or disbarment; mitigation was not sufficient to justify deviation from Standard; respondent's misconduct in violating five separate court orders was serious, not minor; and respondent had not yet provided proof of payment of court-ordered monetary sanctions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[6a-d]**

802.69 Application of Standards — Determination of Appropriate Sanctions — Generally/Other Application of Standards — Standard 2.12(a) — Applied–actual suspension — Violation of Bus. & Prof. Code § 6068(a) through (h)

Where respondent misrepresented case settled when it was actually dismissed, respondent's failure to inform client about dismissal was factually joined with misrepresentation respondent was working on case and getting client settlement money. Review Department therefore treated moral turpitude violation and violation of failing to inform client of significant developments as single offense involving moral turpitude for discipline purposes. No additional disciplinary weight was given to Business and Professions Code section 6068(m) violation because respondent's misconduct underlying section 6068(m) charge was factually same as misconduct underlying moral turpitude charge. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[2a, b]**

Where respondent committed violation involving moral turpitude by misrepresenting to client that client's case settled; misled client to believe respondent was still working on case when case was actually dismissed; case's dismissal resulted from respondent's failure to perform competently by failing to serve defendant in client's case for nearly three years; respondent improperly withdrew from employment in another client matter by when respondent stopped providing services and then misled clients to believe respondent was working on clients' case, most severe applicable disciplinary standard and case law provided that respondent be actually suspended. Degree of recommended discipline, however, was informed by respondent's serious misconduct in two client matters; harm caused to both clients, including dismissal of clients' cases; and fact all misconduct related to respondent's practice of law. Based on review of case law, standards, and aggravation and mitigation, Review Department concluded six-month actual suspension was appropriate and necessary for protection of public, courts, and legal profession and would emphasize to respondent importance of ethical duties to clients. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[11a-c]**

Prosecutors have an elevated standard of candor and impartiality as compared to other attorneys. They must be zealous in their representation, but not at the cost of justice. Where respondent lost sight of her prosecutorial duty to shield against injustice, in failing to disclose evidence to defense counsel despite repeated requests, her misconduct was serious, and her actions fell substantially below the standards required of a prosecutor. Her conduct warranted more than the minimum 30-day suspension described in the applicable standard, but the hearing judge's recommendation of a one-year actual suspension with a proof of rehabilitation requirement was not necessary. A six-month actual suspension was sufficient to convey to respondent the gravity and consequences of her actions. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[12a-b]**

805 Application of Standards - Part A (General Standards) –Standard 1.8 – (a) Current discipline should be greater than prior

Standard 1.8(b) does not consider the remoteness of any prior discipline. Remoteness is only considered under standard 1.8(a) where there is single prior record of discipline. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[21]**

805.10 Application of Standards—Standard 1.8(a) (current discipline greater than prior)—Applied

Where respondent was convicted of misdemeanor involving moral turpitude; lacked candor, including misconduct during disciplinary proceedings; had prior discipline record resulting in 30-day period of actual suspension (which was given diminished weight as that misconduct occurred after misconduct in current disciplinary matter); and aggravation equaled mitigation, based on totality of facts and comparing it to other

cases, Review Department concluded six-month actual suspension was minimum discipline necessary to protect public, courts, and legal profession. Review Department concerned that respondent's prior discipline, which involved nearly 70 instances of filing false pleadings, combined with respondent's lack of insight and failure to accept responsibility for dishonesty in current disciplinary matter, showed possibilities of future recidivism. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[13a, b]**

California Rules of Court, rule 9.20 provides that willful violation is cause for disbarment or suspension. Discipline less than disbarment has typically been imposed for rule 9.20 violations where attorney demonstrated good faith, made unsuccessful attempts to file compliance declaration, proved significant mitigation with little aggravation, or presented other extenuating circumstances. Where respondent failed to comply with notice requirements of rule 9.20; respondent's rule 9.20 compliance declaration contained false statements; respondent violated court orders in both his past and present disciplinary cases; and there was lack of compelling mitigation, respondent's attempt to comply with rule 9.20 and mitigation for extraordinary good character and cooperation made disbarment unduly punitive, and Review Department concluded appropriate progressive discipline was two years' actual suspension continuing until respondent provided proof of rehabilitation and fitness to practice law pursuant to standard 1.2(c)(1) to impress on respondent the seriousness of misconduct and consequences for failing to follow ethical duties as attorney. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[11a-e]**

Under rule 9.20(d) of the California Rules of Court, an attorney may be suspended or disbarred for a willful failure to comply with the provisions of the rule. In general, a violation of rule 9.20 is a serious ethical breach for which disbarment may be appropriate. Nonetheless, each disciplinary case must be decided on its own facts, and discipline less than disbarment has been imposed in rule 9.20 cases where the attorney demonstrated attempts to comply with the rule, significant mitigation, or little aggravation. Where respondent's misconduct was diminished by extreme emotional difficulties; respondent made efforts to comply with his disciplinary obligations and eventually complied with his probation conditions; respondent arranged for all his clients to receive actual, albeit deficient, notice of his suspension; respondent participated in disciplinary proceedings, admitted facts establishing culpability, and proved he had recovered from emotional problems that led to misconduct; there was no evidence of client harm; and respondent's only prior discipline was a 90-day actual suspension, a one-year actual suspension rather than disbarment was appropriate. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[7a-f]**

Purpose of disciplinary standard calling for greater discipline in second case is to address recidivist misconduct. Nature of misconduct in second case need not be more serious than in prior case in order to warrant increased discipline. Where respondent's multiple acts of misconduct in second case significantly harmed client, and occurred when respondent should have been aware of ethical duties because prior disciplinary proceeding had been initiated when misconduct in second case occurred, nothing in record warranted departure from standard requiring greater discipline for subsequent misconduct, even though misconduct in second case was less serious. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[7]**

Where respondent was found culpable of illegally charging and collecting advance fees in violation of Civil Code §2944.7 in two client matters, and misconduct was aggravated by prior record of discipline, significant harm to clients, failure to make restitution, and uncharged misconduct, including failure to perform services and aiding and abetting unauthorized practice of law, six-month actual suspension was warranted under standard 2.18. Standard 1.8(a) also applied, making it appropriate to impose a greater sanction than respondent's prior discipline. *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437. **[6a-d]**

806.10 Application of Standards—Part A (General Standards) – Standard 1.8 – (b) Disbarment after two priors—Applied

Standard 1.8(b) provides disbarment is appropriate where attorney has two or more prior records of discipline if (1) actual suspension was ordered in any prior disciplinary matter, (2) prior and current disciplinary matters demonstrate pattern of misconduct, or (3) prior and current disciplinary matters demonstrate attorney's unwillingness or inability to conform to ethical responsibilities. Where respondent was actually suspended for one year in second disciplinary matter, and similarity of misconduct in

respondent's second prior discipline and current matter demonstrated respondent's unwillingness or inability to conform to ethical responsibilities, two criteria of standard 1.8(b) were met. However, standard 1.8(b) does not apply if most compelling mitigating circumstances clearly predominate or misconduct underlying prior discipline occurred during same time period as current misconduct. Where respondent had only limited mitigation for good character which did not clearly predominate over five serious aggravating circumstances, and misconduct in present matter occurred many years after previous misconduct, exceptions to standard 1.8 did not apply. However, disbarment is not mandatory in third disciplinary matter, even where compelling mitigating circumstances do not clearly predominate, as standard 1.8(b) is not applied reflexively, but with eye to nature and extent of prior record. Where respondent's past discipline occurred in 1993 and 1997, but respondent continued to commit misconduct in present case that was similar to past wrongdoing, committed multiple serious violations, was put on notice in second discipline of importance of handling client trust account with care but the failed to follow client trust account rules, and demonstrated indifference and failed to acknowledge wrongfulness of misconduct, given nature and chronology of respondent's violations, Review Department found no reason to depart from presumptive discipline of disbarment under standard 1.8(b) and concluded public, courts, and legal profession best protected if respondent disbarred. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[20a-e]**

Standard 1.8(b) does not consider the remoteness of any prior discipline. Remoteness is only considered under standard 1.8(a) where there is single prior record of discipline. *In the Matter of Rubin* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 797. **[21]**

Willful violation of rule 9.20 is considered serious ethical offense for which disbarment is generally appropriate. Standard 1.8(b) provides that disbarment is appropriate where respondent has two or more prior records of discipline if: (1) actual suspension was ordered in any prior disciplinary matter; (2) prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) prior and current disciplinary matters demonstrate respondent's unwillingness or inability to conform to ethical responsibilities. Where respondent who violated rule 9.20 had three prior records of discipline, including one-year actual suspension, and had repeatedly failed to comply with disciplinary probation conditions, and exceptions to standard 1.8(b) were not applicable, hearing judge erred in failing to analyze applicability of standard 1.8(b). Where no reasons existed to depart from discipline called for by standard 1.8(b), Review Department recommended disbarment to adequately ensure public protection. *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[8a-f]**

Where respondent repeatedly practiced law while suspended, despite having stipulated to suspension for the same misconduct in earlier disciplinary proceeding, respondent's prior and current misconduct established respondent's unwillingness or inability to conform to ethical norms, and disbarment was necessary to prevent future misconduct. Where disbarment or actual suspension was presumed sanction for respondent's current misconduct (act of moral turpitude and practicing while suspended), and respondent had two or more prior records of discipline including actual suspension, record disclosed no reason to deviate from Standards calling for respondent's disbarment. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[9a-e]**

When a respondent has two or more prior records of discipline, and an actual suspension was ordered in any of them, or the prior and current matters demonstrate either a pattern of misconduct or an unwillingness or inability to conform to ethical norms, disbarment is appropriate. Deviation from the presumptive discipline of disbarment must be based on clearly articulate reasons. Discipline short of disbarment is appropriate only if the most compelling mitigating circumstances clearly predominate, or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. Where respondent had two prior actual suspensions; the misconduct in his third disciplinary matter was similar to that in his first, showing his unwillingness or inability to fulfill his ethical duties; respondent violated his probation; and he did not present compelling mitigation, further suspension and probation would not prevent him from committing future misconduct that would endanger the profession and the public. Thus, hearing judge erred in recommending only a two-year suspension; disbarment was the appropriate discipline. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[5a-f]**

Where (a) respondent had received brief actual suspensions in two prior disciplinary matters; (b) respondent's prior and current misconduct demonstrated his unwillingness or inability to conform to ethical norms; and (c) respondent's limited mitigation neither was compelling, nor predominated over significant aggravation, evidence presented no adequate reason to depart from standard making disbarment appropriate discipline after two priors involving actual suspension. *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511. **[12a-c]**

Where (a) respondent received 60-day actual suspension in first prior disciplinary matter and nine-month suspension in second prior disciplinary matter; (b) respondent's past and current misconduct demonstrated his unwillingness or inability to fulfill his ethical responsibilities; and (c) respondent's nominal mitigation was not compelling, nor did it predominate over the significant aggravation of respondent's two prior discipline records and his multiple acts of misconduct, disbarment was appropriate under standard 1.8(b). *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[15a, b]**

In analyzing standards, Review Department applies three-step analysis: first, determining which standard specifies the most severe sanction for the misconduct at issue; second, analyzing whether an exception exists; and third, determining and explaining whether there is any reason to depart from the presumptive discipline prescribed by the standard. Where respondent had two prior records of discipline, including one actual suspension; respondent's conduct demonstrated unwillingness or inability to conform to ethical responsibilities and disrespect for legal system, and respondent failed to show compelling mitigation or any reason to depart from presumptive discipline under standard 1.8, disbarment was appropriate under this analysis. *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427. **[4a-d]**

806.59 Application of Standards—Standard 1.8 (Effect of Prior Discipline)— (b) Disbarment after two priors—Declined to apply—Other reason

Standard 1.8(b) is intended as deterrent to recidivism, which is not at issue when present misconduct predates attorney's other discipline cases. Accordingly, where misconduct underlying present proceeding occurred before respondent's other two disciplinary proceedings, Review Department declined to apply presumptive discipline of disbarment under standard 1.8(b). *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[8]**

811.10 Application of Standards—Part B —Introductory paragraph

Where presumed sanction applicable to respondent's mishandling of client funds was three months actual suspension, and mitigating circumstances did not sufficiently outweigh aggravating circumstance to justify deviation from standard, Review Department recommended 90-day actual suspension. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[10]**

822.10 Application of Standards —Standard 2.1 Sanctions for Misappropriation—Applied—Disbarment (standard 2.1(a))

Standard 2.1(a), Standards for Attorney Sanctions for Professional Misconduct, provides for disbarment for intentional misappropriation of entrusted funds. Disbarment may be avoided if amount misappropriated is "insignificantly small" or "sufficiently compelling mitigating circumstances clearly predominate," but where respondent misappropriated $175,000 – a very significant amount of money – and there were no compelling mitigating circumstances, those conditions were not applicable. Furthermore, no reason existed to depart from discipline in standard 2.1(a) where respondent (1) failed to deposit $175,000 in client funds into client trust account (CTA), instead depositing portion of money in business account where respondent used money for personal expenses without authority; (2) failed to keep $175,000 in trust as respondent was required to do; (3) respondent was culpable of three moral turpitude violations for misrepresentations to non-client business, court and opposing counsel in litigation, and to Office of Chief Trial Counsel (OCTC); (4) in trying to cover up mistakes by opening up CTA to disburse funds, respondent wrote checks when there were insufficient funds to cover the checks and two checks were returned; (5) attempted to shift blame which demonstrated failure to take responsibility for actions; (6) minimized behavior; (7) failed to appreciate fiduciary duties to client and non-client business; (8) defended actions by claiming money was returned, despite clear precedent that attorney who returned misappropriated funds is still culpable of misappropriation; (9) prevalent aspect of disciplinary proceeding was respondent's dishonesty, and respondent demonstrated

indifference regarding misconduct which demonstrated respondent unfit to practice law, disbarment was appropriate and necessary to protect public, courts, and legal profession. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[21a-e]**

822.59 Application of Standards – Standard 2.1 – Sanctions for Misappropriation -- Declined to apply – sanction less than presumed discipline imposed – Other reason

In the Matter of Jones (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873.

824.10 Application of Standards —Standard 2.2(a) —Commingling/Trust Account Violation Applied

Where presumed sanction applicable to respondent's mishandling of client funds was three months actual suspension, and mitigating circumstances did not sufficiently outweigh aggravating circumstance to justify deviation from standard, Review Department recommended 90-day actual suspension. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[10]**

In analyzing applicable standards, State Bar Court first determines which standard specifies most severe sanction for misconduct. Where respondent was charged with two counts of mishandling client funds, and hearing judge found respondent not culpable on those counts but Review Department reversed that finding, Review Department applied most severe standard applicable to those charges, which provided for greater minimum actual suspension than recommended by hearing judge. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[9a, b]**

824.54 Application of Standards – Part B – Standard 2.2(a) – Declined to apply – lesser sanction imposed

Where applicable standard provided for presumed discipline of three-month actual suspension for commingling, but respondent's misconduct was minor and aberrational; there were multiple mitigating circumstances, including 15-year discipline-free record, no client harm or risk of harm, good character, and cooperation, candor, and honesty; mitigating circumstances clearly outweighed one aggravating circumstance of multiple acts; and respondent demonstrated ability to conform to ethical responsibilities in future, public reproval with conditions of State Bar Ethics School and Client Trust Accounting School was appropriate discipline under standard providing for lesser discipline under such circumstances. *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753. **[13a-d]**

829.51 Application of Standards—Standard 2.9 (Frivolous or Dilatory Litigation) – Applied -- Disbarment – Significant harm to individual

Where respondent pursued unjust and frivolous actions in two superior court matters; pursued same arguments in state court actions; appealed both state court actions to appellate court, California Supreme Court, and United States' Supreme Court; received significant sanctions in those actions but had not paid any money towards sanctions; repeated failed arguments in two federal lawsuits (both dismissed as improper collateral attacks on state court decisions); appealed both federal decisions to Ninth Circuit (where second action remained pending); appealed second federal lawsuit after Hearing Department's decision recommended his disbarment; and besides maintaining multiple unjust actions, respondent failed to obey four court orders, report judicial sanctions, and threatened charges to gain advantage in civil lawsuit, Review Department concluded respondent's misconduct serious, repetitive, and ongoing for over several years and held misconduct demonstrated pattern of wrongdoing and therefore appropriate under standard 2.9 to recommended disbarment. However, even if pattern of wrongdoing not found, disbarment would be appropriate discipline to recommend under standard 1.7(b), due to respondent's multiple instances of serious misconduct combined with several substantial aggravating factors that outweighed nominal mitigation. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[12a-f]**

829.52 Application of Standards— Standard 2.9 (Frivolous or Dilatory Litigation) —Applied— Disbarment – Significant harm to administration of justice

Where respondent pursued unjust and frivolous actions in two superior court matters; pursued same arguments in state court actions; appealed both state court actions to appellate court, California Supreme Court, and United States' Supreme Court; received significant sanctions in those actions but had not paid any money towards sanctions; repeated failed arguments in two federal lawsuits (both dismissed as improper collateral attacks on state court decisions); appealed both federal decisions to Ninth Circuit (where second action remained pending); appealed second federal lawsuit after Hearing Department's decision

recommended his disbarment; and besides maintaining multiple unjust actions, respondent failed to obey four court orders, report judicial sanctions, and threatened charges to gain advantage in civil lawsuit, Review Department concluded respondent's misconduct serious, repetitive, and ongoing for over several years and held misconduct demonstrated pattern of wrongdoing and therefore appropriate under standard 2.9 to recommended disbarment. However, even if pattern of wrongdoing not found, disbarment would be appropriate discipline to recommend under standard 1.7(b), due to respondent's multiple instances of serious misconduct combined with several substantial aggravating factors that outweighed nominal mitigation. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[12a-f]**

829.53 Application of Standards— Standard 2.9 (Frivolous or Dilatory Litigation) —Applied— Disbarment – Pattern of misconduct

Where respondent pursued unjust and frivolous actions in two superior court matters; pursued same arguments in state court actions; appealed both state court actions to appellate court, California Supreme Court, and United States' Supreme Court; received significant sanctions in those actions but had not paid any money towards sanctions; repeated failed arguments in two federal lawsuits (both dismissed as improper collateral attacks on state court decisions); appealed both federal decisions to Ninth Circuit (where second action remained pending); appealed second federal lawsuit after Hearing Department's decision recommended his disbarment; and besides maintaining multiple unjust actions, respondent failed to obey four court orders, report judicial sanctions, and threatened charges to gain advantage in civil lawsuit, Review Department concluded respondent's misconduct serious, repetitive, and ongoing for over several years and held misconduct demonstrated pattern of wrongdoing and therefore appropriate under standard 2.9 to recommended disbarment. However, even if pattern of wrongdoing not found, disbarment would be appropriate discipline to recommend under standard 1.7(b), due to respondent's multiple instances of serious misconduct combined with several substantial aggravating factors that outweighed nominal mitigation. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[12a-f]**

829.54 Application of Standards— Standard 2.9 (Frivolous or Dilatory Litigation) —Applied— Disbarment – Coupled with other misconduct

Where respondent pursued unjust and frivolous actions in two superior court matters; pursued same arguments in state court actions; appealed both state court actions to appellate court, California Supreme Court, and United States' Supreme Court; received significant sanctions in those actions but had not paid any money towards sanctions; repeated failed arguments in two federal lawsuits (both dismissed as improper collateral attacks on state court decisions); appealed both federal decisions to Ninth Circuit (where second action remained pending); appealed second federal lawsuit after Hearing Department's decision recommended his disbarment; and besides maintaining multiple unjust actions, respondent failed to obey four court orders, report judicial sanctions, and threatened charges to gain advantage in civil lawsuit, Review Department concluded respondent's misconduct serious, repetitive, and ongoing for over several years and held misconduct demonstrated pattern of wrongdoing and therefore appropriate under standard 2.9 to recommended disbarment. However, even if pattern of wrongdoing not found, disbarment would be appropriate discipline to recommend under standard 1.7(b), due to respondent's multiple instances of serious misconduct combined with several substantial aggravating factors that outweighed nominal mitigation. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[12a-f]**

829.55 Application of Standards— Standard 2.9 (Frivolous or Dilatory Litigation) —Applied— Disbarment – Other aggravating factors

Where respondent pursued unjust and frivolous actions in two superior court matters; pursued same arguments in state court actions; appealed both state court actions to appellate court, California Supreme Court, and United States' Supreme Court; received significant sanctions in those actions but had not paid any money towards sanctions; repeated failed arguments in two federal lawsuits (both dismissed as improper collateral attacks on state court decisions); appealed both federal decisions to Ninth Circuit (where second action remained pending); appealed second federal lawsuit after Hearing Department's decision recommended his disbarment; and besides maintaining multiple unjust actions, respondent failed to obey four court orders, report judicial sanctions, and threatened charges to gain advantage in civil lawsuit, Review Department concluded respondent's misconduct serious, repetitive, and ongoing for over several years and held misconduct demonstrated pattern of wrongdoing and therefore appropriate under standard 2.9 to recommended disbarment. However, even if pattern of wrongdoing not found, disbarment would be appropriate discipline to recommend under standard 1.7(b), due to respondent's multiple instances of serious

misconduct combined with several substantial aggravating factors that outweighed nominal mitigation. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[12a-f]**

829.61 Application of Standards – Part B (Sanctions for specific misconduct) – Standard 2.9 – Applied – Stayed suspension or reproval – Harm not significant

Where disciplinary standard 2.9(b) provided for discipline ranging from reproval to suspension for respondent's filing of frivolous litigation which did not show proof of significant harm to individual or administration of justice; mitigating circumstances clearly predominated, as no aggravating circumstances were found; and respondent's misconduct was less serious and more mitigated than comparable case where 30-day actual suspension ordered, Review Department affirmed hearing judge and ordered respondent publicly reproved. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[5a-d]**

829.62 Application of Standards – Part B (Sanctions for specific misconduct) – Standard 2.9 – Applied – Stayed suspension or reproval – Mitigating factors

Where disciplinary standard 2.9(b) provided for discipline ranging from reproval to suspension for respondent's filing of frivolous litigation which did not show proof of significant harm to individual or administration of justice; mitigating circumstances clearly predominated, as no aggravating circumstances were found; and respondent's misconduct was less serious and more mitigated than comparable case where 30-day actual suspension ordered, Review Department affirmed hearing judge and ordered respondent publicly reproved. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[5a-d]**

829.69 Application of Standards – Part B (Sanctions for specific misconduct) – Standard 2.9 – Applied – Stayed suspension or reproval – Other reason

Where disciplinary standard 2.9(b) provided for discipline ranging from reproval to suspension for respondent's filing of frivolous litigation which did not show proof of significant harm to individual or administration of justice; mitigating circumstances clearly predominated, as no aggravating circumstances were found; and respondent's misconduct was less serious and more mitigated than comparable case where 30-day actual suspension ordered, Review Department affirmed hearing judge and ordered respondent publicly reproved. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[5a-d]**

831.20 Application of Standards—Standard 2.11 (Moral Turpitude, Fraud, etc.)—Applied—Disbarment Magnitude of misconduct great

Where charges against respondent did not involve individual client matters, but rather extensive, nationwide illegal scheme to sell attorney services while legal work was done by non-attorneys; respondent continued to mislead public even after state and federal agencies informed him his loan modification scheme was fraudulent; and respondent displayed extreme inability to recognize wrongfulness of his actions and threatened State Bar employees, respondent's conduct warranted discipline beyond that recommended in typical loan modification cases. Given these facts, respondent would not be deterred from future wrongdoing merely by suspension, and disbarment was necessary to protect public, courts, and legal profession. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[17a-c]**

Where respondent engaged in serious misconduct for over seven years, including breach of her fiduciary duties by failing to distribute to her siblings almost any assets of estate for which she was trustee; where her conduct resulted in a substantial loss in the value of the trust corpuses; and where respondent made misrepresentations and filed frivolous appeals in attempt to retain control over trust assets, respondent's blatant disregard for her ethical duties and for court processes called for discipline at highest end of applicable range. Where record demonstrated respondent was at risk for committing future misconduct, disbarment was only discipline adequate to protect public, courts, and profession. *In the Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct Rptr. 494. **[9 a, b]**

831.40 Application of Standards – Standard 2.11 (Moral Turpitude) – Applied-Disbarment – Coupled with other misconduct

Where respondent repeatedly practiced law while suspended, despite having stipulated to suspension for the same misconduct in earlier disciplinary proceeding, respondent's prior and current misconduct established respondent's unwillingness or inability to conform to ethical norms, and disbarment was

necessary to prevent future misconduct. Where disbarment or actual suspension was presumed sanction for respondent's current misconduct (act of moral turpitude and practicing while suspended), and respondent had two or more prior records of discipline including actual suspension, record disclosed no reason to deviate from Standards calling for respondent's disbarment. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[9a-e]**

831.50 Application of Standards – Standard 2.11 (Moral Turpitude, Fraud, etc.) – Applied– Disbarment – Presence of other aggravation

Where respondent repeatedly practiced law while suspended, despite having stipulated to suspension for the same misconduct in earlier disciplinary proceeding, respondent's prior and current misconduct established respondent's unwillingness or inability to conform to ethical norms, and disbarment was necessary to prevent future misconduct. Where disbarment or actual suspension was presumed sanction for respondent's current misconduct (act of moral turpitude and practicing while suspended), and respondent had two or more prior records of discipline including actual suspension, record disclosed no reason to deviate from Standards calling for respondent's disbarment. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[9a-e]**

Where charges against respondent did not involve individual client matters, but rather extensive, nationwide illegal scheme to sell attorney services while legal work was done by non-attorneys; respondent continued to mislead public even after state and federal agencies informed him his loan modification scheme was fraudulent; and respondent displayed extreme inability to recognize wrongfulness of his actions and threatened State Bar employees, respondent's conduct warranted discipline beyond that recommended in typical loan modification cases. Given these facts, respondent would not be deterred from future wrongdoing merely by suspension, and disbarment was necessary to protect public, courts, and legal profession. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[17a-c]**

833.90 Application of Standards—Standard 2.11 (Moral Turpitude, Fraud, etc.) —Applied Suspension—Other reason

Where respondent committed violation involving moral turpitude by misrepresenting to client that client's case settled; misled client to believe respondent was still working on case when case was actually dismissed; case's dismissal resulted from respondent's failure to perform competently by failing to serve defendant in client's case for nearly three years; respondent improperly withdrew from employment in another client matter by when respondent stopped providing services and then misled clients to believe respondent was working on clients' case, most severe applicable disciplinary standard and case law provided that respondent be actually suspended. Degree of recommended discipline, however, was informed by respondent's serious misconduct in two client matters; harm caused to both clients, including dismissal of clients' cases; and fact all misconduct related to respondent's practice of law. Based on review of case law, standards, and aggravation and mitigation, Review Department concluded six-month actual suspension was appropriate and necessary for protection of public, courts, and legal profession and would emphasize to respondent importance of ethical duties to clients. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[11a-c]**

Where prosecutor intentionally committed act of moral turpitude by altering criminal defendant's statement to add false confession, resulting in dismissal of charges and thus causing significant harm to victim, public, and administration of justice, 30-day actual suspension was insufficient. To emphasize seriousness of misconduct, appropriate discipline was one-year actual suspension. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[9a, b]**

Where respondent was found culpable of acts of moral turpitude for intentionally deceiving Workers' Compensation Appeals Board, and where respondent had two prior records of discipline but standard 1.8(b) was not applied, based on totality of respondent's misconduct in her three cases that spanned more than eight years and involved repeated probation violations and two instances of moral turpitude for making misrepresentations to separate tribunals, and in light of respondent's lack of insight into the seriousness of her misconduct, appropriate discipline included three years stayed suspension, three years' probation, and

actual suspension of 18 months and until respondent establishes her rehabilitation, fitness to practice, and present learning and ability in the law. *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464. **[9a-e]**

844.19 Application of Standards – Standard 2.7– (b) Multiple matters but no habitual disregard – Applied – actual suspension – Other reason

Where attorney's failures to communicate were numerous and occurred over several years in single client matter, review department held standard 2.7(b) was most applicable standard, even though standard mentions "multiple client matters," as less severe sanction standard 2.7(c) was for violations limited in scope or time. As standard 2.7(b) provides for actual suspension for communication violations, given broad range of discipline suggested by standard, review department looked to guiding case law, focusing on communication violations, to determine appropriate discipline recommendation. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[20a, b]**

Lesser sanction was appropriate in cases of minor misconduct, where there was little or no injury to client, public, legal system, or profession, and where record demonstrates attorney was willing and had ability to conform to ethical responsibilities in future. Although attorneys have duty to communicate adequately with clients, where attorney failed to inform client of significant developments in representation for substantial time period – over six years – but continued to work to advance clients' interests, completed representation, and achieved good result for clients; attorney given substantial mitigation for no prior discipline record and good character, which markedly outweighed aggravation for multiple acts, sanction at lower end of discipline spectrum specified in standard 2.7(b) was warranted. Review department concluded 30-day actual suspension was appropriate, as it was lowest level for actual suspension for communication violations under standard 2.7(b). Recommended discipline considered seriousness of misconduct, but also accounted for attorney's admissions to culpability and commitment to doing things differently in future. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[21a-d]**

846.00 Application of Standards – Standard 2.7– (c) Violations limited in scope or time – suspension or reproval

Where attorney's failures to communicate were numerous and occurred over several years in single client matter, review department held standard 2.7(b) was most applicable standard, even though standard mentions "multiple client matters," as less severe sanction standard 2.7(c) was for violations limited in scope or time. As standard 2.7(b) provides for actual suspension for communication violations, given broad range of discipline suggested by standard, review department looked to guiding case law, focusing on communication violations, to determine appropriate discipline recommendation. *In the Matter of Isola* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911. **[20a, b]**

846.54 Application of Standards – Standard 2.7– (c) Violations limited in scope or time – suspension or reproval– Other aggravating factors

Purpose of disciplinary standard calling for greater discipline in second case is to address recidivist misconduct. Nature of misconduct in second case need not be more serious than in prior case in order to warrant increased discipline. Where respondent's multiple acts of misconduct in second case significantly harmed client, and occurred when respondent should have been aware of ethical duties because prior disciplinary proceeding had been initiated when misconduct in second case occurred, nothing in record warranted departure from standard requiring greater discipline for subsequent misconduct, even though misconduct in second case was less serious. *In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564. **[7]**

881.10 Application of Standards – Standard 2.4 – Applied–suspension

Where respondent, as trustee, borrowed money from client's trust; loan was authorized by trust but respondent did not comply with rule 3-300 and breached fiduciary duty under Probate Code; respondent's misconduct was serious but aberrational, involving only one client matter; mitigation was considerable, and Review Department found no aggravation or moral turpitude, respondent's misconduct warranted actual suspension, but not disbarment. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[15a, b]**

901.05 Application of Standards—Standard 2.18, 2.19—Applied-suspension—Violation of Business & Professions Code

Where most severe standard applicable to respondent's misconduct called for disbarment or actual suspension, and mitigation for lack of a prior disciplinary record and cooperation with State Bar was greatly outweighed by aggravation for multiple acts of wrongdoing, overreaching, uncharged misconduct, significant client harm, indifference, and failure to make restitution, respondent's request for discipline not involving actual suspension was unsupported, and hearing judge properly recommended actual suspension for one year and until respondent completed restitution to clients. In addition, Review Department recommended that respondent remain suspended until he proves rehabilitation, fitness, and learning in the law, allowing him to gain insight into his misconduct, and at the same time, protecting the public, the courts, and the legal profession. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[11a-c]**

Where respondent was found culpable of illegally charging and collecting advance fees in violation of Civil Code §2944.7 in two client matters, and misconduct was aggravated by prior record of discipline, significant harm to clients, failure to make restitution, and uncharged misconduct, including failure to perform services and aiding and abetting unauthorized practice of law, six-month actual suspension was warranted under standard 2.18. Standard 1.8(a) also applied, making it appropriate to impose a greater sanction than respondent's prior discipline. *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437. **[6a-d]**

901.10 Application of Standards – Standards 2.18, 2.10 – Applied–suspension – Gravity of offense severe

Where most severe standard applicable to respondent's misconduct called for disbarment or actual suspension, and mitigation for lack of a prior disciplinary record and cooperation with State Bar was greatly outweighed by aggravation for multiple acts of wrongdoing, overreaching, uncharged misconduct, significant client harm, indifference, and failure to make restitution, respondent's request for discipline not involving actual suspension was unsupported, and hearing judge properly recommended actual suspension for one year and until respondent completed restitution to clients. In addition, Review Department recommended that respondent remain suspended until he proves rehabilitation, fitness, and learning in the law, allowing him to gain insight into his misconduct, and at the same time, protecting the public, the courts, and the legal profession. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[11a-c]**

901.20 Application of Standards – Standards 2.18, 2.10 – Applied–suspension – Harm to victim great

Where most severe standard applicable to respondent's misconduct called for disbarment or actual suspension, and mitigation for lack of a prior disciplinary record and cooperation with State Bar was greatly outweighed by aggravation for multiple acts of wrongdoing, overreaching, uncharged misconduct, significant client harm, indifference, and failure to make restitution, respondent's request for discipline not involving actual suspension was unsupported, and hearing judge properly recommended actual suspension for one year and until respondent completed restitution to clients. In addition, Review Department recommended that respondent remain suspended until he proves rehabilitation, fitness, and learning in the law, allowing him to gain insight into his misconduct, and at the same time, protecting the public, the courts, and the legal profession. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[11a-c]**

901.40 Application of Standards – Standards 2.18, 2.10 – Applied–suspension – Other aggravating factors

Where most severe standard applicable to respondent's misconduct called for disbarment or actual suspension, and mitigation for lack of a prior disciplinary record and cooperation with State Bar was greatly outweighed by aggravation for multiple acts of wrongdoing, overreaching, uncharged misconduct, significant client harm, indifference, and failure to make restitution, respondent's request for discipline not involving actual suspension was unsupported, and hearing judge properly recommended actual suspension for one year and until respondent completed restitution to clients. In addition, Review Department recommended that respondent remain suspended until he proves rehabilitation, fitness, and learning in the law, allowing him to gain insight into his misconduct, and at the same time, protecting the public, the courts, and the legal profession. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[11a-c]**

911.10 Application of Standards – Standard 2.10 (Unauthorized Practice of Law) – (a) Practice while on disciplinary suspension – Applied – disbarment

Where respondent repeatedly practiced law while suspended, despite having stipulated to suspension for the same misconduct in earlier disciplinary proceeding, respondent's prior and current misconduct established respondent's unwillingness or inability to conform to ethical norms, and disbarment was necessary to prevent future misconduct. Where disbarment or actual suspension was presumed sanction for respondent's current misconduct (act of moral turpitude and practicing while suspended), and respondent had two or more prior records of discipline including actual suspension, record disclosed no reason to deviate from Standards calling for respondent's disbarment. *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. **[9a-e]**

913 Application of Standards—Standard 2.10(b)—Practice while inactive or on suspension for non-disciplinary reasons

Where respondent practiced law while suspended for non-payment of child support, OCTC was not required to establish that respondent knowingly committed unauthorized practice of law in order to prove respondent violated sections 6125 and 6126. It was sufficient to prove respondent's conduct was willful. Under standard 2.10(b), knowledge is simply a factor in determining degree of discipline. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448. **[3a, b]**

921.21 Application of Standards — Standard 2.12(a) — Applied–actual suspension — Violation of court order

Where respondent established substantial mitigation, and Office of Chief Trial Counsel sought only stayed suspension, Review Department nonetheless imposed 30-day actual suspension, because applicable Standard provided for actual suspension or disbarment; mitigation was not sufficient to justify deviation from Standard; respondent's misconduct in violating five separate court orders was serious, not minor; and respondent had not yet provided proof of payment of court-ordered monetary sanctions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[6a-d]**

921.23 Application of Standards – Standard 2.12(a) – Applied–actual suspension – Violation of § 6068(a)-(h)

Where respondent, as trustee, borrowed money from client's trust; loan was authorized by trust but respondent did not comply with rule 3-300 and breached fiduciary duty under Probate Code; respondent's misconduct was serious but aberrational, involving only one client matter; mitigation was considerable, and Review Department found no aggravation or moral turpitude, respondent's misconduct warranted actual suspension, but not disbarment. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[15a, b]**

921.24 Application of Standards – Standard 2.12(a) – Applied–actual suspension – Mitigating factors

Where respondent, as trustee, borrowed money from client's trust; loan was authorized by trust but respondent did not comply with rule 3-300 and breached fiduciary duty under Probate Code; respondent's misconduct was serious but aberrational, involving only one client matter; mitigation was considerable, and Review Department found no aggravation or moral turpitude, respondent's misconduct warranted actual suspension, but not disbarment. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[15a, b]**

921.52 Application of Standards – Standard 2.12(a) Violation of court order, oath, or § 6068(a), (b), (d), (e), (f) or (h), or RPC 3.4(f) – Declined to apply – lesser or no discipline – Mitigating factors

Standards for Attorney Sanctions for Professional Misconduct do not apply to non-disciplinary dispositions such as admonitions. As Review Department ordered admonition, consideration of aggravating and mitigating circumstances was not required. However, analysis of aggravating and mitigating circumstances aided court in determining that deviation from standard was warranted. Although standard provided for actual suspension or disbarment, under case law and rule 5.126 of Rules of Procedure of State Bar, admonition was appropriate due to compelling mitigation and lack of aggravating circumstances. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[4a-d]**

Under standard 1.7(c), lesser sanction appropriate if misconduct minor; little or no injury occurred to client, public, legal system, or profession; and attorney willing and able to conform to ethical responsibilities in future. Where respondent stipulated to misconduct before one judge and immediately apologized for disrespectful comments which judge appeared to accept, and misconduct before another judge was very brief and resulted in no appreciable injury to client, public, legal system, or profession, Review Department concluded both incidents were "minor misconduct" under standard 1.7(c). Where respondent established rehabilitation by acknowledgement that respondent would act differently in future which indicated respondent willing and able to conform to ethical responsibilities in future, Review Department concluded, given circumstances, discipline unnecessary and would be punitive considering compelling mitigation, lack of aggravation, narrow extent of respondent's misconduct, and lack of consequential harm. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[12]**

921.59 Application of Standards – Standard 2.12 – (a) Violation of court order, oath, or § 6068(a), (b), (d), (e), (f) or (h), or RPC 3.4(f) – Declined to apply – lesser or no discipline – Other reason

Standards for Attorney Sanctions for Professional Misconduct do not apply to non-disciplinary dispositions such as admonitions. As Review Department ordered admonition, consideration of aggravating and mitigating circumstances was not required. However, analysis of aggravating and mitigating circumstances aided court in determining that deviation from standard was warranted. Although standard provided for actual suspension or disbarment, under case law and rule 5.126 of Rules of Procedure of State Bar, admonition was appropriate due to compelling mitigation and lack of aggravating circumstances. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[4a-d]**

Under standard 1.7(c), lesser sanction appropriate if misconduct minor; little or no injury occurred to client, public, legal system, or profession; and attorney willing and able to conform to ethical responsibilities in future. Where respondent stipulated to misconduct before one judge and immediately apologized for disrespectful comments which judge appeared to accept, and misconduct before another judge was very brief and resulted in no appreciable injury to client, public, legal system, or profession, Review Department concluded both incidents were "minor misconduct" under standard 1.7(c). Where respondent established rehabilitation by acknowledgement that respondent would act differently in future which indicated respondent willing and able to conform to ethical responsibilities in future, Review Department concluded, given circumstances, discipline unnecessary and would be punitive considering compelling mitigation, lack of aggravation, narrow extent of respondent's misconduct, and lack of consequential harm. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[12]**

1010 Discipline—Disbarment

In the Matter of Thomas (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944.

In the Matter of Jones (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873.

In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Gordon (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610.

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511.

In the Matter of Schooler (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494.

In the Matter of Burke Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448.

In the Matter of Carver (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427.

1013.06 Stayed suspension – One year - Discipline Imposed

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

In the Matter of Edward Shkolnikov (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852.

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

1013.08 Discipline—Stayed Suspension—Two years

In the Matter of Nassar (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593.

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

In the Matter of Collins (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551.

In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437.

1013.09 Discipline—Stayed Suspension—Three years

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464.

1013.10 Stayed suspension – Four years

In the Matter of Khishaveh (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564.

1015.01 Actual Suspension — One month or less

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

In the Matter of Collins (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551.

1015.02 Actual suspension – 60 days

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

1015.03 Actual Suspension – Three month - Discipline Imposed

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

1015.04 Discipline—Actual Suspension—Six months

In the Matter of Edward Shkolnikov (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852.

In the Matter of Nassar (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593.

In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437

1015.06 Discipline— Actual suspension – One year

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

1015.07 Discipline—Actual Suspension—18 months

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464.

1015.09 Actual suspension-Three years

In the Matter of Khishaveh (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564.

1017.06 Discipline—Probation—One Year

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

In the Matter of Edward Shkolnikov (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852.

1017.08 Discipline—Probation—Two Years

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

In the Matter of Nassar (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593.

In the Matter of Collins (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551.

In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437.

1017.09 Discipline—Probation—Three Years

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464

1017.10 Probation—Four Years

In the Matter of Khishaveh (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564.

1021 Discipline—Restitution

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

In the Matter of Collins (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551.

In the Matter of DeClue (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437.

1024 Discipline—Ethics exam/ethics school

In the Matter of Fisher (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999.

In the Matter of Jimenez (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965.

In the Matter of Isola (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 911.

*In the Matter of Edward Shkolnikov (*Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852.

In the Matter of Caplin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768.

In the Matter of Martin (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753.

In the Matter of Khakshooy (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.

In the Matter of Lingwood (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660.

In the Matter of Nassar (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593.

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

In the Matter of Khishaveh (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564.

In the Matter of Collins (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551.

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464.

1028 Client trust accounting school

In the Matter of Martin (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753.

1030 Discipline—Standard 1.2(c)(1) Rehabilitation Requirement

In the Matter of Golden (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574.

In the Matter of Khishaveh (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564.

In the Matter of Hansen (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464.

1041 Public reproval – With conditions

In the Matter of Fisher (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999.

In the Matter of Martin (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753.

1091 Discipline – Miscellaneous Substantive Issues re Discipline – Proportionality with Other Cases

Where disciplinary standard 2.9(b) provided for discipline ranging from reproval to suspension for respondent's filing of frivolous litigation which did not show proof of significant harm to individual or administration of justice; mitigating circumstances clearly predominated, as no aggravating circumstances were found; and respondent's misconduct was less serious and more mitigated than comparable case where 30-day actual suspension ordered, Review Department affirmed hearing judge and ordered respondent publicly reproved. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[5a-d]**

Where respondent was convicted of misdemeanor involving moral turpitude; lacked candor, including misconduct during disciplinary proceedings; had prior discipline record resulting in 30-day period of actual suspension (which was given diminished weight as that misconduct occurred after misconduct in current disciplinary matter); and aggravation equaled mitigation, based on totality of facts and comparing it to other cases, Review Department concluded six-month actual suspension was minimum discipline necessary to protect public, courts, and legal profession. Review Department concerned that respondent's prior discipline, which involved nearly 70 instances of filing false pleadings, combined with respondent's lack of insight and failure to accept responsibility for dishonesty in current disciplinary matter, showed possibilities of future recidivism. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[13a, b]**

Where respondent pursued unjust and frivolous actions in two superior court matters; pursued same arguments in state court actions; appealed both state court actions to appellate court, California Supreme Court, and United States' Supreme Court; received significant sanctions in those actions but had not paid any

money towards sanctions; repeated failed arguments in two federal lawsuits (both dismissed as improper collateral attacks on state court decisions); appealed both federal decisions to Ninth Circuit (where second action remained pending); appealed second federal lawsuit after Hearing Department's decision recommended his disbarment; and besides maintaining multiple unjust actions, respondent failed to obey four court orders, report judicial sanctions, and threatened charges to gain advantage in civil lawsuit, Review Department concluded respondent's misconduct serious, repetitive, and ongoing for over several years and held misconduct demonstrated pattern of wrongdoing and therefore appropriate under standard 2.9 to recommended disbarment. However, even if pattern of wrongdoing not found, disbarment would be appropriate discipline to recommend under standard 1.7(b), due to respondent's multiple instances of serious misconduct combined with several substantial aggravating factors that outweighed nominal mitigation. *In the Matter of Thomas* (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944. **[12a-f]**

Standards for Attorney Sanctions for Professional Misconduct do not apply to non-disciplinary dispositions such as admonitions. As Review Department ordered admonition, consideration of aggravating and mitigating circumstances was not required. However, analysis of aggravating and mitigating circumstances aided court in determining that deviation from standard was warranted. Although standard provided for actual suspension or disbarment, under case law and rule 5.126 of Rules of Procedure of State Bar, admonition was appropriate due to compelling mitigation and lack of aggravating circumstances. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[4a-d]**

Where respondent committed violation involving moral turpitude by misrepresenting to client that client's case settled; misled client to believe respondent was still working on case when case was actually dismissed; case's dismissal resulted from respondent's failure to perform competently by failing to serve defendant in client's case for nearly three years; respondent improperly withdrew from employment in another client matter by when respondent stopped providing services and then misled clients to believe respondent was working on clients' case, most severe applicable disciplinary standard and case law provided that respondent be actually suspended. Degree of recommended discipline, however, was informed by respondent's serious misconduct in two client matters; harm caused to both clients, including dismissal of clients' cases; and fact all misconduct related to respondent's practice of law. Based on review of case law, standards, and aggravation and mitigation, Review Department concluded six-month actual suspension was appropriate and necessary for protection of public, courts, and legal profession and would emphasize to respondent importance of ethical duties to clients. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[11a-c]**

Where charges against respondent did not involve individual client matters, but rather extensive, nationwide illegal scheme to sell attorney services while legal work was done by non-attorneys; respondent continued to mislead public even after state and federal agencies informed him his loan modification scheme was fraudulent; and respondent displayed extreme inability to recognize wrongfulness of his actions and threatened State Bar employees, respondent's conduct warranted discipline beyond that recommended in typical loan modification cases. Given these facts, respondent would not be deterred from future wrongdoing merely by suspension, and disbarment was necessary to protect public, courts, and legal profession. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610. **[17a-c]**

1092 Miscellaneous Substantive Issues re Discipline—Excessiveness of Discipline

Standard 2.1(a), Standards for Attorney Sanctions for Professional Misconduct, provides for disbarment for intentional misappropriation of entrusted funds. Disbarment may be avoided if amount misappropriated is "insignificantly small" or "sufficiently compelling mitigating circumstances clearly predominate," but where respondent misappropriated $175,000 – a very significant amount of money – and there were no compelling mitigating circumstances, those conditions were not applicable. Furthermore, no reason existed to depart from discipline in standard 2.1(a) where respondent (1) failed to deposit $175,000 in client funds into client trust account (CTA), instead depositing portion of money in business account where respondent used money for personal expenses without authority; (2) failed to keep $175,000 in trust as respondent was required to do; (3) respondent was culpable of three moral turpitude violations for misrepresentations to non-client business, court and opposing counsel in litigation, and to Office of Chief Trial Counsel (OCTC); (4) in trying to cover up mistakes by opening up CTA to disburse funds, respondent wrote checks when there were insufficient funds to cover the checks and two checks were returned; (5) attempted to shift blame which

demonstrated failure to take responsibility for actions; (6) minimized behavior; (7) failed to appreciate fiduciary duties to client and non-client business; (8) defended actions by claiming money was returned, despite clear precedent that attorney who returned misappropriated funds is still culpable of misappropriation; (9) prevalent aspect of disciplinary proceeding was respondent's dishonesty, and respondent demonstrated indifference regarding misconduct which demonstrated respondent unfit to practice law, disbarment was appropriate and necessary to protect public, courts, and legal profession. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[21a-e]**

Prosecutors have an elevated standard of candor and impartiality as compared to other attorneys. They must be zealous in their representation, but not at the cost of justice. Where respondent lost sight of her prosecutorial duty to shield against injustice, in failing to disclose evidence to defense counsel despite repeated requests, her misconduct was serious, and her actions fell substantially below the standards required of a prosecutor. Her conduct warranted more than the minimum 30-day suspension described in the applicable standard, but the hearing judge's recommendation of a one-year actual suspension with a proof of rehabilitation requirement was not necessary. A six-month actual suspension was sufficient to convey to respondent the gravity and consequences of her actions. *In the Matter of Nassar* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 593. **[12a-b]**

1093 Miscellaneous Substantive Issues re Discipline—Inadequacy of Discipline

Where respondent committed violation involving moral turpitude by misrepresenting to client that client's case settled; misled client to believe respondent was still working on case when case was actually dismissed; case's dismissal resulted from respondent's failure to perform competently by failing to serve defendant in client's case for nearly three years; respondent improperly withdrew from employment in another client matter by when respondent stopped providing services and then misled clients to believe respondent was working on clients' case, most severe applicable disciplinary standard and case law provided that respondent be actually suspended. Degree of recommended discipline, however, was informed by respondent's serious misconduct in two client matters; harm caused to both clients, including dismissal of clients' cases; and fact all misconduct related to respondent's practice of law. Based on review of case law, standards, and aggravation and mitigation, Review Department concluded six-month actual suspension was appropriate and necessary for protection of public, courts, and legal profession and would emphasize to respondent importance of ethical duties to clients. *In the Matter of Edward Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 **[11a-c]**

In analyzing applicable standards, State Bar Court first determines which standard specifies most severe sanction for misconduct. Where respondent was charged with two counts of mishandling client funds, and hearing judge found respondent not culpable on those counts but Review Department reversed that finding, Review Department applied most severe standard applicable to those charges, which provided for greater minimum actual suspension than recommended by hearing judge. *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681. **[9a, b]**

When a respondent has two or more prior records of discipline, and an actual suspension was ordered in any of them, or the prior and current matters demonstrate either a pattern of misconduct or an unwillingness or inability to conform to ethical norms, disbarment is appropriate. Deviation from the presumptive discipline of disbarment must be based on clearly articulate reasons. Discipline short of disbarment is appropriate only if the most compelling mitigating circumstances clearly predominate, or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. Where respondent had two prior actual suspensions; the misconduct in his third disciplinary matter was similar to that in his first, showing his unwillingness or inability to fulfill his ethical duties; respondent violated his probation; and he did not present compelling mitigation, further suspension and probation would not prevent him from committing future misconduct that would endanger the profession and the public. Thus, hearing judge erred in recommending only a two-year suspension; disbarment was the appropriate discipline. *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632. **[5a-f]**

Where prosecutor intentionally committed act of moral turpitude by altering criminal defendant's statement to add false confession, resulting in dismissal of charges and thus causing significant harm to

victim, public, and administration of justice, 30-day actual suspension was insufficient. To emphasize seriousness of misconduct, appropriate discipline was one-year actual suspension. *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479. **[9a, b]**

Where respondent established substantial mitigation, and Office of Chief Trial Counsel sought only stayed suspension, Review Department nonetheless imposed 30-day actual suspension, because applicable Standard provided for actual suspension or disbarment; mitigation was not sufficient to justify deviation from Standard; respondent's misconduct in violating five separate court orders was serious, not minor; and respondent had not yet provided proof of payment of court-ordered monetary sanctions. *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. **[6a-d]**

1094 Miscellaneous Substantive Issues re Discipline—Admonition in Lieu of Discipline

Standards for Attorney Sanctions for Professional Misconduct do not apply to non-disciplinary dispositions such as admonitions. As Review Department ordered admonition, consideration of aggravating and mitigating circumstances was not required. However, analysis of aggravating and mitigating circumstances aided court in determining that deviation from standard was warranted. Although standard provided for actual suspension or disbarment, under case law and rule 5.126 of Rules of Procedure of State Bar, admonition was appropriate due to compelling mitigation and lack of aggravating circumstances. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[4a-d]**

Disciplinary proceeding may be resolved by admonition if (1) it does not involve Client Security Fund (CSF) matter or serious offense; (2) violation either was not intentional or occurred under mitigating circumstances; and (3) no significant harm resulted. Where respondent's misconduct did not involve CSF matter; was not "serious offense" as defined by rule 5.126(B); both incidents of misconduct occurred under mitigating circumstances under standard 1.6 and other unique circumstances considered mitigating; and respondent acknowledged wrongdoing and demonstrated future misconduct unlikely to recur, admonition was appropriate. *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835. **[13a-c]**

1099 Miscellaneous Substantive Issues re Discipline—Other Miscellaneous Issues

Attorney can create fiduciary relationship with non-client when attorney receives money on behalf of non-client. Attorney must then comply with same fiduciary duties in dealing with such funds as if attorney-client relationship existed. Attorney who breached fiduciary duties that would justify discipline if there was attorney-client relationship may be disciplined for such misconduct. Where respondent agreed to hold money from non-client for lease and keep it in client trust account (CTA) until appropriate to release it to proper parties, but failed to do so, respondent violated his fiduciary duties to non-client and violated former rule 4-100(A) of Rules of Professional Conduct. But Review Department assigned no additional weight in discipline as culpability based on same facts underlying Business and Professions Code section 6106 violation. Review Department rejected respondent's argument there was no written agreement regarding $50,000 security deposit's use at time of alleged misconduct, as conduct of parties, when viewed in light of later letter agreement, was strong evidence respondent was to keep security deposit in CTA. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[9a-c]**

Business and Professions Code section 6068(a) provides it is attorney's duty to support Constitution and laws of United States and California. Escrow holder owes fiduciary duties to escrow parties and must strictly comply with parties' instructions. Where respondent agreed to act as escrow holder, deposited funds into business account, and used money to make personal, unauthorized purchases, rather than safekeeping funds, respondent violated fiduciary duties when respondent distributed money in way not contemplated by parties. Review Department held respondent culpable of violating Business and Professions Code section 6068(a) but assigned no additional disciplinary weight as respondent's breach of fiduciary duties was based on same facts underlying moral turpitude violations. *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873. **[12a,b]**

1511 Substantive Issues in Conviction Proceedings — Nature of Underlying Conviction — Driving Under the Influence

Respondent's conviction conclusively proved elements of his crime. Thus, respondent's 2019 misdemeanor conviction established he drove under influence of alcohol and had prior DUI conviction. Drunk driving convictions do not establish per se moral turpitude, but moral turpitude can be established

based on circumstances surrounding convictions. Where respondent repeatedly falsely denied to police officer consumption of alcohol and not feeling its effects, and falsely claimed driving directly home from office, Review Department concluded (1) respondent's actions did not establish moral turpitude but did amount to other misconduct warranting discipline; and (2) circumstances surrounding DUI convictions were indications of alcohol abuse problem, as respondent was again arrested for drunk driving only two years after criminal probation for first DUI ended; second drunk driving violation resulted in collision that injured two victims and caused property damage; and respondent admitted does not drive anymore so as not to risk driving under influence, which clearly implied respondent did not trust himself to make decision not to drive while impaired from drinking. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[1a-e]**

Nexus between conduct resulting in DUI convictions and practice of law established if there were indications of alcohol abuse problem connected to multiple convictions. Where respondent presented evidence that legal work had not suffered from alcohol consumption, but actions resulted in repeated criminal conduct, increasing in severity, which affected respondent's private life, respondent's problems with alcohol were enough to warrant discipline due to potential for future harm. Review Department concluded there was evidence of substance abuse problem with nexus to practice of law and discipline was appropriate to protect public from potential harm related to respondent's practice of law and to convey to respondent's seriousness of his actions. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[2]**

For purposes of attorney discipline, respondent's criminal conviction of driving under the influence of alcohol with an enhancement for an excessive blood alcohol concentration was conclusive proof that respondent committed all elements of that crime. However, it is an attorney's misconduct, not their conviction, that warrants discipline, and facts and circumstances surrounding conviction may be considered in determining whether moral turpitude was involved. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[1a, b]**

Moral turpitude consists of deficiency in any character traits necessary for law practice (such as honesty and candor) or serious breach of duty owed to another or society, or flagrant disrespect for law or societal norms that knowledge of conduct would likely undermine public confidence in and respect for legal profession. Where respondent drove under influence of excessive alcohol, which exhibited contempt for law and public safety and reflected poorly on respondent's judgment and on legal profession, and respondent lied to police and fabricated complex, detailed narrative attempting to shift blame for accident to fictitious driver whom police attempted to locate, thereby wasting law enforcement resources, facts and circumstances surrounding respondent's conviction established moral turpitude, and hearing judge erred in concluding otherwise. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[2a-d]**

Where totality of evidence supported conclusion that after automobile accident, respondent consciously and persistently fabricated complex narrative involving phony driver in order to avoid arrest, respondent could not avoid culpability for acting with moral turpitude by claiming he made "drunken misrepresentations" and did not intend to lie to police officers or recall doing so. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[3a, b]**

Standard 2.15(b) provides that actual suspension or disbarment is appropriate for misdemeanor convictions involving moral turpitude. Where facts and circumstances surrounding respondent's first misdemeanor conviction of driving under influence of alcohol with enhancement for excessive blood alcohol concentration involved moral turpitude, but no one was physically injured by respondent's actions; respondent exhibited exemplary behavior after conviction including full compliance with criminal probation terms and restitution; no aggravating factors were found; and respondent was entitled to mitigation for cooperation, good character, remorse, and restitution, discipline at lowest end of range for actual suspensions was warranted, appropriate discipline was 30 days of actual suspension coupled with one year of stayed suspension and probation. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[10a-c]**

The test for whether an attorney's felony conviction involves moral turpitude is whether the facts and circumstances surrounding the attorney's criminal conduct show either a deficiency in any character trait necessary for the practice of law, or involve such a serious breach of duty to another or society, or such

flagrant disrespect for law or societal norms, that knowledge of the attorney's conduct would likely undermine public confidence in and respect for the legal profession. Where respondent lacked candor and made disingenuous statements to law enforcement personnel, and her conduct in driving while impaired by abuse of prescription drugs showed lack of regard for her duty to society or concern for the law, the circumstances of her felony vehicular manslaughter conviction involved moral turpitude. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[1a-c]**

Respondent's conviction for felony vehicular manslaughter while intoxicated conclusively established that respondent drove while intoxicated and caused victim's death. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[2]**

Where respondent's felony vehicular manslaughter conviction, arising from driving while impaired by prescription drugs, involved moral turpitude; showed disregard for law and public safety; caused significant harm; and was accompanied by lack of candor in dealing with law enforcement, and respondent's mitigating factors were not compelling and fell far short of predominating, discipline less than presumed sanction of disbarment would fail to protect public and would undermine confidence in legal profession. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[9a-c]**

1513.10 Substantive Issues in Conviction Proceedings – Nature of Underlying Conviction – Violent Crimes – Homicide, Assault, Battery, and Related Crimes

Moral turpitude consists of deficiency in any character trait necessary for law practice, such that knowledge of attorney's conduct would likely undermine public confidence in profession. Where respondent frightened woman from massage service by pinning her to bed while naked on top of her and refusing to let her leave; got into violent altercation with woman's bodyguard; and gratuitously fired gun in residential neighborhood when he could not honestly have believed victims posed imminent danger, respondent exhibited contempt for law and disregard of safety of others. Accordingly, facts and circumstances surrounding respondent's felony convictions of assault with force likely to produce great bodily injury and discharging firearm with gross negligence demonstrated moral turpitude. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[1a-d]**

Where respondent pled guilty in criminal proceeding to willfully and unlawfully committing assault, Review Department declined to consider respondent's belated self-defense claim because it would negate elements of crime to which he pled guilty, and factual basis for plea supported hearing judge's finding that respondent's self-defense claim lacked credibility. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[4a, b]**

1517 Substantive Issues in Conviction Proceedings – Nature of Underlying Conviction – Violation of Regulatory Laws

Moral turpitude includes deficiency in any character trait necessary for practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such serious breach of duty owed to another or to society, or such flagrant disrespect for law or societal norms, that knowledge of attorney's conduct would be likely to undermine public confidence in and respect for legal profession. Attorney who accepts responsibility of fiduciary nature held to legal profession's high standards whether or not attorney acts in capacity of attorney. Where respondent, who worked as company's computer network consultant, assumed fiduciary role in company based on job responsibilities, and knowingly and without permission used position of trust in company to restrict authorized users' access to computer system, though for only brief time period, and who, when confronted refused to reset passwords so users could regain access which forced employer to hire another technology consultant to remedy issue, even though respondent eventually made restitution to company, respondent's actions demonstrated character deficiencies including lack of trustworthiness and fidelity to fiduciary duties, which evidenced moral turpitude. Furthermore, where respondent's testimony that he acted with company president's permission was contrary to his guilty plea, Review Department would not consider claims that would negate elements of crime to which respondent pled guilty. Additionally, where, due to respondent's testimony which was unsupported by record and was inconsistent, confusing, and contradicted other evidence in record, including his own admissions, Review Department affirmed hearing judge's conclusions that respondent's testimony lacked credibility and candor;

and where respondent's statements to police, superior court, and Bureau of Criminal Information and Analysis were false and done with intent to cover up and minimize criminal conduct, Review Department held respondent was culpable of moral turpitude. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[4a-f]**

1519 Substantive Issues in Conviction Proceedings – Nature of Underlying Conviction – Other Crimes

Moral turpitude consists of deficiency in any character trait necessary for law practice, such that knowledge of attorney's conduct would likely undermine public confidence in profession. Where respondent frightened woman from massage service by pinning her to bed while naked on top of her and refusing to let her leave; got into violent altercation with woman's bodyguard; and gratuitously fired gun in residential neighborhood when he could not honestly have believed victims posed imminent danger, respondent exhibited contempt for law and disregard of safety of others. Accordingly, facts and circumstances surrounding respondent's felony convictions of assault with force likely to produce great bodily injury and discharging firearm with gross negligence demonstrated moral turpitude. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[1a-d]**

1523 Substantive Issues in Conviction Proceedings — Moral Turpitude — Found Based on Facts and Circumstances

Moral turpitude includes deficiency in any character trait necessary for practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such serious breach of duty owed to another or to society, or such flagrant disrespect for law or societal norms, that knowledge of attorney's conduct would be likely to undermine public confidence in and respect for legal profession. Attorney who accepts responsibility of fiduciary nature held to legal profession's high standards whether or not attorney acts in capacity of attorney. Where respondent, who worked as company's computer network consultant, assumed fiduciary role in company based on job responsibilities, and knowingly and without permission used position of trust in company to restrict authorized users' access to computer system, though for only brief time period, and who, when confronted refused to reset passwords so users could regain access which forced employer to hire another technology consultant to remedy issue, even though respondent eventually made restitution to company, respondent's actions demonstrated character deficiencies including lack of trustworthiness and fidelity to fiduciary duties, which evidenced moral turpitude. Furthermore, where respondent's testimony that he acted with company president's permission was contrary to his guilty plea, Review Department would not consider claims that would negate elements of crime to which respondent pled guilty. Additionally, where, due to respondent's testimony which was unsupported by record and was inconsistent, confusing, and contradicted other evidence in record, including his own admissions, Review Department affirmed hearing judge's conclusions that respondent's testimony lacked credibility and candor; and where respondent's statements to police, superior court, and Bureau of Criminal Information and Analysis were false and done with intent to cover up and minimize criminal conduct, Review Department held respondent was culpable of moral turpitude. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[4a-f]**

For purposes of attorney discipline, respondent's criminal conviction of driving under the influence of alcohol with an enhancement for an excessive blood alcohol concentration was conclusive proof that respondent committed all elements of that crime. However, it is an attorney's misconduct, not their conviction, that warrants discipline, and facts and circumstances surrounding conviction may be considered in determining whether moral turpitude was involved. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[1a, b]**

Moral turpitude consists of deficiency in any character traits necessary for law practice (such as honesty and candor) or serious breach of duty owed to another or society, or flagrant disrespect for law or societal norms that knowledge of conduct would likely undermine public confidence in and respect for legal profession. Where respondent drove under influence of excessive alcohol, which exhibited contempt for law and public safety and reflected poorly on respondent's judgment and on legal profession, and respondent lied to police and fabricated complex, detailed narrative attempting to shift blame for accident to fictitious driver whom police attempted to locate, thereby wasting law enforcement resources, facts and circumstances

surrounding respondent's conviction established moral turpitude, and hearing judge erred in concluding otherwise. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[2a-d]**

Where totality of evidence supported conclusion that after automobile accident, respondent consciously and persistently fabricated complex narrative involving phony driver in order to avoid arrest, respondent could not avoid culpability for acting with moral turpitude by claiming he made "drunken misrepresentations" and did not intend to lie to police officers or recall doing so. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[3a, b]**

Standard 2.15(b) provides that actual suspension or disbarment is appropriate for misdemeanor convictions involving moral turpitude. Where facts and circumstances surrounding respondent's first misdemeanor conviction of driving under influence of alcohol with enhancement for excessive blood alcohol concentration involved moral turpitude, but no one was physically injured by respondent's actions; respondent exhibited exemplary behavior after conviction including full compliance with criminal probation terms and restitution; no aggravating factors were found; and respondent was entitled to mitigation for cooperation, good character, remorse, and restitution, discipline at lowest end of range for actual suspensions was warranted, appropriate discipline was 30 days of actual suspension coupled with one year of stayed suspension and probation. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[10a-c]**

Moral turpitude consists of deficiency in any character trait necessary for law practice, such that knowledge of attorney's conduct would likely undermine public confidence in profession. Where respondent frightened woman from massage service by pinning her to bed while naked on top of her and refusing to let her leave; got into violent altercation with woman's bodyguard; and gratuitously fired gun in residential neighborhood when he could not honestly have believed victims posed imminent danger, respondent exhibited contempt for law and disregard of safety of others. Accordingly, facts and circumstances surrounding respondent's felony convictions of assault with force likely to produce great bodily injury and discharging firearm with gross negligence demonstrated moral turpitude. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[1a-d]**

The test for whether an attorney's felony conviction involves moral turpitude is whether the facts and circumstances surrounding the attorney's criminal conduct show either a deficiency in any character trait necessary for the practice of law, or involve such a serious breach of duty to another or society, or such flagrant disrespect for law or societal norms, that knowledge of the attorney's conduct would likely undermine public confidence in and respect for the legal profession. Where respondent lacked candor and made disingenuous statements to law enforcement personnel, and her conduct in driving while impaired by abuse of prescription drugs showed lack of regard for her duty to society or concern for the law, the circumstances of her felony vehicular manslaughter conviction involved moral turpitude. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[1a-c]**

Where respondent's felony vehicular manslaughter conviction, arising from driving while impaired by prescription drugs, involved moral turpitude; showed disregard for law and public safety; caused significant harm; and was accompanied by lack of candor in dealing with law enforcement, and respondent's mitigating factors were not compelling and fell far short of predominating, discipline less than presumed sanction of disbarment would fail to protect public and would undermine confidence in legal profession. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[9a-c]**

1527 Substantive Issues in Conviction Proceedings – Moral Turpitude – No Moral Turpitude

Where respondent made statements to brother, 911 operator, and deputy sheriff while intoxicated and with head injury, and generally vague statements were made while in heat of moment and while engaged in mutual combat where both parties received injuries, even if statements were not wholly accurate, without clear evidence of an intent to mislead, evidence did not establish that respondent made deliberate misrepresentations so as to satisfy finding of moral turpitude by clear and convincing standard of proof. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[5a-c]**

1528 Substantive Issues in Conviction Proceedings – Moral Turpitude – Definition

Moral turpitude consists of deficiency in any character traits necessary for law practice (such as honesty and candor) or serious breach of duty owed to another or society, or flagrant disrespect for law or societal norms that knowledge of conduct would likely undermine public confidence in and respect for legal profession. Where respondent drove under influence of excessive alcohol, which exhibited contempt for law and public safety and reflected poorly on respondent's judgment and on legal profession, and respondent lied to police and fabricated complex, detailed narrative attempting to shift blame for accident to fictitious driver whom police attempted to locate, thereby wasting law enforcement resources, facts and circumstances surrounding respondent's conviction established moral turpitude, and hearing judge erred in concluding otherwise. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[2a-d]**

Moral turpitude consists of deficiency in any character trait necessary for law practice, such that knowledge of attorney's conduct would likely undermine public confidence in profession. Where respondent frightened woman from massage service by pinning her to bed while naked on top of her and refusing to let her leave; got into violent altercation with woman's bodyguard; and gratuitously fired gun in residential neighborhood when he could not honestly have believed victims posed imminent danger, respondent exhibited contempt for law and disregard of safety of others. Accordingly, facts and circumstances surrounding respondent's felony convictions of assault with force likely to produce great bodily injury and discharging firearm with gross negligence demonstrated moral turpitude. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[1a-d]**

1531 Substantive Issues in Conviction Proceedings – Other Misconduct Warranting Discipline – Found

Respondent's conviction conclusively proved elements of his crime. Thus, respondent's 2019 misdemeanor conviction established he drove under influence of alcohol and had prior DUI conviction. Drunk driving convictions do not establish per se moral turpitude, but moral turpitude can be established based on circumstances surrounding convictions. Where respondent repeatedly falsely denied to police officer consumption of alcohol and not feeling its effects, and falsely claimed driving directly home from office, Review Department concluded (1) respondent's actions did not establish moral turpitude but did amount to other misconduct warranting discipline; and (2) circumstances surrounding DUI convictions were indications of alcohol abuse problem, as respondent was again arrested for drunk driving only two years after criminal probation for first DUI ended; second drunk driving violation resulted in collision that injured two victims and caused property damage; and respondent admitted does not drive anymore so as not to risk driving under influence, which clearly implied respondent did not trust himself to make decision not to drive while impaired from drinking. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[1a-e]**

Nexus between conduct resulting in DUI convictions and practice of law established if there were indications of alcohol abuse problem connected to multiple convictions. Where respondent presented evidence that legal work had not suffered from alcohol consumption, but actions resulted in repeated criminal conduct, increasing in severity, which affected respondent's private life, respondent's problems with alcohol were enough to warrant discipline due to potential for future harm. Review Department concluded there was evidence of substance abuse problem with nexus to practice of law and discipline was appropriate to protect public from potential harm related to respondent's practice of law and to convey to respondent's seriousness of his actions. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[2]**

Standard 2.16(b) provides for discipline ranging from reproval to suspension for misdemeanor convictions not involving moral turpitude but encompassing other misconduct warranting discipline. Where respondent had two DUI convictions; second DUI was committed only two years after respondent completed probation in first DUI matter and involved serious injuries to two victims and property damage; second DUI involved false statements to police; repeated criminal conduct, increasing in severity, evidenced alcohol abuse problems, but respondent's assertion regarding abstaining from driving did not solve alcohol problem or assure court future misconduct would not recur, Review Department concluded respondent's actions did not involve moral turpitude but did constitute other misconduct warranting discipline. As mitigating circumstances outweighed sole aggravating circumstance, and due to respondent's compliance with criminal probation terms, Review Department concluded appropriate discipline was public reproval with conditions, including attendance at abstinence-based self-help group, as court concluded respondent had alcohol

problem. Although record did not establish respondent's law practice was affected by his alcohol abuse problem, court imposed discipline to prevent future harm to public and to impress upon respondent seriousness of actions, as respondent did not fully understand significance of alcohol problem and how it related to practice of law. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[8a-c]**

1541.10 Interim suspension after felony conviction — Ordered — California or federal felony

In the Matter of Smart (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713.

In the Matter of Peters (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536.

1552.10 Application of Standards — Criminal Conviction — Standard 2.15(b) (felony conviction under circumstances involving moral turpitude) — Applied — Disbarment

Prior to July 1, 2019, under former standard 2.15(b), disbarment was presumed sanction for felony conviction in which surrounding facts and circumstances involved moral turpitude, unless most compelling mitigating circumstances clearly predominated. Where respondent was convicted of felony assault and grossly negligent discharge of firearm, and moral turpitude was found, disbarment was warranted despite respondent's showing of good character, cooperation with State Bar, and discipline-free career, as those factors were not most compelling in light of seriousness of criminal misconduct. Moreover, respondent's rehabilitation from alcoholism was in early phase, and respondent had not presented persuasive evidence of being on path to full sobriety and full understanding of extent of alcohol problem. Accordingly, discipline less than disbarment would fail to protect public and courts, and would undermine confidence in the legal profession. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[10a-c]**

Where disciplinary standard in effect at time of respondent's misconduct made disbarment presumed discipline for felony convictions involving moral turpitude in surrounding facts and circumstances, that version of standard applied to respondent's case, rather than later version adopted to reflect non-retroactive statutory change requiring summary disbarment. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[11]**

Where respondent's felony vehicular manslaughter conviction, arising from driving while impaired by prescription drugs, involved moral turpitude; showed disregard for law and public safety; caused significant harm; and was accompanied by lack of candor in dealing with law enforcement, and respondent's mitigating factors were not compelling and fell far short of predominating, discipline less than presumed sanction of disbarment would fail to protect public and would undermine confidence in legal profession. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[9a-c]**

1553.81 Application of Standards to Discipline Based on Criminal Conviction –Standard 2.15(b) – Applied – actual suspension – compelling mitigating circumstances

Standard 2.15(b) provides that actual suspension or disbarment is appropriate for misdemeanor convictions involving moral turpitude. Where facts and circumstances surrounding respondent's first misdemeanor conviction of driving under influence of alcohol with enhancement for excessive blood alcohol concentration involved moral turpitude, but no one was physically injured by respondent's actions; respondent exhibited exemplary behavior after conviction including full compliance with criminal probation terms and restitution; no aggravating factors were found; and respondent was entitled to mitigation for cooperation, good character, remorse, and restitution, discipline at lowest end of range for actual suspensions was warranted, appropriate discipline was 30 days of actual suspension coupled with one year of stayed suspension and probation. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[10a-c]**

1553.89 Application of Standards to Discipline Based on Criminal Conviction –Standard 2.15(b) – Applied – actual suspension – Other reason

Where respondent was convicted of misdemeanor involving moral turpitude; lacked candor, including misconduct during disciplinary proceedings; had prior discipline record resulting in 30-day period of actual suspension (which was given diminished weight as that misconduct occurred after misconduct in current disciplinary matter); and aggravation equaled mitigation, based on totality of facts and comparing it to other cases, Review Department concluded six-month actual suspension was minimum discipline necessary to protect public, courts, and legal profession. Review Department concerned that respondent's prior discipline,

which involved nearly 70 instances of filing false pleadings, combined with respondent's lack of insight and failure to accept responsibility for dishonesty in current disciplinary matter, showed possibilities of future recidivism. *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965. **[13a, b]**

1554.33 Application of Standards to Discipline Based on Criminal Conviction –Standard 2.16(b) – Applied – Reproval

Standard 2.16(b) provides for discipline ranging from reproval to suspension for misdemeanor convictions not involving moral turpitude but encompassing other misconduct warranting discipline. Where respondent had two DUI convictions; second DUI was committed only two years after respondent completed probation in first DUI matter and involved serious injuries to two victims and property damage; second DUI involved false statements to police; repeated criminal conduct, increasing in severity, evidenced alcohol abuse problems, but respondent's assertion regarding abstaining from driving did not solve alcohol problem or assure court future misconduct would not recur, Review Department concluded respondent's actions did not involve moral turpitude but did constitute other misconduct warranting discipline. As mitigating circumstances outweighed sole aggravating circumstance, and due to respondent's compliance with criminal probation terms, Review Department concluded appropriate discipline was public reproval with conditions, including attendance at abstinence-based self-help group, as court concluded respondent had alcohol problem. Although record did not establish respondent's law practice was affected by his alcohol abuse problem, court imposed discipline to prevent future harm to public and to impress upon respondent seriousness of actions, as respondent did not fully understand significance of alcohol problem and how it related to practice of law. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[8a-c]**

1610 Disbarment

In the Matter of Smart (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713.

In the Matter of Peters (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536.

1613.06 Stayed Suspension - One year

In the Matter of Jimenez (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965.

In the Matter of Caplin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768.

1613.08 Discipline—Stayed Suspension—Two years

In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479.

1615.01 Actual Suspension – One month or less

In the Matter of Caplin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768.

1615.04 Actual Suspension – Six months (including between 6 and 9 months)

In the Matter of Jimenez (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965.

1615.06 Discipline—Actual Suspension—One year

In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479.

1617.06 Probation – One year

In the Matter of Jimenez (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965.

In the Matter of Caplin (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768.

1617.08 Discipline—Probation—Two years

In the Matter of Murray (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479.

1691 Miscellaneous Issues in Conviction Cases — Admissibility and/or Effect of Record in Criminal Proceeding

Respondent's conviction conclusively proved elements of his crime. Thus, respondent's 2019 misdemeanor conviction established he drove under influence of alcohol and had prior DUI conviction. Drunk driving convictions do not establish per se moral turpitude, but moral turpitude can be established based on circumstances surrounding convictions. Where respondent repeatedly falsely denied to police officer consumption of alcohol and not feeling its effects, and falsely claimed driving directly home from office, Review Department concluded (1) respondent's actions did not establish moral turpitude but did amount to other misconduct warranting discipline; and (2) circumstances surrounding DUI convictions were indications of alcohol abuse problem, as respondent was again arrested for drunk driving only two years after criminal probation for first DUI ended; second drunk driving violation resulted in collision that injured two victims and caused property damage; and respondent admitted does not drive anymore so as not to risk driving under influence, which clearly implied respondent did not trust himself to make decision not to drive while impaired from drinking. *In the Matter of Herich* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820 **[1a-e]**

For purposes of attorney discipline, respondent's criminal conviction of driving under the influence of alcohol with an enhancement for an excessive blood alcohol concentration was conclusive proof that respondent committed all elements of that crime. However, it is an attorney's misconduct, not their conviction, that warrants discipline, and facts and circumstances surrounding conviction may be considered in determining whether moral turpitude was involved. *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768. **[1a, b]**

Hearing judge is in better position to assess nature and quality of testimony. Hearing judge's findings that respondent's testimony lacked credibility, and that victim's statements to police were credible, was entitled to great weight. Review Department would not contradict hearing judge's credibility conclusions where record lacked sufficient evidence to do so. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[2a, b]**

Hearsay evidence is admissible in State Bar Court proceedings, but is not sufficient in itself to support finding if admitted over timely objection made on grounds valid in civil actions. Where police reports containing victim's hearsay statements were admitted into evidence by stipulation, without objection or limitation by respondent, hearing judge properly relied on victim's statements. Although hearing judge sustained respondent's counsel's objections at trial to questions that would have elicited victim's hearsay statements from investigator, those objections did not preclude reliance on victim's statements in police report admitted without objection. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[3]**

Where respondent pled guilty in criminal proceeding to willfully and unlawfully committing assault, Review Department declined to consider respondent's belated self-defense claim because it would negate elements of crime to which he pled guilty, and factual basis for plea supported hearing judge's finding that respondent's self-defense claim lacked credibility. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[4a, b]**

Respondent's conviction for felony vehicular manslaughter while intoxicated conclusively established that respondent drove while intoxicated and caused victim's death. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. **[2]**

1699 Miscellaneous Issues in Conviction Cases – Other Miscellaneous Issues in Conviction Cases

Nexus between conduct resulting in DUI convictions and practice of law established if there were indications of alcohol abuse problem connected to multiple convictions. Where respondent presented evidence that legal work had not suffered from alcohol consumption, but actions resulted in repeated criminal conduct, increasing in severity, which affected respondent's private life, respondent's problems with alcohol were enough to warrant discipline due to potential for future harm. Review Department concluded there was evidence of substance abuse problem with nexus to practice of law and discipline was appropriate to protect public from potential harm related to respondent's practice of law and to convey to respondent's seriousness of his actions. *In the Matter of Herich (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820* **[2]**

Hearing judge is in better position to assess nature and quality of testimony. Hearing judge's findings that respondent's testimony lacked credibility, and that victim's statements to police were credible, was entitled to great weight. Review Department would not contradict hearing judge's credibility conclusions where record lacked sufficient evidence to do so. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[2a, b]**

Where disciplinary standard in effect at time of respondent's misconduct made disbarment presumed discipline for felony convictions involving moral turpitude in surrounding facts and circumstances, that version of standard applied to respondent's case, rather than later version adopted to reflect non-retroactive statutory change requiring summary disbarment. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713. **[11]**

1712 Issues in Probation Cases – Special Issues – Willfulness

Probation matters do not require proof that respondent actually knew specifics of probation delinquencies, as long as respondent had notice of probation duties. Where respondent failed to schedule and attend meeting with assigned probation deputy and did not submit first quarterly report to Probation until six months after due date, despite email communications from Probation regarding probation duties, respondent willfully failed to comply with three probation conditions in violation of Business and Professions Code section 6068, subdivision (k). *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. [**2a-d]**

1713 Issues in Probation Cases – Special Issues – Standard of Proof

Probation matters do not require proof that respondent actually knew specifics of probation delinquencies, as long as respondent had notice of probation duties. Where respondent failed to schedule and attend meeting with assigned probation deputy and did not submit first quarterly report to Probation until six months after due date, despite email communications from Probation regarding probation duties, respondent willfully failed to comply with three probation conditions in violation of Business and Professions Code section 6068, subdivision (k). *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. [**2a-d]**

1719 Issues in Probation Cases — Special Issues — Miscellaneous

Even though respondent's rule 9.20(c) and probation violations all arose from failing to comply with one Supreme Court order, respondent's violations of three separate probation duties and separate duty to comply with rule 9.20(c) were still multiple acts and entitled to substantial aggravating weight. *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[3a, b]**

Substantial compliance with disciplinary probation conditions is not a defense to probation violations. Where disciplined attorney did not timely schedule initial meeting with Probation Department, and did not timely submit first two required quarterly reports, attorney was culpable of violating probation, despite his belated compliance with both requirements. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[2a, b]**

1810 Disbarment

In the Matter of Braun (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738.

1913.11 Cal. Rules of Ct., Rule 9.20 (formerly Rule 955) Violation Proceedings – Special Substantive Issues – Willfulness – Definition

Level of intent required to prove California Rules of Court, rule 9.20 violation is general intent, not specific intent or bad faith. Where respondent failed to file court notices of suspension required by rule 9.20, such conduct constituted willful violation of rule 9.20, and Review Department rejected respondent's argument that respondent did not have requisite level of intent to be found culpable of violating rule 9.20 as respondent did not do so willfully and acted in good faith. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[5]**

Willful violation of rule 9.20(c) requires neither bad faith nor even actual knowledge of rule provision violated. Where respondent conceded in answer to charges, and in stipulation of facts, that respondent failed to timely file rule 9.20(c) declaration and that State Bar sent email notices informing respondent of rule 9.20(c) filing duties, one that was received and another that was not returned, respondent was culpable of willfully violating rule 9.20(c). *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[1]**

1913.12 Cal. Rules of Ct., Rule 9.20 (formerly Rule 955) Violation Proceedings – Special Substantive Issues – Willfulness – Lack of Notice of Underlying Order

Under Evidence Code section 664, it is acknowledged that official duty has been regularly performed; thus, there is presumption that Supreme Court Clerk properly performed official duty in serving respondent and respondent's attorney with discipline order as provided in California Rules of Court, rule 9.18(b). Where respondent began transferring cases due to impending suspension prior to issuance of Supreme Court's rule 9.20 order; Review Department had recommended two-year suspension in respondent's prior disciplinary matter several months earlier; and respondent's attorney referenced Supreme Court's rule 9.20 order in email to respondent, argument that respondent did not receive notice of rule 9.20 order from either Supreme Court or respondent's attorney was not credible, and respondent did not rebut presumption of Evidence Code section 664. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[2]**

1913.24 Cal. Rules of Ct., Rule 9.20 (formerly Rule 955) Violation Proceedings – Special Substantive Issues – Delay in Compliance – Delay in Filing Affidavit of Compliance

Willful violation of rule 9.20(c) requires neither bad faith nor even actual knowledge of rule provision violated. Where respondent conceded in answer to charges, and in stipulation of facts, that respondent failed to timely file rule 9.20(c) declaration and that State Bar sent email notices informing respondent of rule 9.20(c) filing duties, one that was received and another that was not returned, respondent was culpable of willfully violating rule 9.20(c). *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[1]**

1913.29 Cal. Rules of Ct., Rule 9.20 (formerly Rule 955) Violation Proceedings — Special Substantive Issues — Delay in Compliance Generally

Where respondent's failure to comply with rule 9.20 of the California Rules of Court was considered in establishing his culpability, and he had made several failed attempts to file a compliance declaration and reasonably understood, based on communications from Probation Department, that further attempts would be futile, respondent's failure to file the compliance declaration did not demonstrate continuing misconduct or indifference toward rectification and atonement, and did not constitute an aggravating factor. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[1a-c]**

1913.70 Cal. Rules of Ct., Rule 9.20 (formerly Rule 955) Violation Proceedings — Special Substantive Issues — Lesser Sanction than Disbarment for Violation

California Rules of Court, rule 9.20 provides that willful violation is cause for disbarment or suspension. Discipline less than disbarment has typically been imposed for rule 9.20 violations where attorney demonstrated good faith, made unsuccessful attempts to file compliance declaration, proved significant mitigation with little aggravation, or presented other extenuating circumstances. Where respondent failed to comply with notice requirements of rule 9.20; respondent's rule 9.20 compliance declaration contained false statements; respondent violated court orders in both his past and present disciplinary cases; and there was lack of compelling mitigation, respondent's attempt to comply with rule 9.20 and mitigation for extraordinary good character and cooperation made disbarment unduly punitive, and Review Department concluded appropriate progressive discipline was two years' actual suspension continuing until respondent provided

proof of rehabilitation and fitness to practice law pursuant to standard 1.2(c)(1) to impress on respondent the seriousness of misconduct and consequences for failing to follow ethical duties as attorney. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[11a-e]**

Willful violation of rule 9.20 is considered serious ethical offense for which disbarment is generally appropriate. Standard 1.8(b) provides that disbarment is appropriate where respondent has two or more prior records of discipline if: (1) actual suspension was ordered in any prior disciplinary matter; (2) prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) prior and current disciplinary matters demonstrate respondent's unwillingness or inability to conform to ethical responsibilities. Where respondent who violated rule 9.20 had three prior records of discipline, including one-year actual suspension, and had repeatedly failed to comply with disciplinary probation conditions, and exceptions to standard 1.8(b) were not applicable, hearing judge erred in failing to analyze applicability of standard 1.8(b). Where no reasons existed to depart from discipline called for by standard 1.8(b), Review Department recommended disbarment to adequately ensure public protection. *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738. **[8a-f]**

Under rule 9.20(d) of the California Rules of Court, an attorney may be suspended or disbarred for a willful failure to comply with the provisions of the rule. In general, a violation of rule 9.20 is a serious ethical breach for which disbarment may be appropriate. Nonetheless, each disciplinary case must be decided on its own facts, and discipline less than disbarment has been imposed in rule 9.20 cases where the attorney demonstrated attempts to comply with the rule, significant mitigation, or little aggravation. Where respondent's misconduct was diminished by extreme emotional difficulties; respondent made efforts to comply with his disciplinary obligations and eventually complied with his probation conditions; respondent arranged for all his clients to receive actual, albeit deficient, notice of his suspension; respondent participated in disciplinary proceedings, admitted facts establishing culpability, and proved he had recovered from emotional problems that led to misconduct; there was no evidence of client harm; and respondent's only prior discipline was a 90-day actual suspension, a one-year actual suspension rather than disbarment was appropriate. *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646. **[7a-f]**

1913.90 Cal. Rules of Ct., Rule 9.20 (formerly Rule 955) Violation Proceedings – Special Substantive Issues – Other Substantive Issues

California Rules of Court, rule 9.20(a)(1) and (4) require attorneys to (1) notify clients being represented in pending matters, along with any co-counsel, of their disciplinary suspension and consequent disqualification to act as attorney after suspension's effective date; (2) notify clients to seek other legal advice if there is no co-counsel; (3) notify opposing counsel in pending litigation; (4) if no opposing counsel, notify adverse parties of suspension and consequent disqualification to act as attorney after suspension's effective date; and (5) file copy of notice with court, agency, or tribunal before which litigation is pending. Where respondent stipulated he was attorney of record in four cases at time Supreme Court order requiring compliance with rule 9.20 was filed, and respondent did not file the required notices of suspension with those courts and still had not done so by time of trial over two and one-half years later, respondent failed to comply with rule 9.20. Review Department rejected respondent's argument that respondent was not obligated to file court notices as respondent filed substitutions of attorney in three cases and informed clients that respondent would be suspended prior to rule 9.20 order's issuance, as respondent did not notify clients of suspension by registered or certified mail, return receipt requested, as required by rule 9.20(b); filed substitutions of attorney in pending cases after Supreme Court rule 9.20 order was filed but before effective date of order; and continued to work on one case that was settled, but not dismissed, after filing of Supreme Court rule 9.20 order. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[1a-d]**

Level of intent required to prove California Rules of Court, rule 9.20 violation is general intent, not specific intent or bad faith. Where respondent failed to file court notices of suspension required by rule 9.20, such conduct constituted willful violation of rule 9.20, and Review Department rejected respondent's argument that respondent did not have requisite level of intent to be found culpable of violating rule 9.20 as respondent did not do so willfully and acted in good faith. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[5]**

Reliance on attorney's advice is not defense to California Rules of Court, rule 9.20 violation but may be considered in mitigation. Similarly, reliance on employee's assistance in preparing list of cases in which

respondent was counsel of record is also not defense to rule 9.20 violation. Sole responsibility to ensure identification of all cases pending on date Supreme Court's rule 9.20 order filed lies with respondent. *In the Matter of Chavez* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 783. **[6]**

Even though respondent's rule 9.20(c) and probation violations all arose from failing to comply with one Supreme Court order, respondent's violations of three separate probation duties and separate duty to comply with rule 9.20(c) were still multiple acts and entitled to substantial aggravating weight. *In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738. **[3a, b]**

1915.10 Cal. Rules of Ct., Rule 9.20 (formerly Rule 955) Violation Proceedings – Culpability of Violation – Found

In the Matter of Braun (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738.

In the Matter of Amponsah (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

1921 Discipline Imposed in Rule 9.20 (formerly Rule 955) Matters – Disbarment

In the Matter of Braun (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738.

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

1923.08 Discipline Imposed in Rule 9.20 (formerly Rule 955) Matters – Stayed Suspension — Two years

In the Matter of Amponsah (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646.

1924.06 Discipline Imposed in Rule 9.20 (formerly Rule 955) Matters – Actual Suspension — One year

In the Matter of Amponsah (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646.

1925.08 Discipline Imposed in Rule 9.20 (formerly Rule 955) Matters – Probation — Two years

In the Matter of Amponsah (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646.

1931.50 Discipline in Other Jurisdictions (Section 6049.1) – Special Procedural Issues – Use of Record from Foreign Proceeding

Where hearing judge allowed State Bar's Office of Chief Trial Counsel (OCTC) to amend Notice of Disciplinary Charges (NDC) three days before trial started and did not allow continuance of trial, but it was undisputed that only amendments made to NDC were to allege and attach certified copies of final South Carolina disciplinary order and underlying attorney disciplinary rules, in place of uncertified records submitted with original NDC, and respondent had not established required showing of prejudice, Review Department upheld hearing judge's allowance of OCTC's amendment to original NDC as non-substantive when denying respondent's request for trial continuance. *In the Matter of Fisher (*Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[2]**

1931.90 Discipline in Other Jurisdictions (Section 6049.1) – Special Procedural Issues – Other Special Procedural Issues

Where hearing judge allowed State Bar's Office of Chief Trial Counsel (OCTC) to amend Notice of Disciplinary Charges (NDC) three days before trial started and did not allow continuance of trial, but it was undisputed that only amendments made to NDC were to allege and attach certified copies of final South Carolina disciplinary order and underlying attorney disciplinary rules, in place of uncertified records submitted with original NDC, and respondent had not established required showing of prejudice, Review Department upheld hearing judge's allowance of OCTC's amendment to original NDC as non-substantive

when denying respondent's request for trial continuance. *In the Matter of Fisher (*Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[2]**

1933.10 Discipline in Other Jurisdictions (Section 6049.1) – Special Substantive Issues – Respondent's Burden of Proof

Business and Professions Code section 6049.1, subdivision (a), provides that, subject only to two exceptions in section 6049.1, subdivision (b), final determination of professional misconduct found by another jurisdiction shall be conclusive evidence that California law licensee is culpable of professional misconduct disciplinable in California. Licensee has burden to establish that exceptions do not warrant imposition of discipline in California. One exception set forth in section 6049.1, subdivision (b)(3), is whether proceedings of other jurisdiction lacked fundamental constitutional protection. Word "proceedings" in section 6049.1, subdivision (b)(3) concerns only attorney disciplinary proceeding imposed on California attorney in other jurisdiction and not predicate court proceedings in other jurisdiction that may have led to disciplinary proceeding in other jurisdiction. To conclude that "proceedings" included underlying court proceedings in other jurisdiction which led to disciplinary proceeding in other jurisdiction would be contrary to law's plain meaning and would alter very purposes of section 6049.1, by routinely allowing collateral attacks on disciplinary proceedings taken by other bodies and which extend beyond two limited statutory exceptions in section 6049.1, subdivision (b). Where respondent (1) had ample notice of South Carolina charges, participated, and was represented by counsel in evidentiary hearing before Hearing Panel in South Carolina; (2) litigated matter before Supreme Court of South Carlina; (3) sought review before United States' Supreme Court; (4) South Carolina disciplinary proceeding required opposing counsel to present clear and convincing evidence of misconduct to support culpability; and (5) respondent's participation in South Carolina proceedings was opportunity for her to put at issue and litigate any relevant or cognizable topic as to state proceedings which formed basis of reprimand, respondent failed to sustain her burden to establish that disciplinary proceedings in South Carolina lacked fundamental constitutional protection. While local South Carolina counsel was not subjected to sanctions and disciplinary proceedings in South Carolina as was respondent, different treatment did not show unfairness of disciplinary proceeding as to respondent, especially since record of South Carolina disciplinary proceedings ascribed to respondent responsibility for frivolous and dilatory basis of litigation. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[1a-f]**

1933.30 Discipline in Other Jurisdictions (Section 6049.1) – Special Substantive Issues – Constitutionality of Foreign Proceeding

Business and Professions Code section 6049.1, subdivision (a), provides that, subject only to two exceptions in section 6049.1, subdivision (b), final determination of professional misconduct found by another jurisdiction shall be conclusive evidence that California law licensee is culpable of professional misconduct disciplinable in California. Licensee has burden to establish that exceptions do not warrant imposition of discipline in California. One exception set forth in section 6049.1, subdivision (b)(3), is whether proceedings of other jurisdiction lacked fundamental constitutional protection. Word "proceedings" in section 6049.1, subdivision (b)(3) concerns only attorney disciplinary proceeding imposed on California attorney in other jurisdiction and not predicate court proceedings in other jurisdiction that may have led to disciplinary proceeding in other jurisdiction. To conclude that "proceedings" included underlying court proceedings in other jurisdiction which led to disciplinary proceeding in other jurisdiction would be contrary to law's plain meaning and would alter very purposes of section 6049.1, by routinely allowing collateral attacks on disciplinary proceedings taken by other bodies and which extend beyond two limited statutory exceptions in section 6049.1, subdivision (b). Where respondent (1) had ample notice of South Carolina charges, participated, and was represented by counsel in evidentiary hearing before Hearing Panel in South Carolina; (2) litigated matter before Supreme Court of South Carlina; (3) sought review before United States' Supreme Court; (4) South Carolina disciplinary proceeding required opposing counsel to present clear and convincing evidence of misconduct to support culpability; and (5) respondent's participation in South Carolina proceedings was opportunity for her to put at issue and litigate any relevant or cognizable topic as to state proceedings which formed basis of reprimand, respondent failed to sustain her burden to establish that disciplinary proceedings in South Carolina lacked fundamental constitutional protection. While local South Carolina counsel was not subjected to sanctions and disciplinary proceedings in South Carolina as was respondent, different treatment did not show unfairness of disciplinary proceeding as to respondent,

especially since record of South Carolina disciplinary proceedings ascribed to respondent responsibility for frivolous and dilatory basis of litigation. *In the Matter of Fisher* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 999. **[1a-f]**

2210.90 Issues in Section 6007(c) Involuntary Inactive Enrollment Proceedings – Special Procedural Issues in Section 6007(c)(2) Threat of Harm Cases – Other special procedural issues

Involuntary inactive enrollment proceedings are abbreviated proceedings in which the principal issue is whether OCTC can establish exigent circumstances sufficient to justify enrolling an attorney involuntarily inactive before a formal disciplinary proceeding. Any subsequent disciplinary proceedings are separate proceedings, and neither the involuntary inactive enrollment order itself nor any of the findings made in the underlying proceedings is binding or has any probative value in the formal disciplinary case. Such an order also is not a final decision on the merits, and thus does not fulfill the requirements of collateral estoppel. Accordingly, Review Department considering disciplinary proceedings declined to consider hearing judge's analysis of statute as set forth in order denying involuntary inactive enrollment. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[4a, b]**

Order denying OCTC's petition for involuntary inactive enrollment was judicially noticeable in subsequent disciplinary proceeding involving same respondent. *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574. **[5]**

2310 Inactive Enrollment After Disbarment Recommendation

In the Matter of Smart (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713.

In the Matter of Hoffman (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698.

2311 Discipline – Involuntary Inactive Enrollment After Disbarment Recommendation – Imposed

In the Matter of Thomas (Review Dept. 2022 5 Cal. State Bar Ct. Rptr. 944.

In the Matter of Jones (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873.

In the Matter of Braun (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738.

Where respondent was placed on involuntary inactive enrollment under section 6007(c)(4) following hearing judge's disbarment recommendation, but Review Department reduced discipline to 60-day actual suspension, Review Department ordered involuntary inactive enrollment terminated, and recommended that respondent be given credit for inactive enrollment period toward period of actual suspension. Because inactive enrollment period had lasted longer than 60 days, there would be no prospective period of actual suspension. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[16a-c]**

In the Matter of Gonzalez (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632.

In the Matter of Gordon (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610.

In the Matter of Moriarty (Review Dept. 2017) 5 Cal. State Bar Ct. Rpptr. 511.

In the Matter of Schooler (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494.

In the Matter of Burke (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448.

2319 Inactive Enrollment After Disbarment Recommendation (section 6007(c)(4)) – Miscellaneous Issues

Where respondent was placed on involuntary inactive enrollment under section 6007(c)(4) following hearing judge's disbarment recommendation, but Review Department reduced discipline to 60-day actual suspension, Review Department ordered involuntary inactive enrollment terminated, and recommended that

respondent be given credit for inactive enrollment period toward period of actual suspension. Because inactive enrollment period had lasted longer than 60 days, there would be no prospective period of actual suspension. *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660. **[16a-c]**

2504 Issues in Reinstatement Proceedings — Special Procedural Issues —Burden of Proof/Showing Required for Reinstatement

Petitioner seeking reinstatement to practice law must satisfy number of requirements, including establishing rehabilitation and present moral qualifications for reinstatement. Overwhelming proof of reform must be presented. Petitioner's rehabilitation must be viewed in light of moral shortcomings that preceded resignation. When prior misconduct is sufficiently egregious, petitioner's burden is heavy one, and overwhelming proof must include lengthy period of not only unblemished but exemplary conduct. Where petitioner engaged in reprehensible misconduct, including numerous and egregious acts involving significant deceit, such as dishonesty to court, lying to law enforcement, and blame shifting, petitioner had not demonstrated sustained exemplary conduct over extended time. While record demonstrated petitioner had begun path to rehabilitation and had made rehabilitative gains since felony convictions for obstructing justice, filing false declaration, and criminal contempt, including work as court-appointed paralegal with federal court requiring him to guard confidential records such as matters subject to protective orders, dedication to community involvement, and impressive character evidence, petitioner had not yet met required overwhelming proof of reform necessary to establish successful rehabilitation in light of misconduct. *In the Matter of Ellerman* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 899. **[2a-h]**

By statute, as a condition of reinstatement, disbarred attorneys must reimburse Client Security Fund (CSF) for moneys paid out as result of attorney's misconduct. Under this statute, former attorney must repay CSF in full prior to obtaining reinstatement. Even though Supreme Court has not foreclosed possibility that it could grant conditional reinstatement under some circumstances, State Bar Court lacks authority to recommend reinstatement where payment in full to CSF has not been made, and does not have discretion to grant relief from requirement of CSF reimbursement. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[2a-c]**

Rule 5.441(B)(2) of Rules of Procedure of State Bar establishes that reimbursement of Client Security Fund for moneys paid out as result of disbarred attorney's misconduct is a mandatory prefiling requirement for petitions for reinstatement. Where State Bar Act provision requires such payment, State Bar Board of

Governors acted within its authority, and not in conflict with statute, in adopting rule regulating timing of payment by requiring that it be made before petition for reinstatement is filed. Interpreting rule to require prefiling payment supports policy goals of maintaining solvency of Client Security Fund, and preserving judicial resources by avoiding lengthy reinstatement proceedings when petitioner has no prospects for payment. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[3]**

Due process does not require that petitioner for reinstatement be allowed to present evidence of rehabilitation at evidentiary hearing, where applicable provision of State Bar Rules of Procedure expressly provides for dismissal of petition for failure to comply with prefiling requirements, including reimbursement of Client Security Fund. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[5]**

2505 Issues in Reinstatement Proceedings—Special Procedural Issues— Interpretation of Rules of Procedure, Div. 7, Ch. 3 (rules 5.440-5.447)

The requirement in rule 9.10(f) of the California Rules of Court, and rule 5.441 of the Rules of Procedure of the State Bar, that a petitioner for reinstatement must have taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners, is a single pre-filing requirement that must be fully satisfied before a petitioner can file a petition for reinstatement. Thus, the three-year time limit within which a petitioner must file the petition begins to run on the date of the written notification of passage mailed to the petitioner, not when the petitioner takes the examination. Accordingly, where a petitioner filed a petition for reinstatement within three years after the date he passed the examination but more than three years after he sat for the examination, his application was timely filed. *In the Matter of Unger* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 506 **[2]**

2509 Issues in Reinstatement Proceedings—Special Procedural Issues—Other Procedural Issues

The requirement in rule 9.10(f) of the California Rules of Court, and rule 5.441 of the Rules of Procedure of the State Bar, that a petitioner for reinstatement must have taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners, is a single pre-filing requirement that must be fully satisfied before a petitioner can file a petition for reinstatement. Thus, the three-year time limit within which a petitioner must file the petition begins to run on the date of the written notification of passage mailed to the petitioner, not when the petitioner takes the examination. Accordingly, where a petitioner filed a petition for reinstatement within three years after the date he passed the examination but more than three years after he sat for the examination, his application was timely filed. *In the Matter of Unger* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 506. **[2]**

2551 Issues in Reinstatement Proceedings—Reinstatement Not Granted—Inadequate Showing of Rehabilitation

Petitioner seeking reinstatement to practice law must satisfy number of requirements, including establishing rehabilitation and present moral qualifications for reinstatement. Overwhelming proof of reform must be presented. Petitioner's rehabilitation must be viewed in light of moral shortcomings that preceded resignation. When prior misconduct is sufficiently egregious, petitioner's burden is heavy one, and overwhelming proof must include lengthy period of not only unblemished but exemplary conduct. Where petitioner engaged in reprehensible misconduct, including numerous and egregious acts involving significant deceit, such as dishonesty to court, lying to law enforcement, and blame shifting, petitioner had not demonstrated sustained exemplary conduct over extended time. While record demonstrated petitioner had begun path to rehabilitation and had made rehabilitative gains since felony convictions for obstructing justice, filing false declaration, and criminal contempt, including work as court-appointed paralegal with federal court requiring him to guard confidential records such as matters subject to protective orders, dedication to community involvement, and impressive character evidence, petitioner had not yet met required overwhelming proof of reform necessary to establish successful rehabilitation in light of misconduct. *In the Matter of Ellerman* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 899. **[2a-h]**

2590 Issues in Reinstatement Proceedings — Miscellaneous Issues in Reinstatement Proceedings

Petitioner's claim in book he wrote that he chose to break law for sake of exposing truth about performing enhancement drug use in professional baseball and federal government's inconsistent claim it was cleaning up professional sports while not going after athletes using those drugs did not demonstrate a lack of present insight into misconduct. Rather it supports only a finding that petitioner had not established cognizable steps towards reform until at least couple of years after petitioner wrote book. *In the Matter of Ellerman* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 899. **[1a, b]**

Impressive character evidence and commitment to service, on its own, is not determinative of reform, no matter how positive or great in quantity. *In the Matter of Ellerman* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 899. **[4]**

By statute, as a condition of reinstatement, disbarred attorneys must reimburse Client Security Fund (CSF) for moneys paid out as result of attorney's misconduct. Under this statute, former attorney must repay CSF in full prior to obtaining reinstatement. Even though Supreme Court has not foreclosed possibility that it could grant conditional reinstatement under some circumstances, State Bar Court lacks authority to recommend reinstatement where payment in full to CSF has not been made, and does not have discretion to grant relief from requirement of CSF reimbursement. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[2a-c]**

Rule 5.441(B)(2) of Rules of Procedure of State Bar establishes that reimbursement of Client Security Fund for moneys paid out as result of disbarred attorney's misconduct is a mandatory prefiling requirement for petitions for reinstatement. Where State Bar Act provision requires such payment, State Bar Board of Governors acted within its authority, and not in conflict with statute, in adopting rule regulating timing of payment by requiring that it be made before petition for reinstatement is filed. Interpreting rule to require prefiling payment supports policy goals of maintaining solvency of Client Security Fund, and preserving judicial resources by avoiding lengthy reinstatement proceedings when petitioner has no prospects for

payment. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[3]**

Due process does not require that petitioner for reinstatement be allowed to present evidence of rehabilitation at evidentiary hearing, where applicable provision of State Bar Rules of Procedure expressly provides for dismissal of petition for failure to comply with prefiling requirements, including reimbursement of Client Security Fund. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[5]**

State Bar Court's review of petition for reinstatement, resulting in determination that petition should be dismissed for failure to satisfy a prefiling requirement, constituted hearing of petition in first instance by State Bar Court, as required under California Rules of Court. *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal State Bar Ct. Rptr. 529. **[6]**

2602 Issues in Admissions Moral Character Proceedings – Special Procedural Issues – Burdens of Proof

Once applicant appeals to State Bar Court adverse moral character determination by State Bar's Committee of Bar Examiners (Committee), court must determine whether applicant possesses good moral character. In moral character proceedings, State Bar's Office of Chief Trial Counsel (OCTC) investigates applicant's moral character, discovery occurs, and then matter proceeds to trial. OCTC may take applicant's deposition. Moral character hearings in State Bar Court are de novo and not limited to matters Committee considered. Applicant bears burden of establishing good moral character and cannot meet burden by refusing to cooperate in State Bar investigation. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr 989. **[1a,b]**

2604 Issues in Admissions Moral Character Proceedings – Special Procedural Issues – Discovery

Once applicant appeals to State Bar Court adverse moral character determination by State Bar's Committee of Bar Examiners (Committee), court must determine whether applicant possesses good moral character. In moral character proceedings, State Bar's Office of Chief Trial Counsel (OCTC) investigates applicant's moral character, discovery occurs, and then matter proceeds to trial. OCTC may take applicant's deposition. Moral character hearings in State Bar Court are de novo and not limited to matters Committee considered. Applicant bears burden of establishing good moral character and cannot meet burden by refusing to cooperate in State Bar investigation. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr 989. **[1a,b]**

Disobeying court order to provide discovery is misuse of discovery process under Civil Discovery Act which is applicable in State Bar Court proceedings. Permissible sanction in State Bar Court under Civil Discovery Act is terminating sanction that dismisses action. Where applicant chose not to appear for two scheduled depositions, improperly refused to answer questions at another deposition, and terminated a fourth deposition, applicant did not comply with hearing judge's orders requiring her to sit for deposition and cooperate with investigation and discovery; applicant's failure to comply was willful; and hearing judge had denied two other motions to dismiss by State Bar's Committee of Bar Examiners based on applicant's failure to participate in deposition, hearing judge correctly determined that discovery sanctions were appropriate and did not abuse her discretion by imposing terminating sanctions. Applicant had opportunity to comply with orders to participate in deposition but did not do so. Applicant obstructed discovery, causing dismissal, which prevented State Bar Court from determining whether applicant was morally fit to practice law. Review Department held terminating sanctions were appropriate and affirmed hearing judge's dismissal order. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989. **[3a-d]**

Where applicant failed to seek stay of proceedings in Hearing Department, Review Department rejected applicant's argument that hearing judge should not have dismissed case while request for interlocutory review of hearing judge's order denying applicant's motion for relief from further deposition was pending. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989.**[4]**

2609 Issues in Admissions Moral Character Proceedings – Special Procedural Issues – Other Procedural Issues

Once applicant appeals to State Bar Court adverse moral character determination by State Bar's Committee of Bar Examiners (Committee), court must determine whether applicant possesses good moral character. In moral character proceedings, State Bar's Office of Chief Trial Counsel (OCTC) investigates applicant's moral character, discovery occurs, and then matter proceeds to trial. OCTC may take applicant's deposition. Moral character hearings in State Bar Court are de novo and not limited to matters Committee considered. Applicant bears burden of establishing good moral character and cannot meet burden by refusing to cooperate in State Bar investigation. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr 989. **[1a,b]**

2690 Issues in Admissions Moral Character Proceedings – Miscellaneous Issues in Admissions Moral Character Proceedings

Once applicant appeals to State Bar Court adverse moral character determination by State Bar's Committee of Bar Examiners (Committee), court must determine whether applicant possesses good moral character. In moral character proceedings, State Bar's Office of Chief Trial Counsel (OCTC) investigates applicant's moral character, discovery occurs, and then matter proceeds to trial. OCTC may take applicant's deposition. Moral character hearings in State Bar Court are de novo and not limited to matters Committee considered. Applicant bears burden of establishing good moral character and cannot meet burden by refusing to cooperate in State Bar investigation. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr 989. **[1a,b]**

Where applicant failed to seek stay of proceedings in Hearing Department, Review Department rejected applicant's argument that hearing judge should not have dismissed case while request for interlocutory review of hearing judge's order denying applicant's motion for relief from further deposition was pending. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989.**[4]**

Where moral character proceeding dismissed with prejudice, and no moral character hearing on merits occurred, applicant prohibited from beginning new proceeding in State Bar Court based on same adverse moral charter determination from State Bar's Committee of Bar Examiners (Committee). To allow applicant to do so would reward applicant for obstructing discovery. If applicant wants to continue to seek admission to practice law in California, applicant must submit new Application for Determination of Moral Character, and Committee determines when applicant may file such new application. Applicant may appeal any other future adverse moral character determinations by Committee, as allowed by applicable rules, based on different Application for Determination of Moral Character. *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 989. **[5a, b]**

100 Generally Applicable Procedural Issues

Note: References to rules in topic headings 101 through 199, unless otherwise noted, are to the Rules of Procedure of the State Bar, as adopted effective January 1, 2011 (2011 rules), including subsequent amendments and additions. The 2011 rules reorganized and renumbered the rules governing State Bar Court proceedings, and grouped them under Title V, Discipline.

101 Jurisdiction

Actual notice is not a necessary element of proper service in disciplinary proceedings, and service is deemed completed upon mailing to respondent's official membership address. State Bar Court therefore had jurisdiction to hear disciplinary case even where respondent did not personally receive service of notice of disciplinary charges, motion for entry of default, and default order, all of which were sent to respondent's official membership records address. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348 **[10]**

In order to find culpability under rule 1-300(B) of the Rules of Professional Conduct, the State Bar Court must examine applicable out-of-state authority to determine whether a California attorney has violated professional regulations in a foreign jurisdiction. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250 **[1]**

Rules of Procedure of the State Bar, rule 220(b), which requires the court to file its decision within 90 days of taking a matter under submission, is not jurisdictional. Although filing a decision well beyond the prescribed 90 days undermines important objectives, an attorney's decision to abate his law practice pending filing of hearing decision is too speculative to establish specific, legally cognizable prejudice. *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 **[1]**

Although the State Bar apparently believed that it had perfected its right to appeal due to having filed two requests for review, no timely request for review was filed after service of a final order disposing of a posttrial motion, and therefore the review department was without jurisdiction to hear the appeal. Due to the *sui generis* nature of disciplinary proceedings, as well as the differences between statutes and rules regarding notices of appeal applicable in civil matters and those applicable in disciplinary matters, the review department could not apply civil rules and statutes so as to consider the requests for review as prematurely filed or to stay proceedings at the trial level after a request for review had been filed. Although the State Bar asked for relief on the grounds that it never received a copy of the hearing judge's final order and that it was misled when the review department clerk's office did not reject pleadings filed after the requests for review, the evidence established that service of the hearing judge's final order was properly effectuated, and the review department clerk's failure to issue a notice of rejection of pleadings was not a ground for relief under any rule but merely a courtesy function. More importantly, because the review department was divested of jurisdiction, it was powerless to relieve against mistake, inadvertence, accident, or misfortune. *In the Matter of Ozowski* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67. **[2 a–g]**

The review department concluded that the hearing judge erred as a matter of law in denying the motion to set aside the dismissal for lack of jurisdiction and found that the procedural requirement of Rules of Procedure of the State Bar, rule 662(c) did not divest the court of jurisdiction to extend the time for, or to grant relief from, payment of costs. Relying on well–settled rules of statutory construction, the review department construed the rule to be directory rather than mandatory or jurisdictional and thus found that the court retained jurisdiction to determine whether petitioner's failure to provide proof of payment of costs prior to filing the reinstatement petition should have resulted in a dismissal under the facts and circumstances of the case. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[1a, b]**

Despite its seemingly mandatory wording, Rules of Procedure of the State Bar, rule 662(c) is merely procedural, advancing a time requirement for the payment of costs, while the relevant Business and Professions Code sections confer jurisdiction to decide the substantive issues of costs and relief therefrom. There is no evidence that the Board of Governors of the State Bar attempted to supplant the statutory authority set forth in Business and Professions Code section 6140.7 and 6086.10, or to divest the State Bar Court of jurisdiction, by implementing a rule of procedure, and indeed, the Board of Governors is proscribed from doing so by Business and Professions Code section 6086. That section is consistent with the more general rule that, where a statute empowers an administrative agency to

adopt regulations, those regulations must be consistent and not conflict with the governing statute. Because there is no express language or clear intent to render the rule jurisdictional, the review department looks to the cost provisions as a whole, the nature and character of these provisions, and the consequences that would follow from potential constructions. If the rule were interpreted to be mandatory or jurisdictional, the rule would conflict with and/or constrict relevant statutes and other rules, inadvertently alter the reinstatement requirements, and at times produce unreasonable results. Construing the rule as directory, however, in no way interferes with or compromises the ability of the State Bar or the State Bar Court to effectuate the intent of obtaining costs as money judgments. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[2a, b]**

In construing statutes, a practical construction is preferred. A construction of Rules of Procedure of the State Bar, rule 662(c) which permits the State Bar Court to retain jurisdiction is manifestly more practical than one which cuts off the court's jurisdiction regardless of the time and resources the parties have already expended in the court proceedings. Where a reinstatement proceeding had been pending for almost a year at the time a motion to dismiss was filed, the State Bar's investigation period and the discovery period for both parties had expired, and the trial was set to commence in approximately one month, dismissal was a severe remedy for noncompliance with payment of costs, and denial of a motion to set aside the dismissal was draconian. If a petitioner fails to pay the disciplinary costs prior to filing his reinstatement petition, the hearing judge has discretion to dismiss the reinstatement proceeding rather than to undertake a lengthy trial. But the hearing judge may also consider the failure to timely pay costs as a negative factor in petitioner's showing of rehabilitation or condition a petitioner's return to active status on the payment of some or all of the costs. Finally, if a disbarred or resigned attorney has failed to pay costs, the State Bar may enforce an order imposing costs as a money judgment. Construing Rules of Procedure of the State Bar, rule 662(c) as directory will continue to promote timely payment of costs, while not mandating unreasonable consequences in pending proceedings. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[5a b, c]**

A disciplinary action may be maintained even though the attorney has been acquitted of criminal charges that have been dismissed based on the same facts. Moreover, the State Bar Court has jurisdiction to regulate misconduct even when it occurred in another state and did not result in an out–of–state criminal conviction. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[7]**

The review department declined to consider applicant's argument that the Supreme Court's order in his previous disciplinary matter, filed in 1998, was void on its face because of numerous constitutional infirmities. The review department simply does not have the authority to set aside the Supreme Court's order. Once the record in applicant's previous disciplinary cases was transmitted to the Supreme Court, the review department no longer retained jurisdiction over the matter. Accordingly, the review department declined to consider applicant's collateral attack on his prior discipline.*In the Matter of Applicant B* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 731.**[1]**

Rule 15.2 of the Rules Governing the State Bar Program for Certifying Legal Specialists provides that a denial, suspension, or revocation of certification or re-certification by the Board of Legal Specialization based on a final disciplinary action by the Supreme Court, the State Bar Court, or any body authorized to impose professional discipline, shall be final and shall not be subject to further review. The legislative history of rule 15.2 made it abundantly clear that the State Bar proposed the adoption of this rule to the Supreme Court with the specific intent of divesting previously disciplined applicants of their right of appeal to the State Bar Court. Thus, the rule expressly deprived the State Bar Court of jurisdiction to consider applicant's procedural due process challenge. Accordingly, the review department was compelled to agree with the hearing judge, who correctly dismissed the matter for lack of jurisdiction. Although the State Bar Court lacked jurisdiction in this case, the review department construed rule 15.2 to mean that the decision of the Board denying applicant re-certification was subject to review by the Supreme Court. *In the Matter of Applicant B* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 731.**[1]**

The ability of federal courts and federal agencies to discipline attorneys who practice before them does not deprive a state bar of jurisdiction to discipline one of its members for engaging in misconduct while practicing before the federal courts or agencies. While neither the State Bar Court nor the Supreme Court has jurisdiction to prevent a person from practicing law in federal courts or agencies, the Supreme Court has the inherent authority to discipline attorneys licensed to practice in the State of California, and the State Bar Court has authority to conduct disciplinary proceedings and make recommendations of discipline to the Supreme Court. The federal regulations pertaining to discipline of attorneys practicing before federal immigration agencies themselves contemplate that the

disciplinary agency of a state in which an attorney is admitted to practice has authority to discipline the attorney for misconduct committed in federal immigration agencies. In addition, various cases from federal courts and from the Board of Immigration Appeals have indicated that the disciplinary agencies of the states in which immigration attorneys are licensed have jurisdiction to discipline these attorneys for misconduct committed in immigration cases in federal courts and agencies. *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[1 a-e]**

Rule of Procedure requiring hearing judges to file decisions within 90 days after taking cases under submission is neither mandatory nor jurisdictional. Thus, respondent's contention that the hearing judge's decision was void because it was filed four days after the expiration of the ninety-day time limit was rejected. Furthermore, because respondent failed to establish that he suffered any actual harm or prejudice, he was not entitled to any relief for the hearing judge's failure to file his decision timely. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[8]**

As the reproval imposed on respondent in the prior disciplinary proceeding is final, it and the conditions attached to it are presumed valid and enforceable. The reproval decision is subject to collateral attack only on the grounds that the judge (1) lacked jurisdiction of the subject matter, (2) lacked personal jurisdiction over respondent, or (3) acted in excess of jurisdiction. The burden of proof is on the party who attacks the judgment to show lack of jurisdiction. Furthermore, to succeed on collateral attack, the jurisdictional defect must be proven from the face of the record in the prior proceeding. Respondent's contention that the conditions attached to his prior private reproval are subject to collateral attack because the hearing judge failed to explicitly recite in her decision two findings required by rule 956 of the California Rules of Court, that the reproval conditions would serve to protect the public and to serve respondent's interests, is an allegation that the hearing judge acted in excess of her jurisdiction. Respondent failed to prove from the face of the record in the prior reproval that the conditions attached to it would not serve to protect the public or serve respondent's interest. In any event, the unchallenged factual findings in the hearing judge's decision in the prior case establish that the hearing judge acted within her jurisdiction in attaching the conditions. Without question, the reproval conditions that he take and pass a professional responsibility examination and attend the State Bar's Ethics School will serve to protect the public and serve respondent's interests. The hearing judge's error is not a jurisdictional error that can subject the hearing judge's decision to collateral attack. At most, the error was a procedural defect that respondent waived by failing to appear in the prior proceeding and object to the hearing judge's decision on that ground. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[1]**

The two requisite elements of personal jurisdiction are (1) that respondent is a member of the State Bar for the duration of the proceeding and (2) that respondent was properly served with a copy of the notice of disciplinary charges. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[2]**

Proper subject matter jurisdiction in the State Bar Court is not limited to the subject of attorney misconduct committed in the course of practicing law. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[3]**

In the absence of any direct precedent construing rule 956 of the California Rules of Court, the review department held that the purpose of the rule's findings is to aid in ensuring that any duties attached to a reproval are reasonably related to its purposes. Although rule 956 prescribes a salutary requirement, it cannot be said that it is jurisdictional. The findings themselves do not go to the essential fairness of the underlying disciplinary proceeding or even a subsequent enforcement proceeding. If findings are omitted from a reproval decision to which rule 956 applies, the error can be called to the State Bar Court's attention in a timely manner. If not done timely, the objection is waived, absent a showing that respondent was clearly prejudiced by the omitted findings. No showing of prejudice was made in this proceeding and such a claim would be hard to envision regarding the two duties that respondent was charged with violating in this proceeding: passage of a professional responsibility examination and attendance at the State Bar's Ethics School. These are requirements imposed in almost every disciplinary probation. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[4]**

California Rules of Court, rule 951, which explicitly authorizes the State Bar Court to extend the time within which an attorney must take and pass a professional responsibility examination, applies only when the Supreme Court orders the attorney take and pass such an examination. It does not apply when the State Bar Court orders an attorney to take and pass the examination as a condition attached to a reproval. When the State Bar Court imposes such a condition, its authority to extend the time for the attorney to comply is derived from California Rules of Court,

rule 956, which authorizes the State Bar Court to attach conditions to the reprovals that it imposes. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[1]**

Even after respondent's private reproval became final, the State Bar Court retained jurisdiction over the conditions attached to it under the Former Transitional Rules of Procedure of the State Bar (now the Rules of Procedure of the State Bar, title II, State Bar Court Proceedings). Thus, when the hearing judge extended the time for respondent to comply with the conditions attached to the reproval after the time to comply had expired, the hearing judge did not act without jurisdiction; but in excess of jurisdiction. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[2]**

When a party seeks or consents to a court's action that is in excess of the court's jurisdiction, the party may be estopped to complain of the court's action as long as the court had subject matter jurisdiction. Respondent was estopped from collaterally attacking a final order extending the time in which he was required to comply with conditions attached to a reproval where he consented to the order and where the court had jurisdiction of the subject. The review department concluded that the application of estoppel was in harmony with the primary goals of attorney discipline. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[3]**

The complaining clients' settlement of their civil matter against respondent and the clients' release of all claims against him does not preclude the State Bar from proceeding with the disciplinary matter. A disciplinary proceeding is not a controversy between two individuals, the complainant and the accused attorney, but is an adverse proceeding against the accused attorney and may be instituted and prosecuted upon the complaint of any person knowing the facts upon which the proceeding is based. The complaining person or client is not a party to the disciplinary proceeding, and need not appear and testify at trial. Thus, the disciplinary case was not a right, claim, or cause of action that accrued to the complaining clients; and therefore it was not a claim that they could release or otherwise compromise. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[1]**

Because jurisdiction vests in only one court at a time, once a review department opinion remanding the proceeding to hearing department for further proceedings becomes final, only the hearing department had jurisdiction to rule on State Bar's motion to expand the issues to be addressed at the trial on remand. Because the review department did not adjudicate the issue of petitioner's present moral fitness in its opinion remanding the proceeding to hearing department, the hearing judge's consideration of that issue on remand was not inconsistent with the review department's remanding opinion, and the hearing judge therefore did not error in admitting additional relevant evidence on the issue. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[3]**

In California, as in all the states, the regulation of the practice of law is a judicial function. The California Supreme Court has original, inherent, and plenary jurisdiction to regulate attorneys in California. The State Bar provides assistance in the area of attorney regulation; it serves as an administrative assistant to or adjunct of the Supreme Court, which nonetheless retains its inherent judicial authority. Thus, contrary to respondent's suggestions, the State Bar Court possesses the jurisdiction to adjudicate attorney disciplinary proceedings as an arm of the Supreme Court. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[1]**

Even though statutes authorizing conviction referral proceedings authorize only the disbarment or suspension of attorneys convicted of crimes, the State Bar Court still had jurisdiction in conviction matter to recommend to the Supreme Court that it cancel respondent's license to practice law. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[9]**

Respondent's willful failure to disclose his arrest and pending trial on felony charges by updating his answers to the moral character questions on his initial application for admission to practice law was a fraud upon the Supreme Court because it allowed him to admitted without adequate consideration of his moral character. Thus, the State Bar Court may recommend that his license to practice be revoked without addressing the nature of his crimes or the facts and circumstances surrounding them. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[12]**

Respondent's argument that the State Bar Court lacked jurisdiction because any misconduct occurred in another state was rejected because there is no jurisdictional requirement that alleged misconduct occur in this state. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[3]**

Review Department had jurisdiction under rule 113 of Transitional Rules of Procedure to review portion of order by hearing judge which, in dismissing disciplinary proceeding pursuant to agreement in lieu of discipline, placed conditions on reopening of underlying disciplinary matter. Scope of such review was to determine whether hearing judge abused discretion in including condition in agreement in lieu of discipline which had not been agreed to by parties. *In the Matter of Respondent R* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227. **[1]**

Notice to show cause under rule 550 of Transitional Rules of Procedure of State Bar is not required in conviction referral proceeding. Pursuant to Supreme Court's delegation of authority to State Bar Court in conviction referral matters (Cal. Rules of Court, rule 951(a)), only State Bar Court referral order and notice of time and place of hearing are needed to initiate a conviction referral proceeding. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[2]**

Supreme Court and State Bar Court have unquestioned jurisdiction over attorneys' convictions of crime whether or not they are eligible for summary disbarment. There is no requirement that notice of time and place of hearing in conviction referral matter charge commission of "serious" offense for which admonition would be unavailable (Trans. Rules Proc. of State Bar, rule 415), or offense for which State Bar Court may recommend summary disbarment. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[3]**

State Bar's motion for emergency relief from hearing judge's order regarding conduct of disciplinary investigation was not properly brought before review department under either rule 350 of Transitional Rules of Procedure or rule 1400 of Provisional Rules of Practice. However, motion by State Bar to stay or vacate order issued by hearing judge based on argument that hearing judge acted without jurisdiction was properly brought under rule 113 of Transitional Rules of Procedure. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[1]**

Except with respect to motions to quash investigative subpoenas, the State Bar Court does not have jurisdiction over State Bar disciplinary complaints prior to the filing of formal charges by the Office of the Chief Trial Counsel, and therefore had no jurisdiction to grant relief requested by attorney regarding conduct of disciplinary investigation, absent a Supreme Court order conferring authority to do so. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[2]**

The State Bar Court's statutory exercise of independent decision-making authority over the determination of disciplinary and reinstatement proceedings does not extend to the investigation of such matters. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[3]**

In the statute establishing the State Bar Court (Business and Professions Code section 6086.5), the reference to "committees" which are replaced by the State Bar Court does not include the standing Discipline Committee of the Board of Governors. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[4]**

Former disciplinary structure under which local administrative committees had both investigative and fact-finding powers raised due process concerns. Under volunteer State Bar Court system which superseded it, investigative and prosecutorial functions were separated from fact-finding and adjudicative functions. This separation was strengthened and institutionalized by reforms which created independently appointed State Bar Court. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[5]**

Statutory scheme regarding State Bar discipline system does not provide for State Bar Court judges to report to Board of Governors or any of its committees, nor does it require Chief Trial Counsel to report to State Bar Court. Consistent with separation of prosecutorial and judicial roles, State Bar Court has no administrative oversight role with respect to functions of Chief Trial Counsel, and does not have general, plenary authority to supervise the conduct of investigations. Board of Governors and its Discipline Committee have general statutory authority over Chief Trial Counsel and Office of Investigations, subject to review by California Supreme Court. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[6]**

The State Bar Court's statutory jurisdiction (Business and Professions Code section 6051.1) to adjudicate motions to quash investigative subpoenas issued by the Office of the Chief Trial Counsel constitutes the sole exception to the State Bar Court's lack of jurisdiction during the investigation phase of disciplinary proceedings. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[7]**

Review department declined to adopt construction of statute giving State Bar Court jurisdiction over motions to quash subpoenas (Business and Professions Code section 6051.1) which would do violence both to plain meaning of statute and to necessary separation of powers within disciplinary system. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[8]**

When a disciplinary proceeding is pending in State Bar Court, the respondent may be able to argue that evidence sought to be used by the State Bar which was obtained by improper means should be excluded. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[9]**

Nothing in the California Rules of Court delegates to the State Bar Court the Supreme Court's general review power over decisions of the State Bar Board of Governors and its committees. However, in the exercise of its inherent authority to regulate the legal profession, the Supreme Court could order the State Bar Court to adjudicate or make findings and recommendations regarding a motion for a protective order regarding a State Bar disciplinary investigation, or could adopt a rule of court giving the State Bar Court jurisdiction over such motions generally. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[10]**

Respondent's attempts to have clients withdraw pending State Bar complaints as part of settlements of actions which were not for malpractice did not violate statute prohibiting attorneys from conditioning malpractice settlements on agreement by client not to file State Bar complaint. The State Bar may proceed with a disciplinary matter whether or not the complainant is willing. (Trans. Rules Proc. of State Bar, rule 507.) *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[12]**

The Legislature itself has recognized that the inherent authority of the Supreme Court controls the outcome in disciplinary proceedings. It is therefore incumbent upon the review department not only to review the statutory criteria for summary disbarment, but also to review Supreme Court precedent to assure that application of statutory summary disbarment does not conflict with Supreme Court standards for disbarment. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[4]**

Finality of an attorney's criminal conviction is not essential for an order referring the conviction to the State Bar Court Hearing Department for a determination whether there is probable cause to conclude that the circumstances of the conviction involved moral turpitude for purposes of interim suspension of the attorney. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[1]**

The possibility that criminal proceedings against an attorney may be dismissed if the attorney complies with the terms of criminal probation is not relevant to the effect of the conviction in disciplinary proceedings. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[2]**

No method of enforcement of settlement agreements in disciplinary proceedings is set forth in the Transitional Rules of Procedure, but an express provision governing this subject is not essential to the court's inherent jurisdiction to exercise reasonable control over proceedings before it in order to avoid unnecessary delay. Where one party refused to abide by a settlement agreement, the other party could have made a motion to compel enforcement of the agreement, by analogy with the statutory motion permitted by Code of Civil Procedure section 664.6, or could have asserted the agreement as an affirmative defense in the pending proceeding. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[6]**

Both the Legislature, by statute, and the Supreme Court, by case law, have recognized that the Supreme Court has inherent authority over regulation of the practice of law. The Supreme Court has not felt constrained by lack of authorizing legislation to exercise this inherent power, and has concerned itself with comparable treatment of respondents in comparable situations. Accordingly, Supreme Court case law constituted appropriate authority for review department recommendation that a disbarred respondent be permitted to credit time spent on inactive enrollment toward waiting period to apply for reinstatement, just as an interimly suspended attorney-felon can do by rule (rule 662, Trans. Rules Proc. of State Bar). *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[5]**

Where respondent challenged the use of a prior disciplinary matter as evidence in aggravation because he contended the matter had been time-barred, but respondent had defaulted in the earlier proceeding and the prior discipline had been ordered by the Supreme Court over three years earlier, only the Supreme Court could grant the requested relief. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[19]**

The required five-year waiting period before a disbarred attorney can apply for reinstatement may be shortened to three years for good cause. By rule, the five-year and three-year periods run from the date of any interim suspension, and Supreme Court precedent has given the same effect to inactive enrollment. (Trans. Rules Proc. of State Bar, rule 662.) The issue whether the waiting period may run from the start of a suspension other than an interim suspension has not been decided, and did not need to be addressed by the review department in recommending disbarment, but could be raised by respondent before a hearing judge if respondent wished to seek reinstatement at the earliest possible time. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[22]**

Summary disbarment is statutorily authorized if an attorney commits a California or federal felony as to which: (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement; and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. If the State Bar Court determines that disbarment would be ordered by the Supreme Court without regard to mitigating circumstances, a recommendation of summary disbarment is justified. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[2]**

By statute, summary disbarment is available only for a narrow range of grievous misconduct. Grand theft by an attorney in the capacity of executor of an estate, though egregious, does not come within the statutory definition of an offense justifying summary disbarment unless it was committed in the practice of law or in such a manner that a client was a victim. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[7]**

The Supreme Court has delegated to the State Bar Court its statutory power to place on interim suspension attorneys who have been convicted of crimes. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[2]**

Where an attorney occupies a dual capacity, performing, for a single client or in a single matter, along with legal services, services that might otherwise be performed by a lay person, the services the attorney renders in the dual capacity all involve the practice of law, and the attorney must conform to the Rules of Professional Conduct in the provision of all of them. This rule applies to an attorney who is appointed both attorney and executor of a probate estate. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[1]**

Where respondent was convicted after being admitted to practice law for criminal conduct occurring before such admission, there was statutory authority for disciplining respondent as an attorney, based on the conviction. Had the conviction occurred earlier, the disciplinary system would still have had jurisdiction over the misconduct under the Supreme Court's inherent authority. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[1]**

Admission of attorneys to practice law is an exercise of one of the inherent powers of the California Supreme Court, which relies on the Committee of Bar Examiners of the State Bar to administer and carry out the bar admission process, including examining applicants for admission and investigating their fitness. An applicant who is denied certification by the Committee may seek independent adjudication by the State Bar Court. The determination of moral character made by that court is final and binding, subject to review by the Supreme Court. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[1]**

Judges in State Bar proceedings have inherent authority to exercise reasonable control over the proceedings in front of them. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[15]**

A disciplinary proceeding is seldom the proper forum for attorney fee disputes. In a matter arising from a dispute between attorneys, where respondent did not mishandle any sum that could be considered trust funds and respondent's instruction to staff to endorse the other attorney's name to settlement drafts was not dishonest, corrupt, or reflective of bad moral character, the review department affirmed the dismissal of the proceeding. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[1]**

Rule 951(a), California Rules of Court, delegating certain powers to the State Bar Court regarding the discipline of attorneys convicted of crimes, limits the State Bar Court to recommending summary disbarment to the Supreme Court, rather than imposing it directly. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[9]**

The State Bar Court acts as the administrative arm of the Supreme Court on attorney disciplinary matters and acts pursuant to its mandate. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[8]**

The State Bar Court, as an arm of the Supreme Court in attorney disciplinary matters, does not sit as a collection board for clients aggrieved over fee matters, nor is its jurisdiction derivative of fee arbitration proceedings. The administration of attorney discipline, including such remedial orders as restitution, is independent of any remedy that an aggrieved client may pursue. In a disciplinary proceeding to protect the public, the alleged flaws in a fee arbitration proceeding and resulting judgment have little relevance. Accordingly, the State Bar Court has jurisdiction over a disciplinary matter even though there has already been a factually related fee arbitration. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[4]**

Respondent's fundamental objections to disciplinary proceeding, based on lack of personal service, expiration of the statute of limitations, lack of jurisdiction, and failure of the notice to show cause to state grounds for discipline, should have been presented to the State Bar Court at the trial level by motion. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[15]**

State Bar Court jurisdiction was confirmed by evidence establishing the sole requisite fact, i.e., respondent's membership in the State Bar. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[18]**

Section 6078 authorizes the State Bar Court to hold a hearing on charged violations of law and to recommend disbarment in those cases warranting disbarment, but section 6077 declares that a Rule of Professional Conduct violation does not warrant discipline in excess of three years suspension. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[8]**

Section 6103's authorization of discipline, including disbarment, is limited by its terms to occasions when an attorney violates the oath and duties defined in the Business and Professions Code or violates a court order. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[9]**

Decisions in involuntary inactive enrollment proceedings under section 6007(b) are reviewable by the review department pursuant to rules 450-453, Trans. Rules Proc. of State Bar. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[1]**

As a sui generis arm of the Supreme Court, the State Bar Court may recommend that the Supreme Court declare a statute or rule unconstitutional, but in proceedings not requiring Supreme Court action, the State Bar Court's authority is limited to interpreting existing law. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[5]**

The time limit for filing an answer to the notice to show cause is not jurisdictional, and an answer will be accepted for filing at any time prior to the actual entry of default, no matter how belatedly it is submitted. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[6]**

The State Bar Court retains jurisdiction over a matter until it transmits the record to the Supreme Court. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[1]**

102 Improper Prosecutorial Conduct

102.10 Improper reopening of investigation

Initiation of disciplinary proceeding against respondent was not barred under former rule 511 of the Rules of Procedure of the State Bar by State Bar's decision to monitor appeal in malpractice case against respondent instead of pursuing formal investigation. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[2]**

A disciplinary proceeding was not barred under rule 511, Transitional Rules of Procedure of the State Bar, even though a letter was sent from the Los Angeles office of the State Bar ostensibly closing the case, where there remained a separate open, active investigative file in the San Francisco office. The closure of the Los Angeles investigation did not serve to extinguish the open investigation by the San Francisco office. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[1]**

Evidence provided by State Bar demonstrated that closure and reopening of investigation of disciplinary matter was in compliance with applicable rules and did not bar disciplinary proceedings; respondent had not been prejudiced by delay. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[12]**

102.20 Delay in prosecution (Rule 5.21)

Delay in prosecution bars a disciplinary proceeding only if the delay caused specific actual prejudice resulting in the denial of a fair trial. *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390. **[2]**

Where respondent challenged the use of a prior disciplinary matter as evidence in aggravation because he contended the matter had been time-barred, but respondent had defaulted in the earlier proceeding and the prior discipline had been ordered by the Supreme Court over three years earlier, only the Supreme Court could grant the requested relief. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[19]**

No delay in bringing disciplinary charges occurred where complaint against respondent was sent to State Bar in July 1988, respondent's last act of misconduct was in June 1989, and notice to show cause was filed in May 1990. In addition, where none of evidence allegedly lost due to delay was material to issue of respondent's misconduct, no specific prejudice was demonstrated from alleged delay in bringing charges. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[4]**

Excessive delay in the conduct of a disciplinary proceeding may be a mitigating circumstance, but the attorney must demonstrate that the delay impeded the preparation or presentation of an effective defense. A delay in a disciplinary proceeding merits consideration only if it has caused specific, legally cognizable prejudice. Where respondent was able to present evidence on all issues as to which respondent claimed prejudicial delay, and did not specify what missing evidence would have shown, respondent failed to show that delay caused specific prejudice. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[21]**

Where a fire which destroyed some of respondent's files did not occur until over a year after respondent had promised the State Bar to check his files in response to a client complaint, respondent demonstrated no prejudice from the State Bar's delay in bringing formal charges arising out of the complaint. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[1]**

The passage of time since respondent's misconduct and the failure of the State Bar to consolidate respondent's two disciplinary matters did not render the disbarment recommendation in the second matter unfair. Consolidation of disciplinary matters, while preferable when reasonably possible and not prejudicial, is not mandatory, and independent consideration of separate matters involving the same attorney is not uncommon. Where an investigation by state law enforcement and the State Bar of respondent's misconduct in the second matter was still ongoing after the initiation and disposition of respondent's earlier disciplinary matter, consolidation would not have been possible. Further, it could not be presumed that if the matters had been consolidated, the recommended discipline would have been suspension rather than disbarment, given the far greater seriousness of the misconduct in the second matter. Finally, respondent had shown no prejudice from the delay, and had benefited from being able to practice almost continually in the interim. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[8]**

In order to establish a denial of a fair trial because of delay between the making of a complaint to the State Bar and the filing of a formal notice to show cause, an attorney must show specific instances of actual prejudice from the delay. Where information in support of respondent's claim of prejudice was available and known to respondent at the time of respondent's motion to dismiss before the hearing judge, but was not set forth in support of the motion, respondent could not improve on review the record he had the opportunity to make in the hearing department. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[2]**

Respondent's fundamental objections to disciplinary proceeding, based on lack of personal service, expiration of the statute of limitations, lack of jurisdiction, and failure of the notice to show cause to state grounds for discipline, should have been presented to the State Bar Court at the trial level by motion. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[15]**

There is no statute of limitations in attorney disciplinary proceedings. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[17]**

Delays in disciplinary proceedings merit consideration only if they have caused specific, legally cognizable prejudice (e.g., by impairing the presentation of evidence). Where respondent was not prepared to state that his case would have been stronger if no delays had occurred, and respondent received credit for time on interim suspension following conviction, respondent failed to demonstrate prejudice from delay in disciplinary proceeding. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[1]**

Where respondent failed to identify any specific prejudice resulting from delay of approximately three and one half years in filing of notice to show cause after client's initial complaint, and merely made generalized reference to fading memories, delay was not a basis for the dismissal of charges. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[8]**

102.30 Investigative and/or pretrial misconduct

In the Matter of Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668.

The State Bar was not barred from relying on Michigan proceedings to impose discipline in California under the authority of Business and Professions Code section 6049.1 notwithstanding that, at the time of a prior California disciplinary case in which the State Bar and respondent entered into a stipulation disposing of the charges, the State Bar knew of disciplinary proceedings pending in Michigan but nevertheless advised respondent in writing pursuant to Rules of Procedure of the State Bar, rule 133(a)(12) that there were no additional State Bar investigations pending against him. The clear purpose of Rules of Procedure of the State Bar, rule 133(a)(12) is to require the State Bar to give notice to respondents before the State Bar Court or to attorneys being investigated by the State Bar of the pendency of other complaints lodged with the State Bar against such attorneys, and to expand that requirement to include complaints lodged in other jurisdictions would impose a far greater burden than that contemplated. At the time of the stipulation, both respondent and the State Bar knew of the Michigan proceedings, yet the stipulation did not in any way deal with the California consequences of the Michigan matter, there was no evidence that the Michigan proceedings were included in discussions leading to the stipulation, respondent entered into the stipulation without inquiring about including the Michigan matter in the stipulation, and the State Bar had no way to evaluate the seriousness of the Michigan proceedings. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[1]**

State Bar's motion for emergency relief from hearing judge's order regarding conduct of disciplinary investigation was not properly brought before review department under either rule 350 of Transitional Rules of Procedure or rule 1400 of Provisional Rules of Practice. However, motion by State Bar to stay or vacate order issued by hearing judge based on argument that hearing judge acted without jurisdiction was properly brought under rule 113 of Transitional Rules of Procedure. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[1]**

Except with respect to motions to quash investigative subpoenas, the State Bar Court does not have jurisdiction over State Bar disciplinary complaints prior to the filing of formal charges by the Office of the Chief Trial Counsel, and therefore had no jurisdiction to grant relief requested by attorney regarding conduct of disciplinary investigation, absent a Supreme Court order conferring authority to do so. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[2]**

Statutory scheme regarding State Bar discipline system does not provide for State Bar Court judges to report to Board of Governors or any of its committees, nor does it require Chief Trial Counsel to report to State Bar Court. Consistent with separation of prosecutorial and judicial roles, State Bar Court has no administrative oversight role with respect to functions of Chief Trial Counsel, and does not have general, plenary authority to supervise the conduct of investigations. Board of Governors and its Discipline Committee have general statutory authority over Chief Trial Counsel and Office of Investigations, subject to review by California Supreme Court. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[6]**

When a disciplinary proceeding is pending in State Bar Court, the respondent may be able to argue that evidence sought to be used by the State Bar which was obtained by improper means should be excluded. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[9]**

Nothing in the California Rules of Court delegates to the State Bar Court the Supreme Court's general review power over decisions of the State Bar Board of Governors and its committees. However, in the exercise of its inherent authority to regulate the legal profession, the Supreme Court could order the State Bar Court to adjudicate or make findings and recommendations regarding a motion for a protective order regarding a State Bar disciplinary investigation, or could adopt a rule of court giving the State Bar Court jurisdiction over such motions generally. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[10]**

A State Bar disciplinary matter does not deal with civil responsibility where a party might be under a duty to mitigate harm or damages. The State Bar is entitled to investigate whatever information it acquires about misconduct without notifying the attorney involved contemporaneously, and it did not act improperly by failing to notify attorneys promptly when it learned of solicitation of clients by attorneys' agents. State Bar rules require only that attorneys be given an opportunity to explain or deny matters under investigation prior to issuance of notice to show cause. (Trans. Rules Proc. of State Bar, rule 509(b).) *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[3]**

Where respondents' non-lawyer agents solicited a client who, unknown to them, was a State Bar attorney, and invited that attorney to respondents' office, that attorney did not improperly search respondents' law office by reading papers spread out on table in front of him by respondents' staff, without touching papers or opening any cabinets, drawers, or files. Such conduct would not have been improper if committed by a police agency in collecting evidence in a criminal case. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[5]**

State Bar prosecutors have statutory authority to apply to superior court to grant immunity from criminal prosecution to a witness in an attorney disciplinary proceeding. Where such procedures were properly invoked, and respondents showed no prejudice to themselves on account of the procedures followed in seeking such immunity, respondents were not entitled to relief based on asserted error in such procedures. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[6]**

Where State Bar demonstrated that Board of Governors policy had been properly observed with regard to State Bar investigators' interviews of respondents' current clients who had not made complaints against them, respondents were not entitled to relief based on occurrence of such interviews. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[7]**

Issue of alleged misconduct of examiner during pretrial discovery was moot, where issue had been addressed by order of hearing judge which respondent did not challenge on review, and where only prejudice alleged was unnecessary prolongation of interim suspension for which review department gave respondent credit against recommended actual suspension. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[12]**

Where examiner's pre-trial statement listed respondent's prior record of discipline among exhibits to be offered at trial, but did not detail or characterize such prior record in any way, and copy of prior record was not considered by hearing judge until after determination of culpability, and respondent demonstrated no prejudice from reference in pre-trial statement and had failed to raise issue before hearing judge, respondent was not entitled to any relief based on asserted violation of rule 571, Trans. Rules Proc. of State Bar. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[4]**

A disciplinary proceeding was not barred under rule 511, Transitional Rules of Procedure of the State Bar, even though a letter was sent from the Los Angeles office of the State Bar ostensibly closing the case, where there remained a separate open, active investigative file in the San Francisco office. The closure of the Los Angeles investigation did not serve to extinguish the open investigation by the San Francisco office. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[1]**

Even if it were established that examiner had sent complaining witness's letter to hearing referee, respondent had waived any claim of prejudicial misconduct by his counsel's failure to preserve the objection at trial, and in any event no identifiable prejudice resulted from the referee's exposure to the letter's hearsay statements where the referee heard five days of testimony, including testimony on the same subject by the letter's author and by persons with personal knowledge. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[7]**

102.35 Failure to disclose exculpatory evidence

Even if State Bar prosecutor had duty to disclose exculpatory evidence, unpublished, non-precedential trial court decision did not constitute such evidence, nor was it controlling precedent which prosecutor had duty to disclose to court. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[14]**

102.40 Misconduct during trial

In the Matter of Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668.

In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

102.90 Other improper prosecutorial conduct

Where State Bar conceded at trial that respondent's conviction did not involve moral turpitude, but argued on review that conviction did involve moral turpitude, State Bar's unexplained change of position was troubling, because it denied respondent opportunity to develop trial record on the issue. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283. **[2 a,b]**

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

The State Bar is required by statute to disclose to criminal investigatory agencies certain incriminating information discovered about an attorney as a result of an investigation or formal proceeding. The State Bar also is obligated by statute to refer all convictions to the State Bar Court. Where it appeared that the State Bar complied with these statutory duties by disclosing information to federal authorities well before the start of trial in an earlier original proceeding and by notifying the State Bar Court after respondent sustained a federal conviction, there was no evidence that the subsequent State Bar Court conviction proceeding was the product of vindictive prosecution tactics of the State Bar. *In the Matter of Curtis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601. **[1]**

It is not evident whether defense of selective prosecution is applicable in State Bar disciplinary proceedings. Even if such defense were available, respondent would have been required to show an intentional violation of essential principle of practical uniformity and an element of intentional or purposeful discrimination. That is respondent would have been required to demonstrate that she had been deliberately singled out for prosecution on basis of some invidious criterion. There is no evidence in record on any of these issues. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[14 a-c]**

It is not clear that selective prosecution may be raised as defense in State Bar disciplinary proceedings. Even if such defense were available, it cannot be premised on asserted discrimination due to notoriety rather than on constitutionally prohibited basis such as race, gender, or exercise of constitutional rights. In absence of allegation of prohibited basis for prosecution, State Bar's failure to prove all charges was not sufficient to show invidiously discriminatory prosecution. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[16]**

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

Even if selective prosecution were a valid defense in State Bar proceedings, claim that respondent was singled out for prosecution based on success and fame could not succeed in absence of authority that claims of selective prosecution may be premised on asserted discrimination due to notoriety rather than on a constitutionally prohibited basis such as race, sex, or exercise of constitutional rights. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[9]**

It is not clear that selective prosecution may be raised as defense in State Bar disciplinary proceedings, in which respondents do not enjoy full panoply of procedural protection afforded to criminal defendants. If such defense were available, burden of proof to establish selective prosecution would be on respondent. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[10]**

Pursuant to case law, selective prosecution claims should be raised by motion prior to trial, and as a practical matter, such claims have little chance of success if not raised initially by pretrial motion, due to difficulty of proving them without aid of discovery. However, it is not clear that such claims cannot be raised as part of respondent's defense case at trial; accordingly, review department considered such claim despite respondent's failure to raise it by pretrial motion. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[11]**

Even if claim of selective prosecution could be founded on alleged discrimination on basis of success and fame, there was insufficient evidence to support such claim, where principal factual basis was that many charges were dismissed or were assertedly without merit. A prosecutor's failure to prove all charges brought in a case has not been held to be sufficient to show invidiously discriminatory prosecution. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[12]**

State Bar Court is reluctant to interfere with reasonable exercise of prosecutorial discretion. When presented with a complaint, State Bar can legitimately charge attorney based on facts as they appear from investigation. Where large number of counts filed against respondent resulted primarily from size and volume of respondent's practice and his chronic problem with handling medical liens, fact that State Bar could not establish factual or legal basis for some counts and charges was not sufficient to establish that charges were brought without reasonable basis or that respondent was victim of prosecutorial misconduct. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[13]**

Claim of selective prosecution in probation revocation proceeding was without merit, where such claim was based on asserted failure to give respondent same opportunity as other lawyers to cure defects in probation report, but revocation proceeding was also based on failure to pay restitution due ten months earlier; respondent's subsequent probation reports were also inadequate; and respondent failed to connect cited authorities on doctrine of selective enforcement to facts of proceeding. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[8]**

Where review department imposed public reproval, it was statutorily required to order that respondent pay costs of disciplinary proceeding. Respondent's request to be relieved of such order to pay costs, on ground that State Bar abused its discretion in filing one of the charges, was rejected as premature in light of statute and rules permitting respondent to seek relief from order assessing costs after its effective date. (Trans. Rules Proc. of State Bar, rules 460-464.) *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[10]**

Where a settlement judge's order following a settlement conference indicated that a final compromise had been reached, the order was binding and an attorney's failure to abide by it, without moving for relief therefrom, constituted a violation of the statutes requiring obedience to court orders and respect for courts and judicial officers. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[5]**

Prosecutors must be held to the ethical standards which regulate the legal profession as a whole. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[10]**

Where respondent was not charged with failure to return an unearned advance fee, no finding of culpability for such misconduct could be entered absent an amendment of the charges. Where evidence was insufficient to support such charge, motion to amend was properly denied as an idle act. However, where, despite a clear directive as to the need to amend and an opportunity to move for such amendment in advance of trial, deputy trial counsel waited until after evidence was in to move to amend to conform to proof, motion to amend could also have been denied simply for inexcusable delay in seeking amendment. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[3]**

It is not improper for the Office of Trials to pursue on review a challenge to the exclusion of evidence of uncharged misconduct in one proceeding while simultaneously prosecuting a second proceeding based on the same misconduct, so long as both courts are made aware of the pendency of the other proceeding. The second proceeding could be abated until resolution of the first case. Where this did not occur, it was proper for the hearing judge to adjudicate the second case promptly and then request that the review department take judicial notice of the decision in the second case, thus permitting the review department to consolidate the cases on review. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[5]**

State Bar's pretrial dismissal of three out of four original counts in notice to show cause did not entitle respondent to any relief, where respondent did not demonstrate how such dismissal caused specific prejudice. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[6]**

Where examiner's conduct in connection with obtaining depositions of State Bar's non-party witnesses, while not in bad faith, clearly fell short of her duty under the circumstances, review department upheld hearing judge's

order permitting such witnesses to testify only if first deposed, and modified such order to require examiner to subpoena the witnesses and to pay transportation costs as a condition of permitting witnesses' testimony. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[13]**

It was not an abuse of discretion for the hearing judge to conclude that partial relief from costs was justified, even in the absence of evidence of bad faith on the part of counsel for the State Bar, based on the State Bar's lack of responsiveness to respondent's extraordinary efforts to provide information and good faith offers to settle the matter prior to the filing of formal charges. Elimination of all costs assessed for the stage after filing formal charges, and of half of the State Bar's costs for the pre-filing stage, was within the hearing judge's discretion. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[3]**

Under Supreme Court precedent and the State Bar Rules of Procedure, before entering into a stipulation resolving a disciplinary matter, the State Bar should notify the respondent of any other pending investigations or complaints. However, where respondent had been notified of a second complaint before respondent entered into a stipulation to a public reproval in an earlier, separate matter, respondent demonstrated no prejudice from the failure of the earlier stipulation to refer to the pendency of the second complaint. (Rules Proc. of State Bar, rule 406.) *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[2]**

The Office of Trial Counsel has discretion whether or not to file formal charges in a matter eligible for disposition by admonition. The State Bar Court cannot dismiss a proceeding prior to hearing on the ground that it meets the criteria for admonition, unless a case for selective prosecution is established. (Trans. Rules Proc. of State Bar, rule 415.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[5]**

Highly generalized claims of bias have been rejected as being overbroad. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[7]**

It is not clear that the doctrine of selective prosecution applies in State Bar disciplinary proceedings, in which respondents do not enjoy the full panoply of procedural protection afforded to criminal defendants. But even if it does, there are several threshold procedural and evidentiary hurdles to be overcome before a case of selective prosecution can be established, and where respondent did not even attempt to make the requisite showing, respondent's claim of selective prosecution was without merit. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[22]**

Charges should only be filed when the Office of Trial Counsel ascertains that reasonable cause exists to charge that particular conduct occurred which violated a particular regulatory provision. (Rule 510, Rules Proc. of State Bar.) *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[18]**

103 Disqualification/Bias of Judge (rule 5.46)

Where hearing judge adequately responded to motions to disqualify him, and different hearing judge properly considered and denied motions, and respondent failed on review to show arbitrariness, legal error, or prejudice, Review Department rejected argument that hearing judge should have been disqualified. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348 **[12]**

The burden of showing a claim of bias or prejudice rests on the complaining party. Respondent's assertion that the hearing judge made numerous legal errors to support his allegation of judicial bias was without merit because even if a judge makes numerous mistakes as to questions of law, that does not form a ground for a charge of bias and prejudice. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[7]**

The fact that a portion of a hearing judge's salary might be paid from part of the costs that the State Bar recovers from disciplined attorneys does not create a condition disqualifying the judge because the amount of costs actually recovered are relatively nominal to the State Bar's Budget. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[10]**

The hearing judge's appropriate role is to decide the issues on the evidence presented. If that process leads the hearing judge to conclude that the party bearing the burden of proof had not prevailed, then the judge's duty is to find against the particular party on that issue or to recommend that only that degree of discipline, if any, which

is warranted by the evidence presented. The party failing in its burden runs the very risk that the judge will so act. Absent extraordinary circumstances, a hearing judge is not authorized to require the production of added evidence beyond which the parties have chosen to present. If parties or witnesses testify, the hearing judge is at liberty to ask questions of a type consistent with the judicial function of supervising or regulating the trial. Moreover, allegations against other attorneys can be referred to the State Bar for new investigation. *In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888. **[2]**

Respondent's claim that the State Bar Court is an entity created, owned, and run by the prosecuting party was frivolous. The current State Bar Court is modeled after courts of record. State Bar Court judges are appointed for specified terms by the Supreme Court and are subject to discipline by the Supreme Court upon the same grounds as judges of courts of record. The prosecution does not assign cases to State Bar Court judges, nor do their salaries depend upon finding attorneys culpable of misconduct. Although the Board of Governors of the State Bar is responsible for paying the salaries of State Bar Court judges, these salaries are set by law to equal those of judges of courts of record and come from annual membership fees. Thus, respondent provided no evidence that the State Bar Court is improperly dependent on, or controlled by, the prosecution. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[2]**

In the Matter of Langfus (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161.

Where respondent not only declined to challenge hearing judge for bias in timely manner but also expressed belief that such judge was a fair and good judge, and did not assert bias until after judge heard evidence on culpability and expressed tentative finding that respondent was culpable, and record showed that judge was fair and receptive to hearing all relevant evidence, respondent's claim of racial bias on judge's part was without merit and did not appear to be made in good faith. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[5]**

Statute providing for respondents to pay costs of disciplinary proceeding upon determination of sanction of public reproval or greater discipline, and also providing for assessment of costs against State Bar in case of complete exoneration of attorney, is neutral in its application. Moreover, since salaries of State Bar Court judges are set by statute and are unaffected by assessment or collection of costs by State Bar, and State Bar Court's ruling on costs is only a recommendation to Supreme Court that costs be assessed, cost statute does not provide basis for alleging bias of State Bar Court judges based on alleged personal financial interest. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[6]**

There is no basis for charging impropriety simply because a judge judged prior proceedings involving the same lawyer. Fact that hearing judge in conviction referral proceeding had presided over respondent's prior disciplinary proceeding did not make such judge a percipient witness to improperly considered evidence, nor had such judge functioned as investigator in prior proceeding. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[7]**

Claim of unfairness on part of hearing judge was not meritorious, and did not entitle respondent to new hearing, where such claim was very generalized, concerned some matters peripheral to charges, showed no example of specific prejudice, and was rooted in unproven charge of conspiracy, and where record showed that hearing judges acted fairly and took many steps to accommodate respondent, who had ample opportunity to present evidence. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[5]**

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

A hearing judge's statement that the State Bar Court has a duty to ensure that suspended attorneys are scrupulously honest regarding their suspensions did not indicate that the judge had improperly shifted the burden of proof on culpability at the disciplinary hearing from the State Bar to the respondent. The view that suspended attorneys have a duty not to mislead the public about their suspensions has also been expressed by the Supreme Court. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[8]**

The party making a claim of judicial bias must show that a person in possession of all the relevant facts would reasonably conclude that the hearing judge was biased or prejudiced against that party. The standard is an objective one and the partisan views of the litigants do not control. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[3]**

A hearing judge may question witnesses in order to elicit or clarify testimony and test credibility, but may not, in so doing, become an advocate for one of the parties. Where the judge's treatment of witnesses on both sides was evenhanded and did not overstep the judge's factfinding role, there was no evidence of prejudice or bias. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[4]**

A hearing judge's denial of respondent's request to remove and copy exhibits already admitted into evidence, due to concern for the integrity of the record, was not improper, and did not show bias. Moreover, by failing to seek relief before the hearing judge after being denied access to the exhibits by the State Bar Court clerk's office, respondent waived his right to raise the issue before the review department. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[5]**

A variance between the hearing judge's tentative findings on culpability from the bench, and the judge's detailed written findings of fact and conclusions of law, did not demonstrate bias. The ultimate written decision controlled, and where it was supported by the evidence, the judge's remarks in summing up the evidence were not a basis for reversal. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[6]**

The failure of the hearing judge to rule on respondent's motion to dismiss until after the hearing did not result from bias, but from respondent's filing of the motion less than a week prior to the hearing. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[7]**

Highly generalized claims of bias have been rejected as being overbroad. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[7]**

Where a standard for judicial disqualification in the State Bar's Rules of Procedure was drawn from a similar provision in the Code of Civil Procedure, case law under the statute could be looked to in applying the State Bar rule. (Rule 230, Rules Proc. of State Bar.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[10]**

In pleading a violation of the ethical rule requiring payment of client trust finds on demand, there must be an allegation that the restions for the record and then move forward with the case, were reasonable, did not demonstrate bias under the circumstances and did not deprive respondent of the statutory right to legal assistance. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[11]**

Bias on the part of the hearing referee was not demonstrated when the referee, without the knowledge of the parties, corresponded with an out-of-state trial court judge in an attempt to coordinate conflicting trial schedules. While the better method would have been for the referee to have advised the parties of his intent to contact the trial court judge and to have copied the parties on any correspondence, the referee's conduct was not improper in nature and did not establish an appearance of bias constituting a denial of due process. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[12]**

A State Bar Court referee who referred respondent's out-of-state counsel to the Office of Trial Counsel for investigation for alleged misconduct and possible revocation of their admission to practice *pro hac vice* was not in the same position as a trial court judge ruling on a contempt matter, and the referee's conduct did not demonstrate bias. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[13]**

Where record contained numerous evidentiary rulings favorable to respondent, and showed courteous treatment of respondent by the referee; referee's evenhandedness was also shown by dismissal of two out of four charged counts in their entirety, and referee's handling of hearing was in accord with proper judicial temperament and demeanor, record did not show evidence of bias or prejudice. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[19]**

Party claiming judicial bias has burden to clearly establish such bias and to show specific prejudice; disagreement with how referee weighed issues, and showing of immaterial factual errors, did not establish bias on part of referee who acted in patient, fair, and commendable manner during hearing. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[1]**

To prevail on a claim of error by the hearing referee in denying respondent's motion for mistrial based on the assertedly prejudicial effect on the referee of the examiner's revelation during the hearing that the examiner had been hired as State Bar Court counsel, respondent was required to do more than hint at bias. Where respondent

failed to show how any bias specifically prejudiced him, and record showed no error or bias, motion for mistrial was properly denied. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[2]**

Rule 232 of the California Rules of Court contemplates preparation of a tentative decision after the completion of the trial, not in midstream, as a preliminary stage in the procedure for requesting a statement of decision. Therefore, rule 232 does not support the legitimacy of issuing a tentative decision when only one side has presented evidence. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[3]**

Duty of trial judge differs from that of juror with respect to expressing opinions on aspects of case before its submission, and there is nothing wrong with preparing tentative findings after culpability phase of hearing. However, where referee prepared preliminary findings before defense had put on its case, and lengthy delay ensued which referee indicated had affected the fact-finding process, this gave the appearance that a decision had been reached as to the basic facts at issue before respondent testified. When tentative findings were prepared and presented to the parties after only one side had presented evidence, it gave the appearance that the judge did not truly retain an open mind. Thus, certain of referee's findings were improperly reached. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[4]**

Cases holding judges to have acted prejudicially are generally ones in which judges have refused to hear evidence at all on a certain point, or have indicated that they will not grant certain relief even if the party requesting it is legally and factually entitled to it. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[5]**

Although referee indicated that he had not reached a final decision despite preparation of draft findings, he appeared to have placed a greater burden of proof on the respondent than permitted by law. If a trier of fact imposes the wrong burden of proof, that itself can constitute reversible error. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[6]**

As sole trier of fact, hearing judge had responsibility to declare in decision how he weighed evidence at hearing, including credibility of party as witness, where party's attitude toward reformation and restitution was fundamental issue in proceeding. Judge's occasional use of blunt language did not show bias. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[9]**

104 Disqualification of Counsel and Other Persons

The review department found no merit to respondent's argument that the culpability findings must be reversed based on his claim of conflict of interest. Respondent failed to demonstrate how the investigation and prosecution of his former counsel demonstrated any conflict of interest or unfairness toward him. At trial, respondent was represented by other counsel who advanced his interests vigorously. Moreover, respondent failed to support his claim by any citation of legal authority. *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126. **[1]**

105 Service of Process (rule 5.25)

Actual notice is not a necessary element of proper service in disciplinary proceedings, and service is deemed completed upon mailing to respondent's official membership address. State Bar Court therefore had jurisdiction to hear disciplinary case even where respondent did not personally receive service of notice of disciplinary charges, motion for entry of default, and default order, all of which were sent to respondent's official membership records address. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348 **[10]**

The two requisite elements of personal jurisdiction are (1) that respondent is a member of the State Bar for the duration of the proceeding and (2) that respondent was properly served with a copy of the notice of disciplinary charges. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929. **[2]**

Respondent's highly generalized argument regarding inadequate notice of certain hearings warranted no relief, where respondent had been made aware of duty to keep State Bar informed of current address and given opportunity to correct the official State Bar record thereof, and notices had been served on respondent at another address in addition to the address of record. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[1]**

Respondent's fundamental objections to disciplinary proceeding, based on lack of personal service, expiration of the statute of limitations, lack of jurisdiction, and failure of the notice to show cause to state grounds for discipline, should have been presented to the State Bar Court at the trial level by motion. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[15]**

Where an attorney had failed to comply with the statutory duty to maintain a current address on the State Bar's member records and to notify the State Bar within 30 days of any address change, the attorney failed to show good cause for relief from default even though he did not receive notice of the State Bar proceedings until the review department's opinion was published. Because the address requirement is reasonable, an attorney receives reasonable notice of documents properly sent to the attorney's address of record with the State Bar. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[2]**

106 Issues re Pleadings

106.10 Sufficiency of pleadings to state grounds for action sought (rule 5.124(C), (E))

Rule 5.124 of the Rules of Procedure of the State Bar provides specific and limited grounds for dismissal. Where respondent's pretrial motion to dismiss did not argue that notice of disciplinary charges failed to state a legally disciplinable offense or to give sufficient notice of the charges, but rather sought dismissal on merits, relying on declarations and supporting documents, motion was equivalent to summary judgment motion, which is not provided for under rule 5.124. Hearing judge erred in granting motion to dismiss based on pretrial factual findings, thereby deriving State Bar of its right to present evidence of respondent's culpability at trial. *In the Matter of Eldridge* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 413 **[1 a,b]**

Attorney's due process right not violated when notice of disciplinary charges characterized his post-conviction disclosure duty as legal rather than ethical. Such characterization did not deny attorney sufficient opportunity to defend. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[3]**

In reviewing a motion to dismiss a disciplinary charge based on a contention that the notice of disciplinary charges is defective due to its failure to state a disciplinable offense, the review department treats the factual allegations of the notice of disciplinary charges as true and disregards all factual matters outside the ambit of the notice of disciplinary charges except for judicially noticeable facts, since the purpose of the motion is to test the sufficiency of the notice of disciplinary charges and not to contest the charges. Where the notice of disciplinary charges alleged (1) that respondent, as general partner of a California limited partnership having a fiduciary duty to the limited partners, made preliminary distributions of partnership profits but failed to disburse any funds to one limited partner due to that limited partner's refusal to sign a release of liability and (2) that despite the limited partner's repeated request for the funds, respondent never released the funds and subsequently informed the limited partner that he no longer had the funds, the notice of disciplinary charges was sufficient to state a disciplinary offense, i.e., that respondent committed an act involving moral turpitude by breaching his fiduciary duty to the limited partner and misappropriating funds to which the limited partner was entitled. *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[3a-c]**

A first amended notice to show cause supersedes both the original notice and any proposed but unfiled first amended notices. The sufficiency of the first amended notice to show cause is determined without reference to either the original notice or any earlier proposed first amended notice. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[1]**

Violation of State Bar Act section that is not, by its terms, disciplinable offense may be grounds for finding violation of statute requiring attorneys to uphold law. Where respondent was charged with violating statutory fee limitations and written fee agreement and disclosure requirements which are not, by their terms, disciplinable offenses, charge of violating statute requiring attorneys to uphold law was required as conduit to allege other violations, and such charge should not have been dismissed as unnecessary. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[4]**

Statute requiring attorneys to uphold law is not always proper vehicle for charging violation of State Bar Act when statute is already covered as a disciplinable offense in another part of the Act. Because statutes requiring written attorney fee agreements containing certain information specify non-disciplinary remedies for attorneys' failure to comply with them, and because failure to comply with such statutes may be charged as violations of Rules

of Professional Conduct regarding illegal fees, competence, and communication with clients, violation of such statutes is not disciplinable under statute requiring attorneys to uphold law. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[11]**

Conclusion that violations of statutes requiring written fee agreements and specified disclosures are not disciplinable offenses does not preclude consideration of attorney's failure to comply with such statutes as aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[12]**

An attorney's disobedience of a court order involves moral turpitude for disciplinary purposes only if the attorney acted in either objective or subjective bad faith. Review department declined to find respondent culpable of moral turpitude for failure to appear as ordered at settlement conference, where such culpability was argued for first time on review, notice to show cause did not allege that failure to appear was in bad faith, and hearing judge made no findings regarding respondent's objective or subjective bad faith in failing to obey order to appear. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[6]**

Before the State Bar files charges, it has a duty to determine whether reasonable cause exists to charge statutory or rule violations. (Trans. Rules Proc. of State Bar, rule 510.) *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[2]**

Statute requiring attorneys to uphold law does not provide basis for discipline except where it serves as conduit to charge violation of state or federal statute other than disciplinary provisions of Business and Professions Code. Where no such statutory violation was charged in matter involving failure to honor contractual lien, no violation could be found as a matter of law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[22]**

Supreme Court and State Bar Court have unquestioned jurisdiction over attorneys' convictions of crime whether or not they are eligible for summary disbarment. There is no requirement that notice of time and place of hearing in conviction referral matter charge commission of "serious" offense for which admonition would be unavailable (Trans. Rules Proc. of State Bar, rule 415), or offense for which State Bar Court may recommend summary disbarment. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[3]**

Where record established that respondent agreed to handle litigation and thereafter abandoned case; former and current Rules of Professional Conduct were virtually identical regarding duties imposed on an attorney who wishes to withdraw from employment; both rules were charged in notice to show cause, and violation clearly occurred during period when either one rule or the other was in effect, review department found respondent culpable of improper withdrawal despite lack of evidence regarding exactly when relevant events occurred. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[2]**

The respondent in a probation revocation matter may not be subjected to greater discipline than imposition of the entire period of suspension previously stayed if the notice to show cause does not appropriately charge violations that could result in greater discipline. Where notice to show cause stated that respondent was to show cause why stay of suspension should not be set aside and stayed suspension imposed, imposing entire stayed suspension was maximum discipline that State Bar Court could recommend. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[18]**

On review of a facial challenge to the legal sufficiency of charges in the notice to show cause, the sole issue presented is whether the facts alleged in the notice, if proven, would constitute a disciplinable offense. For the purpose of such review, the review department treats the factual allegations of the notice as true, but draws independent conclusions regarding the legal import of those facts. (Trans. Rules Proc. of State Bar, rule 554.1.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[1]**

The Transitional Rules of Procedure of the State Bar, unlike equivalent California and federal rules, provide for review as of right following the denial of a motion to dismiss, as well as the grant of such a motion. However, this does not affect the type of review to be afforded on the merits. (Trans. Rules Proc. of State Bar, rule 554.1.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[3]**

Both at hearing and on review, the court considering a motion to dismiss a notice to show cause for failure to state a disciplinable offense should disregard all factual matters outside the ambit of the notice, except for judicially noticeable facts. Accordingly, the review department considered respondent's uncontroverted state-

ment that the alleged client referred to in the notice to show cause was respondent's spouse, and also considered respondent's date of admission to the bar and lack of any prior disciplinary record. However, respondent's other factual assertions in support of his motion to dismiss were not suited for judicial notice and were not considered on review. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[4]**

Under section 6125 of the Business and Professions Code, members of the State Bar who are on inactive status may not practice law in California. Section 6068(a) makes violation of section 6125 a disciplinable offense. A member on inactive status who is alleged to have committed acts constituting the practice of law is properly charged with violating sections 6125 and 6068(a). *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[6]**

Section 6103 of the Business and Professions Code does not provide a basis for charging an attorney with any misconduct other than violating a court order. Where respondent who was charged with unauthorized practice of law while inactive had transferred to inactive status voluntarily and not as a result of a court order, section 6103 charge should have been dismissed. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[7]**

A broad scope of activities may be held to constitute the practice of law, but the unauthorized practice of law outside of court appearances is difficult to define. Where respondent, while on inactive status, allegedly referred to a family member as respondent's client in a letter to another lawyer and expressed an intention to seek statutory fees in a probate matter involving the family member, respondent was properly charged with unauthorized practice of law. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[8]**

Respondent's fundamental objections to disciplinary proceeding, based on lack of personal service, expiration of the statute of limitations, lack of jurisdiction, and failure of the notice to show cause to state grounds for discipline, should have been presented to the State Bar Court at the trial level by motion. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[15]**

Notice to show cause properly charged respondent with practicing law while suspended, in violation of sections 6125 and 6126(b), despite language in notice describing respondent as having made court appearance while "on inactive . . . status," when respondent was actually suspended for nonpayment of dues. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[1]**

It is important for decisions of the State Bar Court to identify with specificity both the rule or statutory provision that underlies each charge and the manner in which the conduct allegedly violated that rule or statutory provision. This specificity is essential to the respondent's due process right to adequate notice, as well as to meaningful Supreme Court review of the recommendation of the State Bar Court. The notice to show cause must be sufficient to support the charges relied upon in the decision, because the findings of the State Bar Court must rest on the charges filed. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[6]**

In pleading a violation of the ethical rule requiring payment of client trust finds on demand, there must be an allegation that the respondent was in possession of identified funds, securities or other property of a client; that the client was entitled to receive the funds, securities or property, and that there was a request by the client that the respondent pay or deliver the funds, securities or other property. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[9]**

Reference in notice to show cause to undisclosed loans made from client trust funds would appear to charge violation of rule requiring disclosure of receipt of client funds, but not of rule requiring payment of funds to client on demand, since clients would not be in a position to demand funds which they were unaware were transferred out of trust. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[10]**

Inadequacies in pleading not only made notice to show cause insufficient under rule 550, Trans. Rules Proc. of State Bar, but also caused questions as to whether notice met requirements of rule 554.1, providing that a notice to show cause may be dismissed on ground that it fails to state a disciplinable offense as a matter of law. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[11]**

If State Bar intends to charge violation of rule of professional conduct regarding duty of competence, there must be an allegation that respondent intentionally or with reckless disregard or repeatedly failed to perform legal services competently, and notice should state what particular conduct is characterize as violating this standard. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[12]**

The degree of specificity required in a notice to show cause does not necessitate lengthy detailed pleading. A notice to show cause does not have to include explicit details of a respondent's alleged misconduct, nor does it have to match the subsequent proof at the hearing as long as the difference is immaterial or the pleading is amended and the respondent is given an opportunity to respond to the additional allegations. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[21]**

Contention by State Bar that respondent violated attorney's duty to obey state and federal laws by failing to pay payroll taxes as required by penal and civil statutes was rejected by review department, despite respondent's admission that taxes were not paid, because notice to show cause did not charge violation of employer withholding statutes, and no evidence was introduced to prove they were violated, thus depriving respondent of opportunity to defend. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[10]**

106.20 Adequate notice of charges (rules 5.41 and 5.124(C), (D), (E))

Rule 5.124 of the Rules of Procedure of the State Bar provides specific and limited grounds for dismissal. Where respondent's pretrial motion to dismiss did not argue that notice of disciplinary charges failed to state a legally disciplinable offense or to give sufficient notice of the charges, but rather sought dismissal on merits, relying on declarations and supporting documents, motion was equivalent to summary judgment motion, which is not provided for under rule 5.124. Hearing judge erred in granting motion to dismiss based on pretrial factual findings, thereby deriving State Bar of its right to present evidence of respondent's culpability at trial. *In the Matter of Eldridge* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 413 **[1 a,b]**

Actual notice is not a necessary element of proper service in disciplinary proceedings, and service is deemed completed upon mailing to respondent's official membership address. State Bar Court therefore had jurisdiction to hear disciplinary case even where respondent did not personally receive service of notice of disciplinary charges, motion for entry of default, and default order, all of which were sent to respondent's official membership records address. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348 **[10]**

Respondent's contention the State Bar Court was without jurisdiction to hear disciplinary case because respondent did not personally receive service of the notice of disciplinary charges, the motion for entry of default, and the default order fails. The pleadings were sent to respondent's official membership records address. Moreover, respondent admitted to actual notice of proceedings before motion for entry of default was filed. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[6]**

Attorney's due process right not violated when notice of disciplinary charges characterized his post-conviction disclosure duty as legal rather than ethical. Such characterization did not deny attorney sufficient opportunity to defend. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[3]**

Because respondent's motion to dismiss the notice of disciplinary charges based on insufficient notice of one of the charges was filed later than the date his response to the notice of disciplinary charges was due, in violation of Rules of Procedure of the State Bar, rule 262(c)(2), respondent's assertion was waived as a basis for dismissal. *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[4]**

Absent a motion by the State Bar to amend the notice of disciplinary charges in a way that would have given respondent a sufficient opportunity to defend, the hearing judge should have sustained respondent's objection to evidence of uncharged misconduct on the ground that it was beyond the scope of the charge set forth in the notice of disciplinary charges. In view of respondent's timely and specific objection, the review department declined to adopt the finding of uncharged misconduct as an aggravating circumstance. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[16]**

In default proceedings, uncharged facts cannot be relied on as evidence of aggravating circumstances because the respondents are not fairly apprised that additional uncharged facts will be used against them. The use of uncharged facts in a contested proceeding presents a different question. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[4]**

Respondent's argument that a new trial was necessary because the notices to show cause did not pair facts with each alleged ethical violation was rejected. Even though the Supreme Court has repeatedly criticized this practice, a defective notice entitles an attorney to relief only if the attorney shows that specific prejudice resulted

from the defect. Respondent made no such showing. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[4]**

Respondent waived any due process violation resulting from the State Bar's failure to notify him in the notice of hearing that the cancellation of his license to practice law would be an issue at the trial where he did not allege in his appellant's brief, with supporting references to the record, that he presented his lack of notice objection to, and obtained a ruling on it from, the hearing judge. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[8]**

A first amended notice to show cause supersedes both the original notice and any proposed but unfiled first amended notices. The sufficiency of the first amended notice to show cause is determined without reference to either the original notice or any earlier proposed first amended notice. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[1]**

Where the notice to show cause erroneously charged a violation of former rule 2-111(A)(2) of the Rules of Professional Conduct, but where the factual allegations of the notice stated that respondent had not refunded unearned fees, the subject of former rule 2-111(A)(3) of the Rules of Professional Conduct, respondent had adequate notice of a charge under former rule 2-111(A)(3). *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[6]**

Where the notice to show cause did not charge respondent with committing acts of moral turpitude on account of a violation of fiduciary duty, but did charge respondent with making a misrepresentation to a court, and the hearing judge and the parties understood that the charged moral turpitude violation was based on the misrepresentation, the review department declined the State Bar's request, made for the first time on review, that it find moral turpitude based on respondent's breach of fiduciary duty. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[2]**

Where notice to show cause charged respondent with making a misrepresentation to a court by filing an erroneous pleading, and where respondent consistently asserted that he did not intend to deceive the court and that the erroneous pleading resulted from his inadvertence, but where filing of misleading pleading did not result from single isolated instance of negligence, but from grossly negligent handling of entire matter to which pleading related, respondent could be found culpable of an act of moral turpitude due to his gross neglect in filing the pleading. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[3]**

Where a proceeding under rule 955 of the California Rules of Court was started by an order of referral rather than the issuance of formal charges, culpability could be based on all evidence introduced. Thus, where the evidence demonstrated that respondent failed to give timely notices of her suspension to her clients, opposing counsel, and courts in which her clients' cases were pending, she wilfully violated rule 955, subdivision (a), and the review department considered that violation as substantive and not just an aggravating circumstance as found by the hearing judge. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[5]**

The State Bar must articulate in its pleading the reason why violation of each listed statute and rule was charged in the notice to show cause. A notice which recites factual allegations separately from a charging paragraph that gives no explanation for the citation of charged statutes and rules, and which fails to correlate each alleged statutory and rule violation with the conduct upon which it was based, is inadequate. Such correlation would allow the identification of alternative theories of culpability and lesser included offenses, thus permitting the elimination of duplicative charges at the time of pretrial or trial. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[1]**

Where the reason for each charged violation was specified by the State Bar in its pretrial statement and where respondent was not prejudiced at trial, the inadequate specification of the reasons for the charges in the notice to show cause was not grounds for reversal. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[3]**

Where respondent was charged with violating disciplinary probation conditions by failing to submit evidence of having obtained assistance from a licensed psychologist or psychiatrist, respondent could be found culpable only of failing to comply with requirement that he submit such evidence, and not of failing to comply with requirement that he obtain such assistance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[8]**

Where failure to file complaint for client within statute of limitations was not mentioned in notice to show cause, such failure could not form basis for culpability, but where such failure, although not shown by clear and convincing evidence to be intentional or reckless, constituted part of series of repeated failures to perform competently which significantly harmed client, such failure constituted aggravating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[21]**

The Business and Professions Code section requiring attorneys to support federal and California constitution and laws proscribes attorney conduct which violates any federal or California statute. However, such Business and Professions Code section may be used to charge violation of another statute only if that statute is specifically identified in the notice to show cause. Otherwise, the attorney is not given adequate notice of the particular statute allegedly violated. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[17]**

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

In default proceeding for violation of probation, review department deleted findings in aggravation based on probation violations not charged in notice to show cause. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[6]**

Where notice to show cause charging client solicitation did not identify clients allegedly solicited, but did name persons who were alleged to have performed such solicitations and fixed the period of charged misconduct, and where respondents were informed of identities of allegedly solicited clients well before most pre-trial discovery was completed, and at least six months before trial, respondents' motion to dismiss notice to show cause based on alleged vagueness, which was not made until first day of trial, was properly denied. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[1]**

A notice to show cause in a disciplinary proceeding meets the requirements of due process when it specifies the conduct at issue and the rule charged. Where a notice to show cause named the clients involved in each count, identified them as driver and passenger, averred that respondent agreed to represent each in a personal injury case without advising them of their potential conflict and obtaining their written consent, and cited the rule regarding representation of adverse interests, respondent was given adequate notice of the charge against him. Given the specificity of the factual allegations, adequate notice was given even in a count which did not specify the subsection of the rule being charged. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[5]**

An attorney's unauthorized practice of law while on suspension is an appropriate matter to be considered in aggravation. Where, during the trial in a disciplinary matter, the respondent made a court appearance in a client's case while suspended for nonpayment of dues, the deputy trial counsel was not obligated to wait to file another disciplinary action to address the issue. Where respondent's counsel agreed that the deputy trial counsel could introduce evidence regarding respondent's court appearance during a later phase of the hearing, respondent received proper notice of the charge in aggravation. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[15]**

Where respondent was not charged with failure to return an unearned advance fee, no finding of culpability for such misconduct could be entered absent an amendment of the charges. Where evidence was insufficient to support such charge, motion to amend was properly denied as an idle act. However, where, despite a clear directive as to the need to amend and an opportunity to move for such amendment in advance of trial, deputy trial counsel waited until after evidence was in to move to amend to conform to proof, motion to amend could also have been denied simply for inexcusable delay in seeking amendment. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[3]**

Where respondent's description of his car problems in explaining his failure to appear for a court hearing differed only in degree from the actual events, the difference did not constitute deception or an attempt to mislead the court. The steps respondent took once he experienced the car problems might not have been adequate to excuse his failure to appear, but this aspect of his conduct was not charged as a disciplinary violation and thus could not form the basis of a culpability finding. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[1]**

In determining whether evidence of additional uncharged ethical misconduct should be admitted as aggravating evidence in the discipline phase of the hearing, the hearing judge must balance the desire for additional

relevant evidence against the due process requirement of fair notice of all discipline charges. Where there was sufficient evidence in the record to warrant a recommendation of disbarment, it was unnecessary for the review department to resolve a claim that the hearing judge erred in failing to admit aggravating evidence of uncharged misconduct. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[18]**

A respondent may be disciplined only for misconduct properly charged in the notice to show cause. In probation revocation matter, where notice to show cause charged that respondent failed to deliver financial records to an accountant, and hearing judge found that respondent failed to render an accounting, respondent was properly found culpable of failing to deliver the records, based on his admission by default of the allegations of the notice to show cause. Respondent's failure to file quarterly reports other than those listed in the notice to show cause could not be used as a basis for culpability or as aggravating circumstances in a default matter. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[1]**

Evidence of uncharged misconduct may not be used as an independent basis for discipline, but may be used in a contested proceeding for purposes such as impeaching the credibility of the respondent's testimony regarding rehabilitation, or establishing evidence of aggravating circumstances. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[6]**

Where a notice to show cause alleged that respondent failed to perform services competently, and set forth in separate paragraphs specific facts which in the aggregate charged a lack of diligence upon which that violation was based, the alleged misconduct in the notice was pled with sufficient particularity and was adequately correlated with the rule violation charged to have provided respondent with reasonable notice of the specific charges at issue. There is no requirement that each paragraph of a single count in a notice to show cause must allege a violation of a rule or statute. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[2]**

An attorney can be disciplined only for misconduct charged in the notice to show cause or an amendment thereto. Where notice to show cause charged violation of rule against representing clients with conflicting interests, and respondent served interrogatory requesting identification of all such alleged conflicts, charges against respondent were limited to those identified in State Bar's answer to such interrogatory, and respondent could not be found culpable of violating conflict of interest rule based on a conflict not listed therein. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[9]**

Respondent violated former rule of professional conduct prohibiting representation of clients with conflicting interests when he accepted more signatories to a settlement than were required, because interests of required signatories conflicted with interests of extra signatories, whose participation in settlement reduced amounts received by required signatories and by previous extra signatories. Where such violation of conflict of interest rule was not charged, it could not be basis of culpability, but could be relied on in aggravation. However, because of novelty of situation, which involved extremely unusual settlement, uncharged violation was given minimal aggravating weight. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[12]**

A due process challenge to a discipline proceeding based on vagueness is appropriate where the misconduct involved is not clearly within the scope of a disciplinary standard and the standard is so broad that people of common intelligence must necessarily guess at its meaning and differ as to its application. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[7]**

Where respondent clearly was on notice that drinking and driving could result in criminal penalties, and it was established law that any vehicular homicide or felony conviction resulting from drunk driving could result in professional discipline, respondent apparently had sufficient notice that criminal behavior of driving under the influence could, depending on circumstances, result in professional discipline. However, review department declined to decide notice issue where disciplinary proceeding was dismissed on another ground. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[8]**

An attorney has a fiduciary obligation toward a medical provider which holds a medical lien arising from advancement of funds to the attorney's client, and the attorney therefore has a duty to communicate with the provider as to the subject of the fiduciary obligation. However, where respondent was not charged in the notice to show cause with failing to communicate with the medical provider, respondent could not be found culpable on that basis. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[2]**

Where notice to show cause could have been more clearly phrased with respect to duration of respondent's alleged misconduct, but hearing judge correctly concluded after colloquy at trial that it encompassed misconduct prior to as well as after a certain date, and where hearing judge prohibited introduction of evidence as to respondent's conduct prior to such date only after respondent had had ample time to present such evidence, and where respondent gave no offer of proof or explanation regarding any additional evidence on such issue, respondent's claims of denial of adequate notice of charges and fair opportunity to present evidence were without merit. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[8]**

Even though notice to show cause did not expressly charge violation of rule requiring client funds to be held in trust, respondent could be found culpable of violating such rule by misappropriating client funds, where such charge was clearly encompassed within allegations in support of moral turpitude charge. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[15]**

In the Matter of Tady (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121.

An allegation of an act of moral turpitude or dishonesty encompasses the lesser allegation of a violation of the trust account rules, where the pleading clearly raises the issue of the misuse of trust funds. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[6]**

Where a certain set of facts was considered by the criminal court at the time of respondent's sentencing, and notice of such consideration was given to respondent at the time, there was sufficient notice to respondent prior to his disciplinary hearing of the relevance of such facts, and since respondent had an opportunity to present evidence on the issue at the disciplinary hearing, due process did not require remanding the case for submission of additional exculpatory evidence. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[4]**

Where the original notice to show cause alleged misappropriation, and the examiner amended the notice to charge respondent with commingling resulting from his bookkeeper's negligence, and there was no evidence that respondent's defense was thereby prejudiced, respondent had sufficient notice of the charges to satisfy his due process rights, because the duty to keep client funds safe is a personal obligation of the attorney and nondelegable, and the attorney was therefore on notice that he could be culpable if his staff's conduct resulted in a violation of that duty. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[2]**

Respondents have a right to reasonable notice of the charges against them and they may not be disciplined for a violation not alleged either in the original or a properly amended notice to show cause. Where the notice to show cause charged respondent with dishonest acts with regard to non-payment of tax monies withheld from an employee's wages, respondent could not, based on that notice, be held culpable of improperly concealing personal money from the tax authorities by putting it in a client trust account. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[2]**

Although it was improper to find respondent culpable of misconduct on the basis of his freely given evidence that he concealed funds from the Franchise Tax Board, because such conduct fell outside the proper scope of the charges, such evidence could be used to form the basis of an aggravating circumstance. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[13]**

Notice to show cause properly charged respondent with practicing law while suspended, in violation of sections 6125 and 6126(b), despite language in notice describing respondent as having made court appearance while "on inactive . . . status," when respondent was actually suspended for nonpayment of dues. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[1]**

Evidence of additional uncharged acts of misconduct could not constitute an independent basis for culpability. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[7]**

Uncharged facts cannot be relied upon for evidence of aggravation in a default matter because the respondent is not fairly apprised of the fact that additional uncharged facts will be used against him. The use of uncharged aggravating factors in contested proceedings presents a different question. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[8]**

A notice to show cause which alleged that an attorney was hired by a father to represent his son and that the attorney thereafter failed to perform services for, communicate with, and return unearned fees to, the father was sufficient to put the attorney on notice that he was charged with the specified misconduct in his dual representation of the father and son, because the attorney would not have had a duty to communicate with the father if he were not representing the father. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[22]**

Attorney could not be found culpable of violating probation by failing to respond to an inquiry from the State Bar Court, as required by conditions of his probation, where the notice to show cause in the probation revocation proceeding referred only to the requirement to file quarterly reports, an independent probation condition, and such charge would be factually duplicative of previously-adjudicated charge of failing to file quarterly report. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[2]**

A respondent can only be found culpable of conduct which is charged in the notice to show cause. If the charges do not appear in the notice and the notice is not properly amended, the charges will not be sustained. However, culpability will be sustained in the event of a slight variation in the evidence from the notice, without an amendment, unless the respondent's defense can shown to have been compromised. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[2]**

Specific charging in the notice to show cause is important; it prevents a respondent from having to guess at the charges. In addition, since the standard for a culpability finding in attorney discipline matters is clear and convincing evidence, the State Bar has the burden to charge the alleged misconduct correctly so that this standard can be met. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[3]**

The allegations in the notice to show cause are a determining factor of the scope of an attorney's defense. A complete charge results normally in a full response. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[4]**

A complete charge in the notice to show cause does not necessitate a lengthy pleading but does necessitate particularity to provide sufficient notice. As a result of specific charging the State Bar Court hearing judge is then provided with a proper framework within which to decide the issues raised. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[5]**

Where an appeal and a petition for extraordinary writ had each been pursued by respondent, a notice to show cause charging respondent with "pursu[ing] appeals in bad faith" did not convey sufficient information to advise respondent that the manner of service of the writ of mandate was at issue in the disciplinary case. Respondent therefore was not held culpable for alleged misconduct in connection with the writ proceeding since the notice to show cause did not provide reasonable notice of such charges. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[6]**

Respondent's decision not to send a copy of a writ petition to counsel who was representing the opposing party in a related appeal appeared to have been a breach of normally expected professional courtesy and was not a model of good practice; nonetheless, because allegations of notice to show cause failed to give respondent reasonable notice of charge of which he was found culpable, review department dismissed proceeding. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[10]**

Given that the examiner's pretrial statement indicated that facts and circumstances surrounding respondent's perjury conviction would be at issue and that the record would include the transcript of a related infraction trial as well as respondent's perjury trial, and given the rule permitting the hearing judge to consider evidence of facts not directly connected with respondent's conviction if such facts are material to the issues stated in the order of reference, respondent had sufficient notice that all relevant facts and circumstances would be considered in the disciplinary proceeding. (Trans. Rules Proc. of State Bar, rule 602.) *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[3]**

The failure to charge a violation of section 6068(j) in the notice to show cause was harmless error, where the notice clearly charged an alleged violation of section 6002.1. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[13]**

Charging a violation of section 6068(a) without specifically identifying the underlying provision of law allegedly violated not only fails to put the attorney on sufficient notice of the alleged violation, but also undermines meaningful review of any decision based on such general charging allegation. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[14]**

Where notice to show cause charged respondent with making misrepresentations to opposing counsel and at trial, and respondent testified at disciplinary hearing that similar misrepresentations were also made to court of appeal and to State Bar investigator, this later conduct was properly treated not as bearing on substantive culpability, but on the issue of discipline. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[1]**

General charges in a notice to show cause of disbursing trust funds without permission or knowledge of the beneficiary did not give adequate notice of a charge of misappropriation of such funds, without further specification as to the facts giving rise to the accompanying charge of committing acts of moral turpitude. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[8]**

Where attorney's alleged failure to perform competently occurred after effective date of revised version of rule governing duty of competence, and notice to show cause charged attorney only with violating previous version of rule and notice was not amended, attorney was properly found not culpable of violating earlier version of rule. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[6]**

An uncharged violation of the rule requiring prompt notification to clients when client funds are received could be considered as an aggravating circumstance, where the respondent was put on notice of the nature of the uncharged misconduct in the notice to show cause and did not object to a finding of culpability under a different rule for the same conduct. Evidence of uncharged misconduct may not be used as ground of discipline, but may be considered for other relevant purposes. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[10]**

Where an attorney was not charged in the notice to show cause with violating the ethical rules governing attorneys' business transactions with clients, then even if compliance with those rules were required under the facts, the attorney could not be found culpable of violating those rules. It is a fundamental constitutional and statutory requirement that an attorney must be given notice of all charges and a reasonable opportunity to prepare his defense thereto. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[12]**

Where a notice to show cause alleged that the respondent attorney had misappropriated funds to his own use and purposes, and charged the attorney with acts of moral turpitude in violation of section 6106, but did not charge the attorney with a breach of the ethical rule concerning the proper handling of client trust funds, and the notice to show cause did not clearly put the attorney on notice of a charge that he had violated the trust funds rule, the attorney therefore could not be found culpable of violating that rule in light of the mandate that the attorney be given adequate notice of all charges and a reasonable opportunity to respond thereto. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[18]**

Attorney could not be found culpable of misconduct where not given adequate notice of charges, but this did not preclude consideration of such misconduct for other purposes, including aggravation. Evidence of uncharged misconduct may not be used as an independent ground of discipline, but may be considered for other relevant purposes. Right to notice of charges is not violated by use of uncharged misconduct in aggravation where evidence of such misconduct was necessarily elicited in cause of proving other charges; evidence was used in aggravation only; and facts were based on respondent's own testimony. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[19]**

As terms of art, an attorney's "oath and duties" are defined by sections 6067 and 6068. Section 6103 confirms the Supreme Court's inherent authority to impose discipline for violation of oath or duties defined by other statutes. Accordingly, charge of violating section 6103 or finding that attorney has committed misconduct thereunder is redundant and adds nothing to charges otherwise pending. Charge of violating section 6103 "oath and duties" does not put respondent on notice of any particular misconduct without reference to other statutes defining the particular duty allegedly violated. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[7]**

Charge of violating section 6106 put respondent on notice, to which respondent was entitled, that misconduct charged involved moral turpitude, dishonesty or corruption as described by statute and case law. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[9]**

Where parties stipulated to waive any variance between facts set forth in stipulation and allegations of notice to show cause, stipulated facts which were not charged in original notice could be considered even though notice had not been amended. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[1]**

Where notice to show cause did not charge violation of statute requiring attorneys to maintain respect for courts and their officers, and no motion to amend was made at hearing, referee's conclusion that respondent violated the statute was inappropriate. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[2]**

Aggravating factors are not required to be separately charged. However, facts that could have formed the basis for an additional charge omitted from the notice to show cause cannot be relied on in aggravation in a default matter, because respondent is not fairly put on notice that such facts will be relied on. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[12]**

In finding respondent culpable of misappropriating trust funds and of knowingly issuing a check drawn on insufficient funds, the referee's statement that respondent's acts constituted crimes involving moral turpitude was improper since the criminal statutes were not charged in the notice to show cause. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[16]**

Where notice to show cause failed to charge respondent with failing to perform services in a certain matter, and notice to show cause was not amended to conform to proof at hearing, review department struck hearing department's finding of culpability with respect to that matter. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[1]**

Discipline cannot be imposed for violations not charged; where attorney was charged only with retaining client funds as fees without client consent, and referee found client had consented, attorney could not be disciplined on ground that fee was illegal. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[9]**

In default matter, hearing referee erred in basing findings of culpability partly on facts deemed admitted by failure to respond to improper post-default discovery, and in finding culpability on charges broader than those set forth in notice to show cause. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[12]**

Rule of Procedure 557, permitting amendment of notice to show cause to conform to proof without requiring additional time to prepare answer and defense, assumes respondent attorney's presence at disciplinary proceeding. Where respondent is not present due to entry of default, respondent does not have an opportunity to defend against charges. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[14]**

Where respondent, represented by experienced counsel, stipulated to facts which respondent conceded supported uncharged violation of failing to notify clients of receipt of client funds, and respondent did not object to referee's amendment of notice to show cause to reflect such charge, review department held that any such objection was waived, and found culpability despite omission of charge from notice to show cause. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[6]**

A motion to dismiss a notice to show cause for failure to provide the respondent with sufficient notice of the alleged misconduct is available where appropriate to assure adequate notice of charges in compliance with statutory mandate and due process. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[1]**

In order to defend against charges, a respondent needs to be adequately apprised of the precise nature of the charges. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[2]**

Adequacy of notice is an essential element of due process, in order that the accused may have a reasonable opportunity to prepare and present a defense and not be taken by surprise by evidence offered at trial. The respondent in a disciplinary proceeding is entitled to reasonable notice of the specific charges, which is the purpose of the notice to show cause. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[4]**

The principle that due process requires notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, applies with equal force in State Bar proceedings. The right to practice law is a valuable one which should be suspended or revoked only on charges alleged and proved and as to which full notice and opportunity to defend have been accorded. Thus, the charges in the notice to show cause should relate individual facts to specific statutory and rule violations. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[5]**

It is important for decisions of the State Bar Court to identify with specificity both the rule or statutory provision that underlies each charge and the manner in which the conduct allegedly violated that rule or statutory provision. This specificity is essential to the respondent's due process right to adequate notice, as well as to meaningful Supreme Court review of the recommendation of the State Bar Court. The notice to show cause must be sufficient to support the charges relied upon in the decision, because the findings of the State Bar Court must rest on the charges filed. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[6]**

Shortcomings of notice to show cause were manifest, where such notice did not give respondent notice of any specific alleged misconduct, but broadly referred to a series of loans made over an unspecified period of time from twelve unidentified family trusts to one or more of three limited partnerships; none of the loans was identified by lender, borrower, amount or date; and the notice did not specify which of the loans were challenged as improper. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[7]**

Examiner's offer to amend notice to show cause to name twelve trusts from which respondent (as trustee) was alleged to have made loans was inadequate to remedy deficiencies of notice to show cause which did not identify loans by borrower, date or amount and did not specify which of series of many loans were alleged to have been improper. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[8]**

Inadequacies in pleading not only made notice to show cause insufficient under rule 550, Trans. Rules Proc. of State Bar, but also caused questions as to whether notice met requirements of rule 554.1, providing that a notice to show cause may be dismissed on ground that it fails to state a disciplinable offense as a matter of law. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[11]**

If State Bar intends to charge violation of rule of professional conduct regarding duty of competence, there must be an allegation that respondent intentionally or with reckless disregard or repeatedly failed to perform legal services competently, and notice should state what particular conduct is characterize as violating this standard. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[12]**

Where the first sentence of a paragraph in a notice to show cause referred to a single transaction and the rest of the same paragraph referred to multiple transactions, and where it was unclear whether some or all of the loans described earlier in the notice were alleged not to have been fair or reasonable, there was unnecessary ambiguity in the alleged misconduct with respect to the charge of improper business transactions with clients. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[13]**

The opportunity for permissive amendment of the notice to show cause at a later stage in the proceedings on adequate notice of new factual allegations does not negate the State Bar's obligation in the first instance to provide adequate notice of the original charges. While developments during discovery may lead to augmentation or modification of the charges by amendment, the ability to amend does not affect the requirement of particularity in the original charges. Informal sharing of source material on which charges are based, while highly desirable, is no substitute for formal charges. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[15]**

The State Bar cannot impose discipline for any violation not alleged in the original notice to show cause. If the evidence produced before the hearing department shows the attorney has committed an ethical violation that was not charged in the original notice, the State Bar must amend the notice to conform to the evidence adduced at the hearing. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[16]**

Unless the respondent demonstrates that the respondent's defense was actually compromised, a slight variance in the evidence that relates to the noticed charge does not, in itself, deprive the respondent of adequate notice. This situation, however, is patently different from one in which ambiguity and lack of specificity in the notice to show cause make it unclear which aspect of the respondent's conduct over a number of years allegedly violated the rules and statutes cited in the notice. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[17]**

The State Bar has the duty to distill from sources available to it whether reasonable cause exists for charging a member with statutory or rule violations. It is not only incumbent upon the Office of Trial Counsel to determine which specific conduct of the respondent is at issue, but to articulate the nature of the conduct with particularity in the notice to show cause, correlating the alleged misconduct with the rule or statute allegedly violated thereby. (Rules 510, 550, Rules Proc. of State Bar.) *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[19]**

The degree of specificity required in a notice to show cause does not necessitate lengthy detailed pleading. A notice to show cause does not have to include explicit details of a respondent's alleged misconduct, nor does it have to match the subsequent proof at the hearing as long as the difference is immaterial or the pleading is amended and the respondent is given an opportunity to respond to the additional allegations. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[21]**

Increased specificity in articulating the charged misconduct in the notice to show cause will enable the respondent to prepare to meet the charges; provide the hearing judge with a proper framework for findings and conclusions; and make it easier for the review department and the Supreme Court to conduct meaningful de novo review of the hearing judge's decision. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[22]**

Review department will not consider misappropriation implied by evidence but not charged in notice to show cause, and not mentioned at trial, in hearing department decision, or in briefs on review. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[1]**

Contention by State Bar that respondent violated attorney's duty to obey state and federal laws by failing to pay payroll taxes as required by penal and civil statutes was rejected by review department, despite respondent's admission that taxes were not paid, because notice to show cause did not charge violation of employer withholding statutes, and no evidence was introduced to prove they were violated, thus depriving respondent of opportunity to defend. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[10]**

Where notice to show cause did not charge that respondent misrepresented to his clients the status of their claims, and respondent defaulted and did not appear at hearing, the review department declined to find, based on client's testimony at hearing, that respondent had committed act of dishonesty by making such misrepresentation. The review department is most reluctant to consider, even for the purpose of aggravation, misconduct which could have been, but was not charged in notice to show cause, especially where respondent is in default and has no opportunity to learn of or rebut matters arising during hearing. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[3]**

Where the examiner asserted for the first time in his request for reconsideration of the review department's decision that the respondent's misappropriation of client trust funds constituted an act of embezzlement within the meaning of Penal Code section 506, and, as such, constituted a wilful violation of the attorney's oath and duty to support the laws of this state, the review department concluded that the belated attempt to prove culpability through an uncharged violation of another statute was improper. The State Bar cannot impose discipline for any violation not alleged in the notice to show cause. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[1]**

Where the notice to show cause did not allege a violation of the Penal Code, the alleged violations of sections 6068(a) and 6103 could not be construed as putting the attorney on notice of a possible Penal Code violation. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[2]**

106.30 Duplicative charges

Where respondent was found culpable of moral turpitude for filing bankruptcy petitions containing misrepresentations and material omissions, charge that respondent violated section 6068(d) based on same misconduct was duplicative, and was therefore dismissed. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[4]**

Respondent was culpable of maintaining unjust actions where he unreasonably persisted in pursuing numerous lawsuits after unqualified losses at trial and on appeal, repeatedly filed unmeritorious motions, pleadings,

and other papers, engaged in tactics that were frivolous or intended to cause unnecessary delay, and acted with disregard for two vexatious litigant rulings. However, charges of violations of rule 3-200(A) based on same facts were properly dismissed as duplicative. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360 **[1 a-d]**

Where respondent was found culpable of aiding the unauthorized practice of law, in violation of rule 1-300(A) of the Rules of Professional Conduct, and charges that respondent lent his name for use by non-attorneys, in violation of Business and Professions Code section 6105, were based entirely on same facts, section 6105 charges were duplicative. *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296 **[4]**

In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

In the Matter of Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80

It is not necessarily duplicative to find culpability for failure to communicate with clients and culpability for improperly withdrawing from employment when respondent's failure to communicate arose from her failure to inform clients of crucial information regarding representation and respondent's improper withdrawal was based on her failure to take reasonable steps to protect her clients' interests. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[4 a, b]**

Where respondent's conduct of intentionally making no further appearances on behalf of her indigent clients established culpability for failing to perform competently and where such conduct was duplicative of the conduct surrounding respondent's improper withdrawal, no additional weight was assigned to the recommended discipline.

In the Matter of Wolff (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[5 a, b]**

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

Dismissal of duplicative violations is appropriate where misconduct establishing respondents' culpability for violating their duty never to seek to mislead a judge or other judicial offer by an artifice or false statement of law or fact is covered by the misconduct establishing culpability for committing acts of moral turpitude which supports identical or greater discipline. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[2]**

Because review department relied on respondent's repeated and reckless failure to communicate with client to establish his culpability for violating rule of professional conduct prohibiting attorneys from abandoning clients and withdrawing from employment without taking adequate steps to protect their clients' interests, review department did not adopt hearing judge's finding that respondent violated statute requiring attorneys to adequately communicate with their clients, but dismissed charge with prejudice as being duplicative. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[22]**

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Scott (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.

Where respondent's failure to provide his client with a statutorily required disclosure statement when selling residential real property to the client was one of the factors used to determine that respondent entered into a business transaction with a client without disclosing all terms of the transaction and transmitting them in writing to the client in a manner that the client should reasonably understand, it would not be proper to again rely on that identical failure in order to establish respondent's culpability of failing to support the laws of this state. *In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[6]**

Because the plaintiff in a civil lawsuit, who was respondent's former client, introduced into evidence respondent's offensive discovery requests, it is presumed, in the absence of any jury instruction to the contrary, that the jury relied on them in finding by clear and convincing evidence that respondent acted with oppression or malice when he harassed or intentionally inflicted emotional harm on the plaintiff. Therefore, to find a Business and Professions Code section 6106 moral turpitude violation on this basis would be duplicative of the moral turpitude violations already found based on respondent's harassment and intentional infliction of emotional distress on the plaintiff. For the same reasons, it would also be duplicative to use the offensive discovery to find culpability of Business and Professions Code section 6068, subdivision (f). It is generally inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[5 a - b]**

The Business and Professions Code section 6068, subdivision (f) charge based on respondent's offensive discovery requests is duplicative of the Business and Professions Code section 6106 charge based on the same conduct. It is insufficient for culpability that the section 6068, subdivision (f) charge reflects the additional harm that respondent has caused to the administration of justice and to the right of the plaintiff, respondent's former client, to seek redress in the courts. Culpability of misconduct is determined by whether an attorney has violated the Rules of Professional Conduct, a disciplinable provision of the State Bar Act or other disciplinable provision of law. Harm or lack thereof is an aggravating circumstance. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[6]**

Respondent's endorsement of a client's false financial statement and misrepresentation that one of a client's companies was a successful business were willful violations of his duty to employ only such means as are consistent with the truth when representing clients, and were dishonest acts involving moral turpitude. However, to the extent that the facts underlying both violations were the same, the review department gave no additional weight to the duplication in determining discipline. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. RPtr. 430. **[1]**

As part of his plea in the criminal case, respondent admitted that he caused great bodily injury to another person. Thus, the crime for which respondent was convicted necessarily involved severe injury and it would be duplicative to consider harm to the victim as a separate aggravating circumstance. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[5]**

Where respondent violated rule of professional conduct which prohibits an attorney from improperly obtaining an interest in a client's property and/or entering into a business transaction with a client, and that misconduct was the same misconduct underlying the charge that respondent violated statutory duty to uphold law on account of his violation of provisions of the Probate Code which prohibit self-dealing by trustees; and where discipline did not depend on whether respondent violated both rule and statute, statutory violation was cumulative and review department did not address it. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[1]**

Where respondent's entire course of conduct in handling his duties as the trustee of a testamentary trust amounted to a reckless failure to perform services competently, but the review department considered much of the same misconduct in reaching its conclusion that respondent committed moral turpitude through gross negligence in handling his duties as trustee, the failure to perform competently was given minimal weight as an aggravating circumstance in determining the appropriate discipline to recommend. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[6]**

Statute prohibiting attorneys from engaging in acts of moral turpitude applies to misrepresentation and concealment of material facts. An attorney has a duty under statute and ethics rule never to seek to mislead a judge and acting otherwise constitutes moral turpitude and warrants discipline. Thus, respondent's intentional, material misrepresentation to a settlement conference judge was an act of moral turpitude. Nevertheless, where same misconduct underlay both finding of moral turpitude and findings of violation of statute and rule prohibiting misleading courts, misconduct was treated as single violation. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[5]**

The State Bar must articulate in its pleading the reason why violation of each listed statute and rule was charged in the notice to show cause. A notice which recites factual allegations separately from a charging paragraph that gives no explanation for the citation of charged statutes and rules, and which fails to correlate each alleged statutory and rule violation with the conduct upon which it was based, is inadequate. Such correlation would allow the identification of alternative theories of culpability and lesser included offenses, thus permitting the elimination of duplicative charges at the time of pretrial or trial. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[1]**

Where hearing judge concluded that certain alleged rule violations were duplicative and inconsequential in considering level of discipline, and State Bar did not take issue with such conclusion, and review department determined that respondent should be disbarred based on other findings, review department did not address allegations found to be duplicative. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[10]**

Where attorney violated statute providing that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline, and where misconduct underlying such charge was same as misconduct underlying charges of violating statutes providing that attorneys have duty to comply with disciplinary probation conditions and that wilful disobedience of court orders constitutes cause for disbarment or suspension, latter two charges were given no additional weight in determining appropriate discipline. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[6]**

Where respondent was grossly negligent in failing to respond to requests for information from client and successor counsel, and where respondent failed to maintain client's settlement check in safe place, respondent repeatedly failed to perform competently. However, where charge of repeated failure to perform competently addressed same misconduct as charges of failure to communicate with client and failure to keep client property in safe place, failure to perform competently was given no additional weight in determining appropriate discipline. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[19]**

Where respondent's failure to supervise his personal injury practice and fulfill trust fund responsibilities was so remiss as to be reckless, and his mismanagement of his trust account included repeated failure to provide competent legal services by promptly paying medical liens, respondent violated rule regarding reckless or repeated failure to perform competently. However, where misconduct forming basis for such violation also underlay charge of moral turpitude supporting identical or greater discipline, review department gave violation of competence rule no additional weight in determining discipline. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[2]**

Where respondent failed to file required at-issue memorandum at time when former Rules of Professional Conduct were in effect, but such failure was not intentional or reckless, and respondent failed to perform several other required acts in same litigation after revised Rules of Professional Conduct became effective, review department held that respondent repeatedly failed to perform competently in violation of revised rule precluding intentional, reckless, or repeated failure to perform legal services competently, and did not reach question whether initial failure to file at-issue memorandum constituted duplicative violation of earlier version of same rule. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[8]**

Where same misconduct was found in each of two consolidated matters, review department dismissed allegations of such misconduct in one matter, because disciplining respondent for same misconduct in both matters would not be appropriate. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[7]**

Where respondent did not display disrespect for any court except insofar as he violated a court order, charge of violating statute requiring respect for courts was properly disregarded as duplicative of charge of violating statute requiring obedience to court orders, which more directly addressed respondent's specific misconduct. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[4]**

Duplicative allegations of misconduct serve little, if any purpose. It should be apparent by the time of the pretrial conference which charges are most apt, which other charges might show additional misconduct, and which are simply duplicative and unnecessary. Amendment or dismissal of charges, particularly at the time of filing the

pretrial statement (rule 1222(k), Provisional Rules of Practice), serves the interest of litigant and judicial economy. Thus, where respondent failed to ensure payment of a medical lien when settling a personal injury case, there was no benefit to charging respondent with failing to act competently, when the charge that respondent violated the rule requiring proper payment of entrusted funds addressed the alleged misconduct far more aptly and supported identical or greater discipline. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[13]**

Where an attorney failed to pay court-ordered sanctions, and was charged with violating both the statute requiring respect for courts and the statute requiring obedience to court orders, the misconduct was more specifically addressed under the statute requiring obedience to court orders and that charge was therefore to be preferred. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[7]**

Where hearing judge concluded that respondent misappropriated a portion of client's cost advance under trust account rule, and violated moral turpitude statute by gross negligence in supervising client trust funds, it was unnecessary for review department to amend hearing judge's conclusions to establish that those sections were violated, and review department declined to adopt additional conclusion that respondent acted dishonestly in misappropriating client's funds. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[6]**

Claim that respondent's failure to give required notice of suspension in four different client matters should not have been charged as four separate violations was relevant to degree of discipline but not to culpability. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[8]**

Where respondent violated Supreme Court order imposing disciplinary probation, and hearing judge properly found that respondent had violated statute requiring compliance with probation conditions, respondent was also culpable of violating statute requiring compliance with court orders. However, review department did not need to modify hearing judge's decision to include additional statute and rule violations where review department's recommendation did not depend on whether the misconduct also violated those additional duplicative violations. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[2]**

Uncharged misconduct relied upon to enhance discipline in one proceeding cannot later constitute grounds for additional discipline in an independent disciplinary proceeding. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[7]**

Even if respondent's demand that client return settlement check demonstrated lack of candor or cooperation with client, review department would not consider it as separate aggravating circumstance where it had already been found to be a factor establishing bad faith, a different aggravating circumstance. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[15]**

While a lack of adequate communication with a client may warrant a finding of failure to perform legal services competently, it would be duplicative to draw such a conclusion when the attorney has been found culpable of violating the statutory duty to communicate with clients. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[6]**

For a failure to communicate with a client which occurred prior to the enactment of the statute requiring such communication, grounds for discipline remain under the common law doctrine underlying this duty. However, where the information the attorney most significantly failed to convey was notice of the attorney's withdrawal from representation, the attorney's conduct violated former the rule against prejudicial withdrawal, and finding culpability of a common law failure to communicate would be unnecessarily duplicative. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[10]**

Attorney could not be found culpable of violating probation by failing to respond to an inquiry from the State Bar Court, as required by conditions of his probation, where the notice to show cause in the probation revocation proceeding referred only to the requirement to file quarterly reports, an independent probation condition, and such charge would be factually duplicative of previously-adjudicated charge of failing to file quarterly report. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[2]**

Duplicative allegations of misconduct serve little purpose; if misconduct violates a specific disciplinary provision of the State Bar Act or a Rule of Professional Conduct, there is no need to charge the same misconduct

as a violation of sections 6068(a) and 6103. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[3]**

Where respondent was found culpable of violating statutory duty to uphold the law by failing to adhere to common law duty to communicate with client, additional charge that respondent violated attorney's "oath and duties" under separate statute was duplicative, and resolution of case would not be affected by finding such violation. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[11]**

Little, if any, purpose is served by duplicative allegations of misconduct; if misconduct violates a specific Rule of Professional Conduct or statute, there is no need for the State Bar to allege the same misconduct as a violation of an attorney's duty to obey the law. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[15]**

If violations of the Rules of Professional Conduct were automatically also violations of the statute governing an attorney's duty to obey the law, the statute limiting the discipline for rule violations to a maximum of three years' suspension would be rendered meaningless; such a construction of the statutory scheme would be illogical. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[16]**

As terms of art, an attorney's "oath and duties" are defined by sections 6067 and 6068. Section 6103 confirms the Supreme Court's inherent authority to impose discipline for violation of oath or duties defined by other statutes. Accordingly, charge of violating section 6103 or finding that attorney has committed misconduct thereunder is redundant and adds nothing to charges otherwise pending. Charge of violating section 6103 "oath and duties" does not put respondent on notice of any particular misconduct without reference to other statutes defining the particular duty allegedly violated. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[7]**

In matter charging attorney with filing false declaration and assisting in preparation of fraudulent documents, hearing referee's conclusions that respondent violated statutory duty to uphold the law (Bus. & Prof. Code, § 6068(a)) and statute regarding attorneys' violations of their oath and duties (*id.*, § 6103) were inappropriate. Section 6068(a) charge was duplicative since same misconduct was charged as violation of specific Rule of Professional Conduct. Section 6103 does not define a duty or obligation, but rather provides grounds for discipline for violation of an oath or duty defined elsewhere. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[3]**

When misconduct violates a specific Rule of Professional Conduct, it is unnecessary to allege the same misconduct as a violation of the attorney's statutory duty to uphold the law. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[4]**

Where sole court order violated by attorney was order suspending attorney from practice, and attorney was found culpable of unauthorized practice under other statutes, charge of violating section 6103 was superfluous. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[6]**

Where all of attorneys' acts of dishonesty were encompassed in charge of committing acts of moral turpitude, there would be no added value in straining to find in the same conduct a violation of another statute prohibiting misrepresentations to tribunals. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[5]**

106.40 Amendment of pleadings (rule 5.44)

Absent a motion by the State Bar to amend the notice of disciplinary charges in a way that would have given respondent a sufficient opportunity to defend, the hearing judge should have sustained respondent's objection to evidence of uncharged misconduct on the ground that it was beyond the scope of the charge set forth in the notice of disciplinary charges. In view of respondent's timely and specific objection, the review department declined to adopt the finding of uncharged misconduct as an aggravating circumstance. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[16]**

Because respondent failed to competently perform legal services both before and after the September 14, 1992, effective date of the revised version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110), he violated both the "former" and the "current" versions of that rule. Thus, State Bar erred when it amended the charges to "conform to proof" by deleting the charge that respondent violated the "current" rule and replacing it with a charge that he violated the "former" rule. State Bar should not have deleted the charge that respondent violated the "current" rule, but should have added to it a charge that respondent also violated the "former" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[2]**

Even though State Bar erroneously amended the charges to "conform to proof" by deleting the charge that respondent violated the revised (i.e., "current") version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110 as amended eff. Sept. 14, 1992) and replacing it with a charge that respondent violated the "former" version of that rule instead of correctly amending the charges by adding, to the charged violation of the "current" rule, a charge that respondent also violated the "former" rule, no due process violation occurred when review department held that respondent was culpable of violating both the "former" rule and the "current" rule because (1) the text of both rules was virtually identical, (2) respondent did not argue lack of notice, and (3) the trial in hearing department covered respondent's conduct during the time period in which the "former" rule was in effect and after the effective date of the "current" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[3]**

A first amended notice to show cause supersedes both the original notice and any proposed but unfiled first amended notices. The sufficiency of the first amended notice to show cause is determined without reference to either the original notice or any earlier proposed first amended notice. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[1]**

The purpose of the notice to show cause in a disciplinary proceeding is to serve as a determination that probable cause exists to warrant formal charges. (Trans. Rules Proc. of State Bar, rule 510.) Accordingly, statements of probable cause, which identified clients allegedly involved in solicitation charged in notice to show cause, served as equivalent of amendments to notice to show cause. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[2]**

Duplicative allegations of misconduct serve little, if any purpose. It should be apparent by the time of the pretrial conference which charges are most apt, which other charges might show additional misconduct, and which are simply duplicative and unnecessary. Amendment or dismissal of charges, particularly at the time of filing the pretrial statement (rule 1222(k), Provisional Rules of Practice), serves the interest of litigant and judicial economy. Thus, where respondent failed to ensure payment of a medical lien when settling a personal injury case, there was no benefit to charging respondent with failing to act competently, when the charge that respondent violated the rule requiring proper payment of entrusted funds addressed the alleged misconduct far more aptly and supported identical or greater discipline. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[13]**

Where respondent was not charged with failure to return an unearned advance fee, no finding of culpability for such misconduct could be entered absent an amendment of the charges. Where evidence was insufficient to support such charge, motion to amend was properly denied as an idle act. However, where, despite a clear directive as to the need to amend and an opportunity to move for such amendment in advance of trial, deputy trial counsel waited until after evidence was in to move to amend to conform to proof, motion to amend could also have been denied simply for inexcusable delay in seeking amendment. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[3]**

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

Where the original notice to show cause alleged misappropriation, and the examiner amended the notice to charge respondent with commingling resulting from his bookkeeper's negligence, and there was no evidence that respondent's defense was thereby prejudiced, respondent had sufficient notice of the charges to satisfy his due process rights, because the duty to keep client funds safe is a personal obligation of the attorney and nondelegable, and the attorney was therefore on notice that he could be culpable if his staff's conduct resulted in a violation of that duty. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[2]**

A notice to show cause may be amended, including amendment to conform to proof, so long as the attorney is given a reasonable opportunity to defend the charge and provided the amendment is not a trap for the unwary attorney. Where respondent was given informal, oral notice of an intended amendment five months prior to its filing, and formal notice one month prior to trial, respondent had adequate time to prepare a defense, and due process was not violated. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[8]**

Respondents have a right to reasonable notice of the charges against them and they may not be disciplined for a violation not alleged either in the original or a properly amended notice to show cause. Where the notice to show cause charged respondent with dishonest acts with regard to non-payment of tax monies withheld from an employee's wages, respondent could not, based on that notice, be held culpable of improperly concealing personal money from the tax authorities by putting it in a client trust account. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[2]**

A respondent can only be found culpable of conduct which is charged in the notice to show cause. If the charges do not appear in the notice and the notice is not properly amended, the charges will not be sustained. However, culpability will be sustained in the event of a slight variation in the evidence from the notice, without an amendment, unless the respondent's defense can shown to have been compromised. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[2]**

Where attorney's alleged failure to perform competently occurred after effective date of revised version of rule governing duty of competence, and notice to show cause charged attorney only with violating previous version of rule and notice was not amended, attorney was properly found not culpable of violating earlier version of rule. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[6]**

Where parties stipulated to waive any variance between facts set forth in stipulation and allegations of notice to show cause, stipulated facts which were not charged in original notice could be considered even though notice had not been amended. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[1]**

Where notice to show cause did not charge violation of statute requiring attorneys to maintain respect for courts and their officers, and no motion to amend was made at hearing, referee's conclusion that respondent violated the statute was inappropriate. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[2]**

Where notice to show cause failed to charge respondent with failing to perform services in a certain matter, and notice to show cause was not amended to conform to proof at hearing, review department struck hearing department's finding of culpability with respect to that matter. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[1]**

Motions to amend notice to show cause to correct typographical errors or modify facts which do not alter the charges in the original notice are permissible after entry of default. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[13]**

Rule of Procedure 557, permitting amendment of notice to show cause to conform to proof without requiring additional time to prepare answer and defense, assumes respondent attorney's presence at disciplinary proceeding. Where respondent is not present due to entry of default, respondent does not have an opportunity to defend against charges. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[14]**

Where respondent, represented by experienced counsel, stipulated to facts which respondent conceded supported uncharged violation of failing to notify clients of receipt of client funds, and respondent did not object to referee's amendment of notice to show cause to reflect such charge, review department held that any such objection was waived, and found culpability despite omission of charge from notice to show cause. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[6]**

Examiner's offer to amend notice to show cause to name twelve trusts from which respondent (as trustee) was alleged to have made loans was inadequate to remedy deficiencies of notice to show cause which did not identify loans by borrower, date or amount and did not specify which of series of many loans were alleged to have been improper. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[8]**

The opportunity for permissive amendment of the notice to show cause at a later stage in the proceedings on adequate notice of new factual allegations does not negate the State Bar's obligation in the first instance to provide adequate notice of the original charges. While developments during discovery may lead to augmentation or modification of the charges by amendment, the ability to amend does not affect the requirement of particularity in the original charges. Informal sharing of source material on which charges are based, while highly desirable, is no substitute for formal charges. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[15]**

The State Bar cannot impose discipline for any violation not alleged in the original notice to show cause. If the evidence produced before the hearing department shows the attorney has committed an ethical violation that was not charged in the original notice, the State Bar must amend the notice to conform to the evidence adduced at the hearing. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[16]**

The degree of specificity required in a notice to show cause does not necessitate lengthy detailed pleading. A notice to show cause does not have to include explicit details of a respondent's alleged misconduct, nor does it have to match the subsequent proof at the hearing as long as the difference is immaterial or the pleading is amended and the respondent is given an opportunity to respond to the additional allegations. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[21]**

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

106.50 Answer to initial pleading (rules 5.42, 5.43)

Except for service of initial pleading in a proceedings, State Bar Rules of Procedure and State Bar Court Rules of Practice require that attorney's response to notice of disciplinary charges contain an address of service for the attorney. Thus, clerk properly served copy of hearing judge's decision on attorney by mailing it to attorney at the address listed in the attorney's response to notice of disciplinary charges even though that address was not address that attorney maintained on State Bar's official membership records, particularly since attorney never notified clerk that he wished to be served at any address other than the address listed on the response. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[9]**

Where respondent refused to take the witness stand when ordered to do so by the referee at the disciplinary hearing, and invoked the protection of the Fifth Amendment through counsel and not in response to specific questions, respondent's actions were improper. If appearing under subpoena, respondent's actions could have been certified for contempt before the Superior Court. If culpability had been found on the underlying misconduct charges, respondent's actions could have been considered evidence in aggravation. However, the referee did not have contempt power and lacked the authority to sanction respondent by striking respondent's answer to the notice to show cause and deeming the allegations admitted by default as a matter of law. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[33]**

Time to file answer to notice to show cause is extended twenty days by service of notice of application to enter default, and is extended an additional five days when the application is served by mail. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[2]**

Where respondent who filed motion for relief from default had previously submitted proposed answer to notice to show cause to State Bar Court and served it on examiner, and declaration accompanying motion to set aside default verified essential allegations of proposed answer, this constituted substantial compliance with rule requiring motion to set aside default to be accompanied by verified proposed answer. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[3]**

The time limit for filing an answer to the notice to show cause is not jurisdictional, and an answer will be accepted for filing at any time prior to the actual entry of default, no matter how belatedly it is submitted. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[6]**

Where record showed that respondent cured defects in otherwise timely answer within six days of mailing of notice to do so by clerk's office, review department's duty of independent record review precluded it from ignoring those facts in determining just disposition of motion for relief from default, despite weakness of respondent's moving papers. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[12]**

Pursuant to Rule of Procedure 552(a), an answer submitted for filing prior to the entry of default is not required to be verified. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[14]**

It would be an abuse of discretion to deny relief from default solely on the basis of the lack of a verification of respondent's proposed answer, without giving respondent a chance to cure the defect. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[15]**

106.90 Other issues re pleadings

Multiple acts of misconduct as aggravation are not limited to the counts pleaded. Respondent's 65 improper CTA withdrawals were multiple acts of misconduct that constitute significant aggravation. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273. **[2]**

Review Department declined to find uncharged misconduct where State Bar had ample opportunity but did not move to amend the notices of disciplinary charges to include new charges; therefore, respondent did not have sufficient notice or opportunity to defend against them. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250. **[7]**

Where State Bar had notice of respondent's additional alleged acts of misconduct and failed to charge them in initial pleading and to amend charges to conform to proof at trial, respondent was denied fair opportunity to defend against additional charges, and Review Department declined State Bar's late request on review to consider them in aggravation. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221. **[12]**

Respondent's testimony and arguments regarding his customary practices (1) to limit the scope of his representation of clients referred to him by nonattorney immigration services providers to that of an "appearance attorney," which respondent asserts is an attorney who appears in his clients' immigration cases only for the limited purpose of making court appearances, and (2) to rely on or permit referring nonattorney immigration services providers to prepare and file immigration applications, pleadings, and other documents for his clients placed respondent's practices in issue so that any uncharged improprieties in them may appropriately be considered as aggravation warranting increased discipline. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[4 a-c]**

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

Respondent's arguments and testimony that almost all hearing judge's findings of misconduct are erroneous because they are based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients placed respondent's methods of practicing law in issue so that any uncharged impropriety in them may appropriately be considered as aggravation warranting increased discipline. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[9 a, b]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law

that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

Absent an appropriate objection to the introduction of evidence of misconduct other than that charged in the notice of disciplinary charges, such evidence may, when appropriate, be used as an aggravating factor in disciplinary matters.*In the Matter of Peavey* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483. **[3 a-c]**

In determining culpability, the review department declined to view respondent's conduct in each of four lawsuits separately where the notice of disciplinary charges charged that the totality of respondent's conduct in filing and pursuing all four of the actions was the basis of his misconduct.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[5]**

In reviewing a pretrial motion to dismiss the notice of disciplinary charges on the ground that it was barred by the applicable period of limitations, we treat the factual allegations of the notice of disciplinary charges as true. Where the notice of disciplinary charges alleged that respondent, a general partner of a California limited partnership, informed a limited partner within five years before the notice of disciplinary charges was filed that the limited partner's share of funds from a partnership distribution was gone, the charge that respondent committed an act involving moral turpitude by breaching a fiduciary duty and misappropriating funds was timely filed under Rules of Procedure of the State Bar, rule 51.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[5a,b]**

In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.91.

Respondent's argument that a new trial was necessary because the notices to show cause did not pair facts with each alleged ethical violation was rejected. Even though the Supreme Court has repeatedly criticized this practice, a defective notice entitles an attorney to relief only if the attorney shows that specific prejudice resulted from the defect. Respondent made no such showing. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[4]**

Respondent waived any due process violation resulting from the State Bar's failure to notify him in the notice of hearing that the cancellation of his license to practice law would be an issue at the trial where he did not allege in his appellant's brief, with supporting references to the record, that he presented his lack of notice objection to, and obtained a ruling on it from, the hearing judge. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[8]**

Where a proceeding under rule 955 of the California Rules of Court was started by an order of referral rather than the issuance of formal charges, culpability could be based on all evidence introduced. Thus, where the evidence demonstrated that respondent failed to give timely notices of her suspension to her clients, opposing counsel, and courts in which her clients' cases were pending, she wilfully violated rule 955, subdivision (a), and the review department considered that violation as substantive and not just an aggravating circumstance as found by the hearing judge. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[5]**

Violation of State Bar Act section that is not, by its terms, disciplinable offense may be grounds for finding violation of statute requiring attorneys to uphold law. Where respondent was charged with violating statutory fee limitations and written fee agreement and disclosure requirements which are not, by their terms, disciplinable offenses, charge of violating statute requiring attorneys to uphold law was required as conduit to allege other violations, and such charge should not have been dismissed as unnecessary. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[4]**

Statute requiring attorneys to uphold law is not always proper vehicle for charging violation of State Bar Act when statute is already covered as a disciplinable offense in another part of the Act. Because statutes requiring written attorney fee agreements containing certain information specify non-disciplinary remedies for attorneys' failure to comply with them, and because failure to comply with such statutes may be charged as violations of Rules of Professional Conduct regarding illegal fees, competence, and communication with clients, violation of such statutes is not disciplinable under statute requiring attorneys to uphold law. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[11]**

State Bar Court is reluctant to interfere with reasonable exercise of prosecutorial discretion. When presented with a complaint, State Bar can legitimately charge attorney based on facts as they appear from investigation. Where large number of counts filed against respondent resulted primarily from size and volume of respondent's practice and his chronic problem with handling medical liens, fact that State Bar could not establish factual or legal basis for some counts and charges was not sufficient to establish that charges were brought without reasonable basis or that respondent was victim of prosecutorial misconduct. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[13]**

Where hearing judge viewed proceeding as one to revoke probation, not to impose added culpability or discipline, and recommended actual suspension would not exceed imposition of previously stayed suspension if respondent made restitution within such time, applicable standard of proof was preponderance of evidence standard applicable to probation revocation proceedings, even though notice to show cause also alleged violations of respondent's statutory oath and duties and of a court order. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[5]**

Notice to show cause under rule 550 of Transitional Rules of Procedure of State Bar is not required in conviction referral proceeding. Pursuant to Supreme Court's delegation of authority to State Bar Court in conviction referral matters (Cal. Rules of Court, rule 951(a)), only State Bar Court referral order and notice of time and place of hearing are needed to initiate a conviction referral proceeding. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[2]**

The purpose of the notice to show cause in a disciplinary proceeding is to serve as a determination that probable cause exists to warrant formal charges. (Trans. Rules Proc. of State Bar, rule 510.) Accordingly, statements of probable cause, which identified clients allegedly involved in solicitation charged in notice to show cause, served as equivalent of amendments to notice to show cause. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[2]**

Admonitions are not discipline and may be reopened and proceed anew as a formal disciplinary proceeding if a formal proceeding is brought with two years based on other misconduct. The rules of procedure define the start of a formal proceeding as the issuance of a notice to show cause. (Trans. Rules Proc. of State Bar, rules 415, 550.) *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[20]**

In probation revocation matter, where notice to show cause informed respondent who was subject to stayed suspension that he could be enrolled inactive upon finding of probation violation and recommendation of actual suspension therefor, it would have been appropriate for hearing judge to order such inactive enrollment with or

without request from Office of Trial Counsel, and where hearing judge had not done so, review department made such order. Under statute providing that inactive enrollment for probation violation shall be credited against ensuing actual suspension, review department recommended that respondent's one-year actual suspension commence as of the date of his inactive enrollment. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[7]**

An attorney can be disciplined only for misconduct charged in the notice to show cause or an amendment thereto. Where notice to show cause charged violation of rule against representing clients with conflicting interests, and respondent served interrogatory requesting identification of all such alleged conflicts, charges against respondent were limited to those identified in State Bar's answer to such interrogatory, and respondent could not be found culpable of violating conflict of interest rule based on a conflict not listed therein. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[9]**

The Office of Trial Counsel has discretion whether or not to file formal charges in a matter eligible for disposition by admonition. The State Bar Court cannot dismiss a proceeding prior to hearing on the ground that it meets the criteria for admonition, unless a case for selective prosecution is established. (Trans. Rules Proc. of State Bar, rule 415.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[5]**

Finding a pattern in aggravation is not limited to consideration of the counts pleaded. Where respondent stipulated to misconduct involving eight clients over six years, that number of cases only, in a high volume practice, might not have constituted a pattern. However, where respondent also testified to his prolonged, systematic failure to supervise his staff, his staff's inability to handle the caseload, and numerous other problems besides the ones listed in the notice to show cause, he had no grounds to challenge the finding in aggravation based thereon that a pattern of neglect existed. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[6]**

Aggravating factors are not required to be separately charged. However, facts that could have formed the basis for an additional charge omitted from the notice to show cause cannot be relied on in aggravation in a default matter, because respondent is not fairly put on notice that such facts will be relied on. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[12]**

Charges should only be filed when the Office of Trial Counsel ascertains that reasonable cause exists to charge that particular conduct occurred which violated a particular regulatory provision. (Rule 510, Rules Proc. of State Bar.) *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[18]**

The scope of the respondent's defense is determined by the scope of the notice to show cause. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[20]**

The State Bar Court must make appropriate findings as to the manner in which an attorney's conduct violated charged rules and statutes. Conclusory language in an examiner's papers indicating that the factual findings supported a conclusion of culpability under a given statute or rule was inadequate and did not promote meaningful review. The conduct proved under each count which supports culpability of particular charged violations must be identified. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[3]**

Where "and/or" language was used as part of the allegations in the notice to show cause, such language could not be used to establish respondent's culpability based solely on admitted allegations by default. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[7]**

107 Default/Relief from Default (rules 5.80-5.84, 5.250-5.253, 5.346)

Where hearing judge properly granted respondent limited relief from default, to extent of requiring hearing on State Bar's petition for disbarment after default, and respondent sought review of hearing judge's ultimate decision, Review Department declined to dismiss respondent's petition for review, exercising its power to permit respondent to participate in proceeding notwithstanding default. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[1]**

Prior to 2011, the Rules of Procedure of the State Bar permitted imposition of a discipline less than disbarment even if the defaulting attorney did not seek relief from default. (See former rule 200 et seq. of the Rules of Procedure of the State Bar.) The rules now require that when a member's default has been entered and the member fails to have it set aside or vacated, the Office of the Chief Trial Counsel must file a petition seeking the member's

disbarment. (Rule 5.85(A).) In turn, a hearing judge must grant the petition and recommend disbarment provided (1) the member has failed to file a response to the petition for disbarment or (2) the court has denied a motion to set aside or vacate the default. (Rule 5.85(F)(1).) *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[2 a,b]**

A member in default has various opportunities to seek relief from default. (Rules Proc. of State Bar, rules 5.83(A), (C), (D), and 5.85(E).) Because the effects of a default may deny a disposition of the case on the merits irrespective of the charges or potential mitigation, the review department closely scrutinizes orders denying relief from default and any doubts must be resolved in favor of the member. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[3]**

Where respondent filed opposition to petition for disbarment after default, and sought review of hearing judge's order granting petition, and Review Department remanded to permit hearing judge to exercise discretion regarding what relief was appropriate, hearing judge did not abuse discretion on remand by declining to set aside default except for limited purpose of conducting hearing on culpability, aggravation, and level of discipline, in which respondent was not permitted to participate. Hearing judge also properly deemed allegations in notice of disciplinary charges to be admitted. By allowing his default to be entered, respondent waived right to participate in proceedings, to make evidentiary objections, and to present evidence in mitigation. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[4 a-c]**

Hearing judge properly deemed allegations in notice of disciplinary charges to be admitted by virtue of respondent's default. Where admitted allegations showed respondent had received public reproval with conditions attached in prior discipline matter, and had failed to comply with certain conditions, hearing judge properly found clear and convincing evidence that respondent violated conditions of prior disciplinary order, in violation of rule 1-110. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[5]**

Where respondent's default was set aside for limited purpose of conducting discipline hearing, neither amended default rules nor discipline standards provided for presumptive discipline of disbarment. Even two-year actual suspension was excessive discipline for violation of probation conditions attached to prior public reproval. Rather, appropriate discipline, under standard 2.10 and case law, was 90-day actual suspension and lengthy probation with conditions. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[8 a-c]**

In contrast to original disciplinary proceedings, which emanate from complaints against lawyers or from State Bar investigations and require an accusatory pleading alleging with reasonable specificity the charges related to alleged violations of specific conduct rules or laws, conviction referral proceedings are intended to be more streamlined because they are initiated based solely on a member of the State Bar's conviction, which is conclusive evidence of guilt of the crime. Convictions for offenses which may or may not involve moral turpitude or other misconduct warranting discipline should be referred for an evidentiary hearing to determine whether in the commission of the crime the convicted lawyer was guilty of misconduct warranting suspension or disbarment; typical offenses in this category include: assault and battery crimes, driving while intoxicated, certain tax convictions, and certain drug law convictions. Because it is appropriate to consider a wide ambit of facts and circumstances surrounding an attorney's commission of a crime during an evidentiary hearing in a referral proceeding, the State Bar met historic notice requirements by alerting respondent that evidence could be introduced on the facts and circumstances surrounding his assault conviction. The review department held the State Bar was not further required to provide respondent written notice of all the facts it considered germane to the referral proceeding at the time it started or respondent's default was entered for failure to reply to the notice of hearing. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[1 a–d]**

In conviction referral proceeding, ample due process protections were afforded to respondent where the State Bar served him via certified mail with a copy of the conviction referral order along with written notice that informed him of the specific conviction that was subject to the referral and of the specific issues to be decided at the hearing, warned him of the specific consequences of failure to timely reply, and directed him to attend the hearing to present evidence on his behalf and to examine and cross-examine witnesses. Further, the motion for entry of default, also served by certified mail, again warned respondent of the consequences of his failure to participate and notified him of the minimum level of discipline the State Bar would recommend if the hearing judge found culpability. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[2]**

While allegations in an original proceeding are deemed admitted after a default is entered, in a conviction referral matter, even after a default, the State Bar must prove by clear and convincing evidence any facts or circumstances it maintains are relevant to the conviction. If respondent in conviction referral proceeding had replied instead of defaulting, he could have sought to discover the State Bar's contentions of specific facts surrounding the conviction, and the court could have required the parties to exchange pretrial statements to identify factual contentions still in dispute before trial. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[3]**

Where the hearing judge recommended for a defaulting attorney, among other things, an actual suspension of 60 days and until the attorney made restitution of unearned fees and until the State Bar Court granted the attorney's motion to terminate her actual suspension under Rules of Procedure of the State Bar, rule 205, the hearing judge should also have recommended compliance with paragraphs (a) and (c) of California Rules of Court, rule 955 if the actual suspension exceeded 90 days. *In the Matter of Copren* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861. **[2a, b]**

In default proceeding, period of stayed suspension and disciplinary provision authorizing probation conditions to be imposed on attorney in the future by State Bar Court ought not to be rejected by hearing judge merely because attorney's actual suspension will continue until attorney establishes rehabilitation under standard 1.4(c)(ii) or until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[3]**

In default proceeding, no loss of public protection occurs when specific probation conditions are not immediately imposed on attorney who is placed on actual suspension because such attorney will be prohibited from practicing law for duration of attorney's actual suspension and until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[4]**

Even though plenary review is sought, the issue of whether a hearing judge erred in setting aside a default as to the limited issue of the degree of discipline is reviewed under the limited scope of review customarily used for procedural questions, testing whether the hearing judge committed legal error or abuse of discretion. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.**[1]**

The hearing judge erred in using the State Bar's request to add a quarterly reporting probation condition to conclude that limited relief under rule 203(e)(3)(B), Rules of Procedure of the State Bar, warranted the setting aside of the default on the issue of discipline. Rule 203(e)(2) allows a judge to vacate a default subject to appropriate conditions. Rule 203(e)(3)(B) allows a judge to vacate a default entered after filing of the decision, for limited purposes. There is nothing in rule 203(e) that eliminates the burden the respondent must sustain under rule 203(c), Rules of Procedure of the State Bar. Only after a defaulting respondent has made a sufficient showing for relief under rule 203(c), may a hearing judge set aside a default unconditionally or on appropriate conditions or for a limited purpose under rule 203(e). Since the judge's decision on its face concluded that respondent had not made the required showing under rule 203(c)(2), the judge erred when setting aside respondent's default. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.**[2]**

In a motion for relief from default, general allegations of despondency and depression do not meet decisional law standards for relief, even under the more liberal requirements of rule 202(c)(1), Rules of Procedure of the State Bar. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.**[3]**

In default proceedings, uncharged facts cannot be relied on as evidence of aggravating circumstances because the respondents are not fairly apprised that additional uncharged facts will be used against them. The use of uncharged facts in a contested proceeding presents a different question. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[4]**

Where respondent's default had been entered in hearing department, and motion for relief from default was denied, respondent's sole remedy on review was to seek review of denial of relief from default. (Prov. Rules of Practice, rule 1400(e)(vii).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[2]**

Where respondent was repeatedly warned by hearing judge concerning consequences of continued inaction regarding seeking relief from default, but respondent failed to seek such relief for over a year after his first default was entered and more than six months after he had actual notice of the proceedings, and where respondent made no sufficient showing justifying such extraordinary delay, hearing judge was well within her discretion in denying relief from default, and review department denied respondent's request for review of such ruling. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[3]**

In default proceeding for violation of probation, review department deleted findings in aggravation based on probation violations not charged in notice to show cause. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[6]**

An attorney's lack of concern for the disciplinary process and failure to appreciate the seriousness of the charges is a factor in aggravation. Where respondent displayed a lack of appreciation of the necessity for timely, meaningful participation in the disciplinary process, as demonstrated by his repeated attempts to appear without timely seeking relief from default in both the hearing and review departments, despite repeated warnings by the court, respondent's dilatory conduct was an aggravating factor. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[11]**

Where respondent challenged the use of a prior disciplinary matter as evidence in aggravation because he contended the matter had been time-barred, but respondent had defaulted in the earlier proceeding and the prior discipline had been ordered by the Supreme Court over three years earlier, only the Supreme Court could grant the requested relief. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[19]**

A respondent may be disciplined only for misconduct properly charged in the notice to show cause. In probation revocation matter, where notice to show cause charged that respondent failed to deliver financial records to an accountant, and hearing judge found that respondent failed to render an accounting, respondent was properly found culpable of failing to deliver the records, based on his admission by default of the allegations of the notice to show cause. Respondent's failure to file quarterly reports other than those listed in the notice to show cause could not be used as a basis for culpability or as aggravating circumstances in a default matter. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[1]**

Because there was no procedure for entering a default in a referral proceeding for alleged wilful violation of rule 955, the respondent was not precluded by lack of participation in the hearing department from filing an opposition brief on review. However, when respondent failed to file such a brief, the review department issued an order precluding respondent from appearing at oral argument. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[1]**

A short delay in compliance with rule 955, by itself, would not necessitate disbarment. However, where respondent also had failed to appear in the rule 955 violation proceeding, had failed to appear in two prior disciplinary proceedings, and had continued to ignore her obligations thereafter, showing a clear pattern of failure to participate in the disciplinary process and to comply with requirements of Supreme Court, disbarment was clearly appropriate. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[2]**

A respondent's default results in the admission of the facts alleged in the charging allegations of the notice to show cause, and no further proof is required to establish the truth of those charges. (Trans. Rules Proc. of State Bar, rules 552.1(e), 555(e).) *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[2]**

In a default proceeding, ambiguous evidence that can be interpreted as consistent with allegations of the notice to show cause does not negate the deemed admissions of the notice to show cause. Where evidence introduced at default hearing fell short of clear and convincing proof of charged violations, but was not inconsistent with charging allegations, defaulting respondent should have been found culpable of violations properly charged. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[3]**

Uncharged facts cannot be relied upon for evidence of aggravation in a default matter because the respondent is not fairly apprised of the fact that additional uncharged facts will be used against him. The use of uncharged aggravating factors in contested proceedings presents a different question. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[8]**

Where the State Bar chooses to present evidence in a default hearing that undercuts or negates the allegations of the notice to show cause, it is the evidence, and not the allegations, that controls the findings of fact. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[2]**

Where hearing referee failed to determine whether respondent's default was properly entered, review department was required to do so, and for that purpose it took judicial notice of respondent's membership records address under Evidence Code section 459; evidence of membership records address is essential in a default case to assess the propriety of the default procedures. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[3]**

Where evidence offered by State Bar at default hearing neither established nor controverted or undermined allegations of notice to show cause, such allegations, which were deemed admitted by respondent's default, could properly be relied on to establish attorney's culpability. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[17]**

In the Matter of Potack (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525.

Although rule 644 of the Transitional Rules of Procedure purports to allow a presumption affecting the burden of proof if an attorney fails without good cause to undergo an ordered mental examination, rule 644 must be interpreted as merely allowing a permissive inference of mental infirmity, in order to ensure due process. Rule 644 would not be valid if it operated to relieve the examiner of the burden of proving mental incompetence by clear and convincing evidence. The presumption authorized by rule 644, if applied, would conflict with the appropriate presumption that an attorney remains mentally competent to practice law in the absence of proof to the contrary, and would be tantamount to the imposition of a default judgment for failure to obey a discovery order, in violation of rule 321 of the Transitional Rules of Procedure. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[11]**

Requirement that respondent comply with standard 1.4(c)(ii) before returning to active practice after suspension was particularly appropriate where respondent defaulted in disciplinary proceeding, indicating a need for an affirmative showing of fitness prior to resuming practice. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[14]**

In a default matter, the well-pleaded allegations in the notice to show cause must be deemed admitted even if the State Bar did not so request. (Rules Proc. of State Bar, rule 552.1(d)(iii).) *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[18]**

In a default matter, to the extent that evidence negates allegations of notice to show cause, it is evidence and not allegations that controls findings of fact. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[19]**

As a matter of policy, not all attorneys who fail to participate in disciplinary proceedings should be precluded from receiving discipline containing probation conditions. Defaulting attorneys do present a problem for the hearing department in that the cause of their misconduct is not always evident on the record, thus making it difficult to determine which probation conditions or duties would further the goals of discipline. Nonetheless, the view that an attorney's default is prima facie evidence that the attorney is not amenable to probation runs contrary to the duty to consider each case on its own merits to determine appropriate discipline, and also precludes the use of probation monitoring as an effective means of public protection. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[8]**

Legal effect of entry of default in disciplinary proceeding is to admit allegations in notice to show cause and to preclude respondent attorney's further participation in proceeding unless default is set aside. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[1]**

Granting motion to set aside default would not have prejudiced State Bar where State Bar relied only on documentary evidence and did not present live witnesses. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[3]**

In ruling on a motion to set aside default under Rule of Procedure 555.1(a), State Bar Court interprets and applies terms "mistake, inadvertence, surprise or excusable neglect" in same manner as in civil cases under section 473 of the Code of Civil Procedure. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[4]**

In reviewing an order on a motion to set aside default, the standard of review is abuse of discretion. However, because law strongly favors resolution of matters on the merits, doubts are to be resolved in favor of the defaulted party, and orders denying relief are scrutinized more closely than orders permitting trial on the merits. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[5]**

Party requesting relief from default has burden of proving excusable neglect by a preponderance of the evidence. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[6]**

Rule of Procedure 555 does not require that motion to set aside default be made within a reasonable time, but only that it be made within 75 days. Motion to set aside default filed 75 days after entry of default was timely, and also was filed within a reasonable time, where it was filed approximately one month after respondent learned true status after receiving conflicting notices, less than two weeks after seeking a continuance for that purpose, and less than one week after obtaining counsel. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[7]**

Respondent's fear, panic, or aversion to formal charges alone would not show abuse of discretion in failure to grant relief from default, but specific showing regarding preoccupation with mother's serious illness raised doubts as to proper exercise of discretion, which review department resolved in respondent's favor. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[8]**

State Bar had no right to propound and rely on discovery requests after entry of respondent's default; if discovery was required in order to prove charges, default should not have been taken until after discovery responses were due and State Bar should not have opposed motion to set aside default. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[9]**

Service of discovery requests after entry of default is inconsistent with fundamental fairness and due process, and does not serve purposes of modern discovery procedures such as exchanging information, informing parties of merits of case, and facilitate settlement or resolution of matter. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[10]**

Failure by party in default to respond to requests for admissions propounded after default cannot serve as basis for propounding party to seek order deeming admission of truth of facts or genuineness of documents. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[11]**

In default matter, hearing referee erred in basing findings of culpability partly on facts deemed admitted by failure to respond to improper post-default discovery, and in finding culpability on charges broader than those set forth in notice to show cause. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[12]**

Motions to amend notice to show cause to correct typographical errors or modify facts which do not alter the charges in the original notice are permissible after entry of default. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[13]**

Rule of Procedure 557, permitting amendment of notice to show cause to conform to proof without requiring additional time to prepare answer and defense, assumes respondent attorney's presence at disciplinary proceeding. Where respondent is not present due to entry of default, respondent does not have an opportunity to defend against charges. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[14]**

In order to reach merits on review of decision recommending discipline following default hearing, review department first had to be satisfied with the propriety of the entry of the respondent's default and the order denying respondent's motion for relief from default. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[1]**

Time to file answer to notice to show cause is extended twenty days by service of notice of application to enter default, and is extended an additional five days when the application is served by mail. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[2]**

Where respondent who filed motion for relief from default had previously submitted proposed answer to notice to show cause to State Bar Court and served it on examiner, and declaration accompanying motion to set aside default verified essential allegations of proposed answer, this constituted substantial compliance with rule requiring motion to set aside default to be accompanied by verified proposed answer. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[3]**

General rule is that where record is silent, all intendments and presumptions are indulged to support a lower court order; moreover, inadvertent misuse of terms in an order does not require reversal. Review department therefore presumed that referee considered and denied alternate ground for relief from default which was addressed in moving papers of both parties but not listed in referee's order denying motion. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[4]**

There is a strong public policy in favor of hearing cases on the merits and against depriving a party of the right of appeal because of technical noncompliance in matters of form. The policy against deprivation of a hearing due to noncompliance with filing requirements appears just as strong in the situation of noncompliance resulting in default prior to trial. In both cases parties are deprived of a significant legal remedy if the noncomplying pleading is ultimately disregarded despite its reasonably timely correction. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[5]**

The time limit for filing an answer to the notice to show cause is not jurisdictional, and an answer will be accepted for filing at any time prior to the actual entry of default, no matter how belatedly it is submitted. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[6]**

Review department declined to decide whether clerk's entry of default prior to expiration of reasonable time to respond to clerk's notice, which rejected answer due to technical defects, was void, or erroneous and voidable. Instead, review department determined that the denial of respondent's motion to set aside default was an abuse of discretion. An attorney's neglect in untimely filing papers must be evaluated in light of the reasonableness of the attorney's conduct; respondent acted reasonably in timely submitting answer to notice to show cause, and promptly resubmitting corrected answer after receiving clerk's rejection notice. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[7]**

In proceedings to set aside default under Rule of Procedure 555.1(a), the terms "mistake, inadvertence, surprise or excusable neglect" are interpreted and applied in the same manner as in motions in civil cases pursuant to section 473 of the Code of Civil Procedure. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[8]**

Effective September 1, 1989, the former Rules of Procedure of the State Bar were replaced by the Transitional Rules of Procedure of the State Bar. A motion to set aside default filed and served prior to September 1, 1989, was governed by former Rules of Procedure. (Rule 109, Trans. Rules Proc. of State Bar.) *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[9]**

Appellate review under section 473 of the Code of Civil Procedure is for abuse of discretion, the test being whether the trial court exceeded the bounds of reason. The Supreme Court has applied a similar abuse of discretion standard in reviewing procedural motions in State Bar proceedings. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[10]**

It is the policy of the law under section 473 of the Code of Civil Procedure to favor a hearing on the merits; any doubts in applying section 473 must be resolved in favor of the party seeking relief from default. A trial court order denying relief is scrutinized more carefully than an order permitting trial on the merits. Nonetheless, it is the moving party's responsibility to recite facts that meet the burden of proving mistake, inadvertence, surprise or excusable neglect. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[11]**

Where record showed that respondent cured defects in otherwise timely answer within six days of mailing of notice to do so by clerk's office, review department's duty of independent record review precluded it from ignoring those facts in determining just disposition of motion for relief from default, despite weakness of respondent's moving papers. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[12]**

An attorney is ordinarily justified in relying on communications from the clerk as a basis for relief under section 473 of the Code of Civil Procedure. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[13]**

Pursuant to Rule of Procedure 552(a), an answer submitted for filing prior to the entry of default is not required to be verified. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[14]**

It would be an abuse of discretion to deny relief from default solely on the basis of the lack of a verification of respondent's proposed answer, without giving respondent a chance to cure the defect. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[15]**

Examiner's argument against setting aside default on review, based on resulting delay, necessity for new trial, and resulting prejudice and inconvenience, was unpersuasive. Reversal of denial of motion to set aside default will always require new hearing. Moreover, record revealed that examiner had notice prior to hearing of respondent's intention to move to set aside default. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[16]**

Although respondent's default precluded respondent from seeking review and the State Bar examiner did not request review, the review department had a duty to review on an ex parte basis a proceeding heard by a referee of the former volunteer State Bar Court, as part of the transition to the new State Bar Court system. (Trans. Rules Proc. of State Bar, rules 109, 452(a).) *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[1]**

Where an attorney had failed to comply with the statutory duty to maintain a current address on the State Bar's member records and to notify the State Bar within 30 days of any address change, the attorney failed to show good cause for relief from default even though he did not receive notice of the State Bar proceedings until the review department's opinion was published. Because the address requirement is reasonable, an attorney receives reasonable notice of documents properly sent to the attorney's address of record with the State Bar. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[2]**

Under rule 555.1(b), Transitional Rules of Procedure, a respondent has until 75 days after the entry of his default to file, as a matter of right, a motion to set aside the default. This 75-day time period is not jurisdictional; however, after it has run, a much greater showing must be made to justify setting aside the default. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[3]**

Respondent's claimed alcoholism did not excuse him from his statutory duties to notify the State Bar promptly of any change of his address of record, and to participate in State Bar disciplinary proceedings against him. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[4]**

Review department recognized that respondent's default raised concerns regarding respondent's suitability for probation, but concluded that respondent should not be denied opportunity to comply with probation terms which would appear to have rehabilitative benefit. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[7]**

Where notice to show cause did not charge that respondent misrepresented to his clients the status of their claims, and respondent defaulted and did not appear at hearing, the review department declined to find, based on client's testimony at hearing, that respondent had committed act of dishonesty by making such misrepresentation. The review department is most reluctant to consider, even for the purpose of aggravation, misconduct which could have been, but was not charged in notice to show cause, especially where respondent is in default and has no opportunity to learn of or rebut matters arising during hearing. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[3]**

Where respondent admitted many of the serious charges against him during State Bar investigation, review department declined to find failure to cooperate with State Bar as aggravating factor, despite respondent's failure to participate in proceedings against him. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[13]**

Where "and/or" language was used as part of the allegations in the notice to show cause, such language could not be used to establish respondent's culpability based solely on admitted allegations by default. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[7]**

Taking of evidence which negated allegation of notice to show cause permitted hearing department to reject allegations based on a conflict between the admission of the allegations by default and the evidence adduced at trial. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[10]**

Where entry of attorney's default for failure to appear at disciplinary hearing resulted in the admission of all allegations in the notice to show cause, but certain of those allegations were in conflict with evidence adduced at hearing, examiner properly requested reconsideration of hearing decision to delete findings contrary to evidence adduced at hearing, and hearing referee properly deleted such findings from the decision, based on their conflict with the evidence. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[1]**

108 Failure to Appear at Trial (rule 5.100)

Respondent's highly generalized argument regarding inadequate notice of certain hearings warranted no relief, where respondent had been made aware of duty to keep State Bar informed of current address and given opportunity to correct the official State Bar record thereof, and notices had been served on respondent at another address in addition to the address of record. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[1]**

Medical emergency might have excused respondent's failure to attend pre-trial conference, but did not excuse respondent's failure to file pre-trial statement which would have better preserved respondent's posture at trial. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[2]**

Where respondent sought no relief from hearing judge on account of respondent's inability to attend pre-trial conference, which respondent contended was excusable due to medical emergency, respondent could not be heard to complain for the first time on review. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[3]**

While disciplinary hearings can be stressful for accused attorneys to attend, Supreme Court has made clear that accused attorneys must avail themselves of opportunity to participate and present all favorable evidence. Failing that opportunity, the accused may not demand a new hearing to present evidence belatedly. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[6]**

Respondent's tardy and intermittent participation in disciplinary proceedings was an aggravating circumstance, where respondent gave no excuse for failure to appear on last day of hearing, was not represented by counsel, and displayed several failures to participate or tardiness in participating. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[9]**

It was not an aggravating circumstance that respondent did not personally attend the hearing on the degree of discipline, since respondent was represented by counsel who appeared on respondent's behalf. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[1]**

Where respondent was not a California resident, and thus not subject to subpoena, respondent's attendance as a witness at the disciplinary hearing could have been required by notice to respondent's counsel. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[28]**

Evidence Code section 776, providing for calling the opposing party as an adverse witness, does not empower the State Bar to require the respondent's presence at a disciplinary hearing. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[29]**

The respondent in a disciplinary proceeding has an obligation to be present at the hearing even if not subpoenaed or noticed to appear as a witness. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[30]**

Where entry of attorney's default for failure to appear at disciplinary hearing resulted in the admission of all allegations in the notice to show cause, but certain of those allegations were in conflict with evidence adduced at hearing, examiner properly requested reconsideration of hearing decision to delete findings contrary to evidence adduced at hearing, and hearing referee properly deleted such findings from the decision, based on their conflict with the evidence. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[1]**

109 Venue (rules 5.22, 5.23)

110 Consolidation/Severance (rules 5.47, 5.48)

In the Matter of Respondent R (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227.

The Supreme Court order in a probation revocation matter can become effective earlier than the Supreme Court order in an original discipline matter. (Cal. Rules of Court, rule 952(a), (b).) Accordingly, where a probation revocation matter and an original discipline matter were consolidated, the review department made a separate disciplinary recommendation for each matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[1]**

Because time to seek Supreme Court review is shorter for probation revocation matters than for original disciplinary matters, it is necessary to make separate discipline recommendations when such cases are consolidated. (Cal. Rules of Court, rule 952(a), (b).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[1]**

It is not improper for the Office of Trials to pursue on review a challenge to the exclusion of evidence of uncharged misconduct in one proceeding while simultaneously prosecuting a second proceeding based on the same misconduct, so long as both courts are made aware of the pendency of the other proceeding. The second proceeding could be abated until resolution of the first case. Where this did not occur, it was proper for the hearing judge to adjudicate the second case promptly and then request that the review department take judicial notice of the decision in the second case, thus permitting the review department to consolidate the cases on review. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[5]**

Where two separate disciplinary proceedings were consolidated on review, the first proceeding did not constitute prior discipline for the purpose of enhanced discipline in the consolidated matter. Nonetheless, where the misconduct involved in the second proceeding had continued during the period that the first proceeding was pending in hearing department, the fact that respondent engaged in additional misconduct while he was aware that his conduct was being scrutinized in a pending disciplinary proceeding was significant. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[18]**

Where two unrelated matters were consolidated in the hearing department, and a party requested review in order to challenge the result in one of the matters, the entire matter was placed before the review department and reviewed by it even though in the other matter neither party challenged the findings and conclusions of the hearing judge. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[1]**

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108.

The passage of time since respondent's misconduct and the failure of the State Bar to consolidate respondent's two disciplinary matters did not render the disbarment recommendation in the second matter unfair. Consolidation of disciplinary matters, while preferable when reasonably possible and not prejudicial, is not mandatory, and independent consideration of separate matters involving the same attorney is not uncommon. Where an investigation by state law enforcement and the State Bar of respondent's misconduct in the second matter was still ongoing after the initiation and disposition of respondent's earlier disciplinary matter, consolidation would not have been possible. Further, it could not be presumed that if the matters had been consolidated, the recommended discipline would have been suspension rather than disbarment, given the far greater seriousness of the misconduct in the second matter. Finally, respondent had shown no prejudice from the delay, and had benefited from being able to practice almost continually in the interim. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[8]**

Disciplinary proceedings and involuntary inactive enrollment proceedings are not related so as to require consolidation, and may be conducted on simultaneous, parallel tracks. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[3]**

Where a related proceeding was pending in the hearing department, the respondent's argument in favor of a remand by the review department carried more weight, because the pendency of the related proceeding created an opportunity for a fuller record to be prepared in the remanded matter without undue delay. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[5]**

Where respondent's two convictions were interconnected in their surrounding facts and circumstances, and where the record in the earlier matter lacked information regarding respondent's compliance with his criminal probation and his subsequent rehabilitation, a remand of the first matter and consolidation with the subsequent, related matter would be appropriate, in order to give the Supreme Court a single, more complete record and a single recommendation of discipline, if any. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[6]**

Consolidation may be ordered on the Presiding Judge's own motion, if no substantial rights will be prejudiced. (Trans. Rules Proc. of State Bar, rules 2.22, 2.25 and 262.) Consolidation is encouraged at the hearing department level where feasible to avoid substantial duplicate effort expended by counsel and the hearing department to create trial records. Consolidation was appropriate where at most a brief delay would result, and a substantial savings of time would result from a single proceeding on review. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[7]**

111 Abatement (rules 5.50, 5.51, 5.52)

Hearing judge did not abuse discretion in denying respondent's motion to abate, filed one month before disciplinary trial, in order to protect public, where respondent's grounds for seeking abatement were not persuasive. Pending civil proceeding involving same client as disciplinary matter dealt with recovery of damages based on breach of contract and fraud, while issue in discipline matter was whether respondent performed with competence. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[3]**

Given the severe consequences of inactive enrollment, public protection supports inactive enrollment of an attorney who intentionally makes a claim of mental incompetence, even if the attorney was actually rational and was misguidedly making the claim as a strategy to impede disciplinary prosecution. Any issue of bad faith may be addressed in the context of the requested abatement of the disciplinary case. The mere enrollment of the attorney inactive does not dictate abatement of the underlying disciplinary proceeding. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[4]**

An abatement order is a procedural matter, for which the standard of review is one of abuse of discretion. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[5]**

A determination whether a disciplinary proceeding should be abated on the ground of inability of the respondent to assist in the defense resembles a competency hearing in a criminal matter. In the law of attorney discipline, the respondent is presumed competent. Inability to assist in the defense of a disciplinary proceeding suggests a more serious form or degree of mental illness than inability to practice competently without endangering clients or the public. Therefore, facts sufficient to institute inactive status proceedings under section 6007(b) may not be sufficient to support abatement of a disciplinary proceeding. The appropriate standard for abatement is proof by a preponderance of the evidence that the attorney is incompetent to assist in the defense. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[6]**

The respondent in a disciplinary proceeding has a right to a fair hearing. The State Bar's interest in protecting the public and maintaining integrity and public confidence in the legal profession would not be served by disciplining an attorney who is mentally incompetent to the degree that she or he cannot assist in a defense against disciplinary charges. Therefore, if an attorney is unable to assist in his or her own defense, due process requires that the disciplinary proceeding be abated. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[7]**

A motion supported by written submissions, including a detailed psychiatric report, could, if unopposed, be sufficient evidence to warrant abating a disciplinary proceeding due to the respondent's inability to assist in the defense. However, where the adequacy of the respondent's showing is questioned, the respondent's evidence may be weighed in the context of the whole record in the disciplinary proceeding. Any proffered medical submission regarding the respondent's mental competency should address the nature of the medical examination or tests conducted; the attorney's symptoms; the diagnosis and cause of the condition, and any past or proposed treatment. The report should note whether the illness raises doubts about the respondent's ability to assist in the defense, and should relate the respondent's condition to a recognized legal definition of competency. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[9]**

Where it was unclear what evidence hearing judge considered in deciding to abate disciplinary proceeding due to respondent's claimed inability to assist counsel, and where respondent's medical evidence lacked important elements and was conclusory, and respondent's counsel's declaration was undermined by contrast with earlier declaration regarding respondent's superior performance of paralegal tasks, review department concluded that hearing judge failed to exercise her discretion properly in abating proceeding without holding hearing to allow presentation and resolution of conflicting evidence. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[11]**

It is not improper for the Office of Trials to pursue on review a challenge to the exclusion of evidence of uncharged misconduct in one proceeding while simultaneously prosecuting a second proceeding based on the same misconduct, so long as both courts are made aware of the pendency of the other proceeding. The second proceeding could be abated until resolution of the first case. Where this did not occur, it was proper for the hearing judge to adjudicate the second case promptly and then request that the review department take judicial notice of the decision in the second case, thus permitting the review department to consolidate the cases on review. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[5]**

112 Assistance of Counsel

Respondent's suggestion that alleged ineffective assistance of his counsel necessitates a new trial was rejected. A disciplinary proceeding is administrative in nature, not governed by the rules of criminal procedure. Although an attorney in a disciplinary hearing must have a fair hearing, the attorney has no constitutional right to counsel or effective assistance from counsel. Any mistakes of respondent's counsel thus did not warrant retrial. Nor did the record establish that respondent received an unfair hearing. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[5]**

Neither the law nor the facts supported respondent's contention that by denying two continuance requests during the six days of trial, the hearing judge deprived him of a reasonable opportunity to be represented by counsel. An attorney in a disciplinary hearing has no constitutional right to the assistance of counsel. Further, continuances of State Bar Court hearings are disfavored. (State Bar Court Rules of Practice, rule 1131.) To prevail on a procedural argument in a disciplinary matter, an attorney must show both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged procedural error. Respondent proved neither where respondent's counsel set a murder trial for the day before the scheduled start of the disciplinary hearings and failed to provide timely information about this conflict to the State Bar Court, where respondent failed to show that his counsel could not have anticipated or avoided the conflict, and where respondent failed to show that the only proper means of handling the conflict was to grant a continuance. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[1]**

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244.

It was not an aggravating circumstance that respondent did not personally attend the hearing on the degree of discipline, since respondent was represented by counsel who appeared on respondent's behalf. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[1]**

The hearing judge is entitled to exert reasonable control over the conduct of the hearing. Such measures as requiring one counsel to question a witness, requesting respondent not to consult with respondent's attorneys while the judge was speaking to them, and expecting counsel to note objections for the record and then move forward with the case, were reasonable, did not demonstrate bias under the circumstances and did not deprive respondent of the statutory right to legal assistance. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[11]**

113 Discovery (rules 5.65-5.71)

Respondent's discovery rights under the revised Rules of Procedure of the State Bar, which are based on similar discovery provisions in the California Administrative Procedure Act, satisfy fair trial concerns. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[4]**

A judge has broad discretion to impose discovery sanctions and is subject to reversal only for arbitrary, capricious, or whimsical action. The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[2]**

While the power to impose discovery sanctions is broad, there are two requirements that must be met before the imposition of a sanction: 1) there must be a failure to comply with court–ordered discovery; and 2) the failure must be willful. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[3]**

Where respondent elected not to attend a properly–noticed deposition which resulted in a court order to compel his deposition, where respondent was given the opportunity to comply with that order but willfully failed to do so, and where the hearing judge barred respondent from introducing any documentary or testimonial evidence, except for his own testimony, the sanction imposed was wholly inappropriate to respondent's disobedience, and the hearing judge abused her discretion by imposing an insufficient sanction that failed to protect the interests of the party entitled to but denied discovery. This discovery sanction was ineffective to induce respondent to provide the discovery sought. Moreover, this lesser sanction hindered the State Bar's ability to proceed at trial and would allow respondent to testify without affording the State Bar the opportunity to impeach his testimony or credibility or even to adequately prepare for trial, opening the trial to surprise and delay. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[4 a–d]**

Discovery sanctions should be appropriate to the dereliction and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. A court will generally impose lesser sanctions regarding a discovery request unless the lesser sanctions will not bring about the compliance of the offending party. A court's exercise of discretion should not reward the disobedient party, let alone at the expense of the fundamental reasons supporting the discovery process. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[5 a–c]**

Generally the standard to apply to the review of a discovery order on appeal is abuse of discretion. There was no abuse of discretion in denying the State Bar's request that the hearing judge order petitioner to submit to an independent medical examination because petitioner continues to consume alcohol when there is no evidence that petitioner presently abuses alcohol or suffered from a previous alcohol addiction or that petitioner's present consumption of alcohol caused any relapse into drug use. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[8 a, b]**

Misrepresentations in an attorney's verified answers to interrogatories propounded to him by the State Bar, is a serious aggravation warranting increased discipline and might well constitute a greater offense than underlying misconduct. It is no defense that attorney's answers were prepared for him by his counsel. While it might be improper to penalize a lay client for not correcting mistakes that his counsel made in a pleading that the client verified, such reasoning carries little weight when the client is an attorney. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[26 a-c]**

Under State Bar Act and disciplinary case law, respondent had affirmative duty to insure that his answers to interrogatories propounded to him by the State Bar were true and correct even if he had to refresh his recollection of the facts by going to the immigration court and reviewing the court file and listening to the tapes of all relevant court hearings in each client matter that was a subject of the interrogatories. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[27]**

Under Civil Discovery Act, respondent had affirmative duty to answer each of the State Bar's interrogatories as complete and straightforward as the information reasonably available to him permitted. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[28]**

Respondent's claim that the application of the Civil Discovery Act to attorney disciplinary proceedings denied him due process was rejected. State Bar disciplinary proceedings are administrative but of a nature of their own. It has been repeatedly held that they are not governed by the rules of procedure governing civil or criminal litigation although such rules have been invoked when necessary to insure administrative due process. The Supreme Court observed that the Rules of Procedure of the State Bar supply a wide array of procedural safeguards and that

pursuant to these rules, the Civil Discovery Act, as adopted and limited by the Rules of Procedure of the State Bar, constitutes the rules of discovery in State Bar disciplinary proceedings. Under Supreme Court case law, such application is constitutional. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[6]**

Respondent's use of obstructive tactics during his disciplinary proceeding, including abuse of discovery and frivolous motions, constituted a serious aggravating circumstance. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[13]**

Pursuant to case law, selective prosecution claims should be raised by motion prior to trial, and as a practical matter, such claims have little chance of success if not raised initially by pretrial motion, due to difficulty of proving them without aid of discovery. However, it is not clear that such claims cannot be raised as part of respondent's defense case at trial; accordingly, review department considered such claim despite respondent's failure to raise it by pretrial motion. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[11]**

Where notice to show cause charging client solicitation did not identify clients allegedly solicited, but did name persons who were alleged to have performed such solicitations and fixed the period of charged misconduct, and where respondents were informed of identities of allegedly solicited clients well before most pre-trial discovery was completed, and at least six months before trial, respondents' motion to dismiss notice to show cause based on alleged vagueness, which was not made until first day of trial, was properly denied. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[1]**

Where the record of a legal specialization proceeding contained no documents explaining the basis for the denial of specialist certification and where responses by the deputy trial counsel to interrogatories clarified the basis for the denial, augmentation of the record with the interrogatory responses was appropriate. (Prov. Rules of Practice, rule 1304.) *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[2]**

Where both respondent's admission in discovery and client's testimony supported finding that respondent accepted responsibility for proceeding with lawsuit on client's behalf, and there was no evidence that contradicted or undercut respondent's admission, no additional corroboration was necessary to find that respondent agreed to prosecute case, and respondent could therefore be found culpable of misconduct based on failure to perform legal services requested by client. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[1]**

Where discovery period was extended, giving respondent ample time to conduct discovery, and where respondent engaged in discovery, did not seek additional time for further discovery, and did not move to compel further responses or to compel attendance of witnesses at depositions, respondent's contentions that errors occurred during discovery lacked merit. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[5]**

An attorney can be disciplined only for misconduct charged in the notice to show cause or an amendment thereto. Where notice to show cause charged violation of rule against representing clients with conflicting interests, and respondent served interrogatory requesting identification of all such alleged conflicts, charges against respondent were limited to those identified in State Bar's answer to such interrogatory, and respondent could not be found culpable of violating conflict of interest rule based on a conflict not listed therein. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[9]**

Issue of alleged misconduct of examiner during pretrial discovery was moot, where issue had been addressed by order of hearing judge which respondent did not challenge on review, and where only prejudice alleged was unnecessary prolongation of interim suspension for which review department gave respondent credit against recommended actual suspension. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[12]**

Under rule 835 of the Transitional Rules of Procedure, various discovery provisions applicable in disciplinary proceedings are also applicable in moral character proceedings. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[2]**

Rule XI of the Rules Regulating Admission to Practice Law in California, providing that the files of the Committee of Bar Examiners are confidential, does not have any bearing on the Committee's duty to respond to interrogatories from the applicant in a moral character proceeding, and, when read in conjunction with other applicable rules, only precludes the Office of Trials from disclosing documents voluntarily as opposed to pursuant

to appropriate discovery requests or by court order. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[3]**

The identities of persons who have knowledge of relevant facts and who may be potential witnesses are outside the scope of both the attorney-client and work product privileges. The added fact that such a person is a member of the State Bar is a matter of public record and cannot appropriately be claimed to be privileged. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[4]**

Normally, discovery objections not raised in a timely fashion will not be considered, and this provision applies in discovery in moral character proceedings even though the Civil Discovery Act has not been made applicable to such proceedings in its entirety. However, where a claim of privilege from discovery had been belatedly presented to the hearing judge without objection and raised an important issue, the review department considered its applicability on review. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[5]**

The State Bar is a public entity within the scope of the statutory official information privilege (Evid. Code, § 1040). The procedure to be followed in State Bar Court proceedings where the official information privilege is asserted is the same as in civil cases. In a moral character proceeding, where the information sought was the identities of persons whom the State Bar had reserved the right to call as impeachment or rebuttal witnesses at trial, the official information privilege did not apply to such information, either because the consent exception was applicable, or because the reservation of the right to call such persons reduced the Committee of Bar Examiners' need for secrecy to the interest of a party in the outcome of the proceeding, which is not protected under section 1040 and which was outweighed by the interests of the public and the applicant in a fair trial. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[6]**

The rule permitting a party to exclude rebuttal or impeachment witnesses from a pretrial statement (Prov. Rules of Practice, rule 1222(g)) has no bearing on the broader issue of discoverable information. Discovery of identities of individuals is not limited to persons who may be called in the opposing party's case in chief. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[7]**

Generally, when a lower court ruling favors disclosure of materials requested in discovery, in camera inspection cannot be requested for the first time on review. There is an exception for questions of first impression, but this exception did not apply where the authority relied on in requesting the inspection had been decided over 30 years earlier. Where the party requesting in camera inspection did so for the first time on a motion for reconsideration before the review department in bank, and gave no explanation of its failure to request such inspection earlier, the review department declined to conduct an in camera inspection. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[8]**

In camera inspection was not appropriate before ordering a party to disclose names of potential witnesses in response to an interrogatory, because the court was ill-equipped to evaluate the potential relevance of the undisclosed names without argument from the counsel of the party requesting them, which could only be made after the names were disclosed. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[9]**

Private personal information about a non-party to a proceeding may be privileged from discovery under some circumstances pursuant to the California constitutional right to privacy. The privacy right to be protected is that of the non-party, and the custodian of the private information may not waive it. The right to privacy is not absolute, but must be balanced against the need for disclosure. In a moral character proceeding, it was unreasonable for material witnesses against the applicant to claim a right of privacy preventing the disclosure of their identities to the applicant during discovery, while consenting to testify against the applicant at trial. However, as to the identities of persons whose testimony would not be used under any circumstances, the applicant had not made a sufficient showing of need to overcome these persons' privacy rights, and their names could be withheld from disclosure. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[10]**

Declaration regarding facts relating to discovery motion was stricken as untimely, where it related to facts which should have been presented to hearing judge, not offered for the first time on review. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[12]**

Where examiner's conduct in connection with obtaining depositions of State Bar's non-party witnesses, while not in bad faith, clearly fell short of her duty under the circumstances, review department upheld hearing judge's order permitting such witnesses to testify only if first deposed, and modified such order to require examiner to subpoena the witnesses and to pay transportation costs as a condition of permitting witnesses' testimony. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[13]**

The Civil Discovery Act has not been adopted in its entirety in the conduct of State Bar proceedings. The imposition of monetary costs as discovery sanctions is precluded under rule 321, Trans. Rules Proc. of State Bar. Authorized discovery sanctions include orders precluding a party from supporting or opposing designated claims or defenses or from introducing evidence or testimony. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[14]**

Denial of respondent's motion to compel discovery did not deprive respondent of due process, where the information sought (information concerning the race, practice and gender of members of the State Bar, and statistics allegedly maintained by the Bar) was not gathered or maintained by the State Bar, and the State Bar was under no obligation to survey its membership in order to respond to respondent's discovery request. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[6]**

Evidence of convicted attorney's efforts toward rehabilitation would be relevant at the hearing on final discipline, but could not be relied upon in proceedings seeking to vacate interim suspension because of lack of opportunity for pretrial discovery and full development of facts. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[7]**

Where facts deemed conclusively established by court order, following respondent's failure to respond to examiner's requests for admissions, showed that respondent had wilfully misled judge, but respondent was permitted to testify that representations made to judge, though false, were true to the best of respondent's knowledge at the time they were made, respondent's testimony on this point was properly received, but only in mitigation, and not to contradict deemed admissions on which culpability findings were based. Deemed admissions, while conclusive as to literal truth of facts clearly set forth in request for admissions, did not preclude referee from admitting and considering other evidence that tended to explain or helped to interpret admitted facts. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[2]**

Where respondent failed to respond to examiner's requests for admissions, those facts deemed admitted were properly considered as conclusive where there had been no timely motion for relief. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[3]**

Respondent's testimony that he unsuccessfully tried to telephone a State Bar investigator in response to a letter the investigator sent him regarding his possible misconduct was admissible only in mitigation, not in defense to his culpability of failing to cooperate in the investigation, which was conclusively established by his deemed admissions resulting from his failure to respond to discovery. Such testimony was not a sufficient basis for a finding in mitigation. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[8]**

Discovery in State Bar proceedings must be completed within 90 days after service of notice to show cause, subject to reasonable extension. (Trans. Rules Proc. of State Bar, rule 316.) Where examiner noticed and took deposition well after 90-day cutoff, and did not seek extension of discovery period, deposition was clearly discovery, even though examiner's purpose in taking it was to preserve evidence for trial. However, provision of Civil Discovery Act governing time to object to deposition notice on certain grounds did not apply, because respondent's objection was not based on grounds set forth in Civil Discovery Act but on examiner's failure to comply with State Bar rules of procedure. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[17]**

Even if respondent waived procedural objection to deposition by appearing and participating, deposition transcript should not have been admitted in evidence, because examiner failed to show that State Bar had been unable to procure deponent's attendance at trial despite reasonable diligence, as required by provision of Civil Discovery Act governing use of depositions at trial. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[18]**

The test for the constitutional validity of a mental examination order is whether the mental examination serves a compelling government interest and constitutes the least intrusive means of accomplishing that interest. Mere convenience or avoidance of administrative costs does not make a means the least intrusive; otherwise the overriding value would be expediency, not the compelling government interest. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[4]**

Section 6053, which allows the State Bar Court to order a mental examination when an attorney's mental condition is a material issue in a State Bar proceeding, does not violate the California constitutional right of privacy, because section 6053 serves a compelling government interest in protecting the public, courts, and profession from mentally incompetent attorneys and because section 6053's grant of discretion to order a mental examination may be construed so as to allow such examinations to be ordered only when they are the least intrusive means to satisfy the compelling government interest. In addition, the limited distribution of the mental examination report and the confidentiality of the proceeding serve as further protections of the attorney's privacy and thereby bolster the constitutionality of section 6053. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[6]**

The rules governing the proceedings for the transfer of an attorney to inactive status incorporate by reference Code of Civil Procedure section 2032(d). (Rules 315, 321, 643, Trans. Rules Proc. of State Bar.) Proceedings to obtain an order for a mental examination under section 6053 must comply with the procedural and substantive requirements of Code of Civil Procedure section 2032(d). *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[7]**

Where no evidence or finding indicated that a compulsory mental examination constituted the least intrusive means of determining a respondent's mental condition, the issuance of mental examination orders violated not only the applicable statutory requirements but also the respondent's California constitutional right of privacy. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[8]**

A determination of mental incompetency does not require a psychiatric examination. Witness testimony regarding a respondent's behavior and documents allegedly reflecting the respondent's mental infirmity may be introduced as evidence of incompetency, and a qualified psychiatrist may be appointed to render an opinion about the respondent's mental condition on the basis of such testimonial and documentary evidence. Then, if the judge remains unable to make the necessary determination without a mental examination of the respondent and the respondent refuses to consent to such an examination, an order for a compulsory mental examination may be justified as the least intrusive means of accomplishing the government's compelling interest in protecting the public, courts, and profession from mentally incompetent attorneys. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[10]**

Although rule 644 of the Transitional Rules of Procedure purports to allow a presumption affecting the burden of proof if an attorney fails without good cause to undergo an ordered mental examination, rule 644 must be interpreted as merely allowing a permissive inference of mental infirmity, in order to ensure due process. Rule 644 would not be valid if it operated to relieve the examiner of the burden of proving mental incompetence by clear and convincing evidence. The presumption authorized by rule 644, if applied, would conflict with the appropriate presumption that an attorney remains mentally competent to practice law in the absence of proof to the contrary, and would be tantamount to the imposition of a default judgment for failure to obey a discovery order, in violation of rule 321 of the Transitional Rules of Procedure. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[11]**

Respondent's deceit in his responses to the State Bar's interrogatories seriously aggravated his misconduct, and might perhaps constitute a greater offense. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[7]**

Respondent's answers to State Bar's interrogatories could be relied on as party admissions even though not verified, and were adequately authenticated when examiner identified them while introducing them at trial, and respondent did not object. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[8]**

State Bar had no right to propound and rely on discovery requests after entry of respondent's default; if discovery was required in order to prove charges, default should not have been taken until after discovery

responses were due and State Bar should not have opposed motion to set aside default. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[9]**

Service of discovery requests after entry of default is inconsistent with fundamental fairness and due process, and does not serve purposes of modern discovery procedures such as exchanging information, informing parties of merits of case, and facilitate settlement or resolution of matter. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[10]**

Failure by party in default to respond to requests for admissions propounded after default cannot serve as basis for propounding party to seek order deeming admission of truth of facts or genuineness of documents. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[11]**

The opportunity for permissive amendment of the notice to show cause at a later stage in the proceedings on adequate notice of new factual allegations does not negate the State Bar's obligation in the first instance to provide adequate notice of the original charges. While developments during discovery may lead to augmentation or modification of the charges by amendment, the ability to amend does not affect the requirement of particularity in the original charges. Informal sharing of source material on which charges are based, while highly desirable, is no substitute for formal charges. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[15]**

114 Subpoenas and Motions to Quash (rules 5.60-5.64)

The Rules of Procedure of the State Bar presently in effect concerning the issuance and service of investigative subpoenas are not materially different than were the rules before the Supreme Court in a prior case. Where the subpoena duces tecum was issued based on a competent declaration that was presented to the designee of the Chief Trial Counsel which demonstrated that the records sought were, in fact, trust account records, that they were reasonably required for the matter under investigation, and that the matter under investigation concerned an attorney, the subpoena was issued in accordance with those rules. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[2 a, b]**

In a prior case, the Supreme Court expressed concern for the privacy of the targeted attorney's clients, and further noted that the proceedings of the State Bar were conducted in strict confidence. While such formal proceedings are now public, the investigative process is conducted in the same strict confidence that the Supreme Court noted in the prior case. In addition, in the event the records are sought to be used in a subsequent public proceeding following a confidential investigation, the attorney's duty of informing the client or clients whose trust account information may become public of that fact would come into play. The client or clients would then have the opportunity to seek relief from the State Bar Court under the rules of procedure that create a method for sealing portions of the record. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[3]**

Based on the determination that the provisions of the State Bar Act and the Rules of Procedure of the State Bar concerning investigative subpoenas for trust account records meet the standard as enunciated by the Supreme Court in a prior case, the review department concluded that there was no need to import either the provisions of Code of Civil Procedure section 1985 et seq., or the provisions of Government Code section 7470 et seq., for either due process or other reasons into the procedures for the issuance of State Bar investigative subpoenas. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[4]**

In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

Except with respect to motions to quash investigative subpoenas, the State Bar Court does not have jurisdiction over State Bar disciplinary complaints prior to the filing of formal charges by the Office of the Chief Trial Counsel, and therefore had no jurisdiction to grant relief requested by attorney regarding conduct of disciplinary investigation, absent a Supreme Court order conferring authority to do so. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[2]**

The State Bar Court's statutory jurisdiction (Business and Professions Code section 6051.1) to adjudicate motions to quash investigative subpoenas issued by the Office of the Chief Trial Counsel constitutes the sole exception to the State Bar Court's lack of jurisdiction during the investigation phase of disciplinary proceedings. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[7]**

Review department declined to adopt construction of statute giving State Bar Court jurisdiction over motions to quash subpoenas (Business and Professions Code section 6051.1) which would do violence both to plain meaning of statute and to necessary separation of powers within disciplinary system. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[8]**

Judges are required under canon 2B of the California Code of Judicial Conduct not to testify voluntarily as character witnesses, but where subpoenas were issued to compel judges to testify, their declarations regarding good character of disciplinary respondent could be considered by State Bar Court. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[3]**

Where a municipal court judge and a state appellate justice were subpoenaed as witnesses, it was proper for them to testify in a reinstatement proceeding. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[10]**

Where examiner's conduct in connection with obtaining depositions of State Bar's non-party witnesses, while not in bad faith, clearly fell short of her duty under the circumstances, review department upheld hearing judge's order permitting such witnesses to testify only if first deposed, and modified such order to require examiner to subpoena the witnesses and to pay transportation costs as a condition of permitting witnesses' testimony. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[13]**

Where respondent was not a California resident, and thus not subject to subpoena, respondent's attendance as a witness at the disciplinary hearing could have been required by notice to respondent's counsel. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[28]**

Evidence Code section 776, providing for calling the opposing party as an adverse witness, does not empower the State Bar to require the respondent's presence at a disciplinary hearing. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[29]**

The respondent in a disciplinary proceeding has an obligation to be present at the hearing even if not subpoenaed or noticed to appear as a witness. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[30]**

115 Continuances (rule 5.49)

Neither the law nor the facts supported respondent's contention that by denying two continuance requests during the six days of trial, the hearing judge deprived him of a reasonable opportunity to be represented by counsel. An attorney in a disciplinary hearing has no constitutional right to the assistance of counsel. Further, continuances of State Bar Court hearings are disfavored. (State Bar Court Rules of Practice, rule 1131.) To prevail on a procedural argument in a disciplinary matter, an attorney must show both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged procedural error. Respondent proved neither where respondent's counsel set a murder trial for the day before the scheduled start of the disciplinary hearings and failed to provide timely information about this conflict to the State Bar Court, where respondent failed to show that his counsel could not have anticipated or avoided the conflict, and where respondent failed to show that the only proper means of handling the conflict was to grant a continuance. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[1]**

Under California civil evidence rules, which apply generally in State Bar proceedings, a hearing judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice. Undue consumption of time alone is not in itself grounds for exclusion. Nor is unfair surprise, where the fairness if the trial may otherwise be ensured, if necessary by a continuance. Where evidence is cumulative or remote, however, there is discretion to exclude it. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[10]**

Hearing judge's denial of respondent's request for continuance to research probate practices in respondent's county was not error, where respondent had had ample time prior to trial to prepare his defense, and evidence sought would have had very little probative value as custom and practice in respondent's county would not explain or excuse respondent's prolonged delay in closing estate at issue. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[8]**

The length of pendency of matters before the State Bar Court is a matter of great concern and continuances have long been disfavored by the court. A judge's denial of a motion for a continuance to prepare for the mitigation portion of a hearing was not an abuse of discretion where respondent had notice one month before trial of how the evidence would be presented, and respondent failed to take any steps to contact potential character witnesses. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[2]**

116 Requirement of Expedited Proceeding

Procedures for ruling on standard 1.4(c)(ii) petitions for relief from actual suspension (Rules Proc. of State Bar, rules 630-641) are expedited to avoid procedural delays that might effectively create a far longer period of actual suspension than that originally ordered by the Supreme Court. Proceedings on standard 1.4(c)(ii) petitions are summary in nature, not full-fledged reinstatement proceedings in which disbarred attorneys seek to be reinstated to the practice of law. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[3]**

Because of due process concerns, time spent on involuntary inactive enrollment pending disciplinary proceedings is limited to one year absent proof of delay by respondent or respondent's counsel or other circumstances justifying lack of compliance. (See rules 799, 799.8, Trans. Rules Proc. of State Bar.) Where review department had ruled on earlier appeal that respondent would receive credit against final discipline for time spent on involuntary inactive enrollment, and respondent had not sought to terminate inactive enrollment during pendency of proceedings on remand and second appeal, respondent would be prejudiced if period of over five years spent on inactive enrollment were not credited against waiting period to apply for reinstatement. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[7]**

Excessive delay in conducting disciplinary proceedings, not attributable to respondent and resulting in prejudice to respondent, should be taken into account in mitigation, especially in probation revocation proceedings which are required to be expedited. Where, due to delay in proceedings, actual suspension in probation matter would not commence until after start of actual suspension in separate matter which was supposed to be served concurrently with prior suspensions, review department modified recommended discipline in probation matter to provide for actual suspension to be served concurrently with previously ordered actual suspension to extent it was still in effect. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[16]**

Under applicable expedited hearing procedures, a respondent may apply for a hearing pursuant to standard 1.4(c)(ii) up to 150 days before the respondent's actual suspension is set to expire. (Rules 810-826, Trans. Rules Proc. of State Bar.) *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[15]**

Where lapse of time between sessions of hearing in disciplinary matter resulted from respondent's own actions, and respondent never complained about delay, respondent waived right to speedy determination of charges underlying involuntary inactive enrollment. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[1]**

117 Dismissal (rules 5.122-5.124)

Rule 5.124 of the Rules of Procedure of the State Bar provides specific and limited grounds for dismissal. Where respondent's pretrial motion to dismiss did not argue that notice of disciplinary charges failed to state a legally disciplinable offense or to give sufficient notice of the charges, but rather sought dismissal on merits, relying on declarations and supporting documents, motion was equivalent to summary judgment motion, which is not provided for under rule 5.124. Hearing judge erred in granting motion to dismiss based on pretrial factual findings, thereby deriving State Bar of its right to present evidence of respondent's culpability at trial. *In the Matter of Eldridge* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 413 **[1 a,b]**

The review department concluded that the hearing judge erred as a matter of law in denying the motion to set aside the dismissal for lack of jurisdiction and found that the procedural requirement of Rules of Procedure of the State Bar, rule 662(c) did not divest the court of jurisdiction to extend the time for, or to grant relief from, payment of costs. Relying on well–settled rules of statutory construction, the review department construed the rule to be directory rather than mandatory or jurisdictional and thus found that the court retained jurisdiction to determine whether petitioner's failure to provide proof of payment of costs prior to filing the reinstatement petition should

have resulted in a dismissal under the facts and circumstances of the case. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[1a, b]**

In construing statutes, a practical construction is preferred. A construction of Rules of Procedure of the State Bar, rule 662(c) which permits the State Bar Court to retain jurisdiction is manifestly more practical than one which cuts off the court's jurisdiction regardless of the time and resources the parties have already expended in the court proceedings. Where a reinstatement proceeding had been pending for almost a year at the time a motion to dismiss was filed, the State Bar's investigation period and the discovery period for both parties had expired, and the trial was set to commence in approximately one month, dismissal was a severe remedy for noncompliance with payment of costs, and denial of a motion to set aside the dismissal was draconian. If a petitioner fails to pay the disciplinary costs prior to filing his reinstatement petition, the hearing judge has discretion to dismiss the reinstatement proceeding rather than to undertake a lengthy trial. But the hearing judge may also consider the failure to timely pay costs as a negative factor in petitioner's showing of rehabilitation or condition a petitioner's return to active status on the payment of some or all of the costs. Finally, if a disbarred or resigned attorney has failed to pay costs, the State Bar may enforce an order imposing costs as a money judgment. Construing Rules of Procedure of the State Bar, rule 662(c) as directory will continue to promote timely payment of costs, while not mandating unreasonable consequences in pending proceedings. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[5a b, c]**

Rule 15.2 of the Rules Governing the State Bar Program for Certifying Legal Specialists provides that a denial, suspension, or revocation of certification or re-certification by the Board of Legal Specialization based on a final disciplinary action by the Supreme Court, the State Bar Court, or any body authorized to impose professional discipline, shall be final and shall not be subject to further review. The legislative history of rule 15.2 made it abundantly clear that the State Bar proposed the adoption of this rule to the Supreme Court with the specific intent of divesting previously disciplined applicants of their right of appeal to the State Bar Court. Thus, the rule expressly deprived the State Bar Court of jurisdiction to consider applicant's procedural due process challenge. Accordingly, the review department was compelled to agree with the hearing judge, who correctly dismissed the matter for lack of jurisdiction. Although the State Bar Court lacked jurisdiction in this case, the review department construed rule 15.2 to mean that the decision of the Board denying applicant re-certification was subject to review by the Supreme Court. *In the Matter of Applicant B* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 731.**[1]**

Rule of Procedure of State Bar 262, which authorizes proceedings to be dismissed in the furtherance of justice, is construed in the State Bar Court in the same manner as its analog Penal Code section 1385 is construed in criminal proceedings. State Bar rule does not permit respondents to make motions. Motions may be made only by the State Bar as the prosecutor or a dismissal may be entered on State Bar Court's own motion after taking required steps. Hearing judge's dismissal of proceeding comported with those required pre-dismissal steps because she issued an order to show cause to the parties, allowed for responses from them, considered all appropriate interests, and stated in detail her reason for dismissal, and since the hearing judge acted promptly after the proceeding was filed and since the dismissal was expressly without prejudice to refiling, review department saw no prejudice to the State Bar. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721.**[2 a-c]**

Hearing judge did not abuse her discretion in ordering the dismissal of proceeding without prejudice in furtherance of justice on her own motion under Rule of Procedure of State Bar 262 as an appropriate remedy for the deprivation of the opportunities (1) for respondent to meet and attempt to resolve the matter with the State Bar prosecuting attorney 20 days before any disciplinary charges were filed and (2) for respondent to request an early neutral evaluation conference with a State Bar Court judge before disciplinary charges were filed because the deprivation of the opportunities occurred when, as a consequence of respondent's prior incorrect change of address submission to the State Bar, respondent did not receive State Bar's letter notice of intent to file notice of disciplinary charges informing him of these pre-filing opportunities. Once the hearing judge contemplated dismissal under rule 262 and once the uncontroverted evidence emerged as to how respondent's change of address was mistakenly composed on the change of address form and mistakenly approved by respondent (essentially a typographical error), the hearing judge was justified in considering the mistake to come within the ambit of rule 262 and did not abuse her discretion in ordering dismissal. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721.**[3 a-e]**

In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.

In reviewing a motion to dismiss a disciplinary charge based on a contention that the notice of disciplinary charges is defective due to its failure to state a disciplinable offense, the review department treats the factual allegations of the notice of disciplinary charges as true and disregards all factual matters outside the ambit of the notice of disciplinary charges except for judicially noticeable facts, since the purpose of the motion is to test the sufficiency of the notice of disciplinary charges and not to contest the charges. Where the notice of disciplinary charges alleged (1) that respondent, as general partner of a California limited partnership having a fiduciary duty to the limited partners, made preliminary distributions of partnership profits but failed to disburse any funds to one limited partner due to that limited partner's refusal to sign a release of liability and (2) that despite the limited partner's repeated request for the funds, respondent never released the funds and subsequently informed the limited partner that he no longer had the funds, the notice of disciplinary charges was sufficient to state a disciplinary offense, i.e., that respondent committed an act involving moral turpitude by breaching his fiduciary duty to the limited partner and misappropriating funds to which the limited partner was entitled.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[3a-c]**

Because respondent's motion to dismiss the notice of disciplinary charges based on insufficient notice of one of the charges was filed later than the date his response to the notice of disciplinary charges was due, in violation of Rules of Procedure of the State Bar, rule 262(c)(2), respondent's assertion was waived as a basis for dismissal.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[4]**

In reviewing a pretrial motion to dismiss the notice of disciplinary charges on the ground that it was barred by the applicable period of limitations, we treat the factual allegations of the notice of disciplinary charges as true. Where the notice of disciplinary charges alleged that respondent, a general partner of a California limited partnership, informed a limited partner within five years before the notice of disciplinary charges was filed that the limited partner's share of funds from a partnership distribution was gone, the charge that respondent committed an act involving moral turpitude by breaching a fiduciary duty and misappropriating funds was timely filed under Rules of Procedure of the State Bar, rule 51.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[5a,b]**

The review department found no merit to respondent's argument that the culpability findings must be reversed based on his claim of conflict of interest. Respondent failed to demonstrate how the investigation and prosecution of his former counsel demonstrated any conflict of interest or unfairness toward him. At trial, respondent was represented by other counsel who advanced his interests vigorously. Moreover, respondent failed to support his claim by any citation of legal authority. *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126. **[1]**

As the reproval imposed on respondent in the prior disciplinary proceeding is final, it and the conditions attached to it are presumed valid and enforceable. The reproval decision is subject to collateral attack only on the grounds that the judge (1) lacked jurisdiction of the subject matter, (2) lacked personal jurisdiction over respondent, or (3) acted in excess of jurisdiction. The burden of proof is on the party who attacks the judgment to show lack of jurisdiction. Furthermore, to succeed on collateral attack, the jurisdictional defect must be proven from the face of the record in the prior proceeding. Respondent's contention that the conditions attached to his prior private reproval are subject to collateral attack because the hearing judge failed to explicitly recite in her decision two findings required by rule 956 of the California Rules of Court, that the reproval conditions would serve to protect the public and to serve respondent's interests, is an allegation that the hearing judge acted in excess of her jurisdiction. Respondent failed to prove from the face of the record in the prior reproval that the conditions attached to it would not serve to protect the public or serve respondent's interest. In any event, the unchallenged factual findings in the hearing judge's decision in the prior case establish that the hearing judge acted within her jurisdiction in attaching the conditions. Without question, the reproval conditions that he take and pass a professional responsibility examination and attend the State Bar's Ethics School will serve to protect the public and serve respondent's interests. The hearing judge's error is not a jurisdictional error that can subject the hearing judge's decision to collateral attack. At most, the error was a procedural defect that respondent waived by failing to appear in the prior proceeding and object to the hearing judge's decision on that ground. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[1]**

In the Matter of Feldsott (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754.

A hearing judge's determination to dismiss specified charges in the furtherance of justice with prejudice over the State Bar's objection that the dismissals should be without prejudice is reviewed under an abuse of discretion standard. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[1]**

Even though equitable estoppel does not control a hearing judge's determination whether to dismiss specified charges in the furtherance of justice with or without prejudice, the considerations in making such a determination are not dissimilar. Thus, in determining that the dismissals should be with prejudice in the present case, the hearing judge properly considered the positions of the parties and its effect on each side. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[2]**

The fact that respondent may be placed in "indefinite limbo" if specified charges are dismissed in the furtherance of justice without prejudice is not sufficient cause to require that the charges be dismissed with prejudice. His remedy in any subsequent proceeding would be a due process argument for relief caused by unreasonable delay based upon a sufficient showing of specific prejudice resulting therefrom. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[3]**

Generally, it is in the public interest to dispose of disciplinary charges on the merits. However, the public interest and the interests of justice would not be served by permitting the State Bar to maintain specified charges for possible later prosecution by dismissing the charges without prejudice when respondent relied on the charges to his detriment in preparation for and during trial and in doing so exposed his defense case. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[4]**

Violation of State Bar Act section that is not, by its terms, disciplinable offense may be grounds for finding violation of statute requiring attorneys to uphold law. Where respondent was charged with violating statutory fee limitations and written fee agreement and disclosure requirements which are not, by their terms, disciplinable offenses, charge of violating statute requiring attorneys to uphold law was required as conduit to allege other violations, and such charge should not have been dismissed as unnecessary. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[4]**

Review Department had jurisdiction under rule 113 of Transitional Rules of Procedure to review portion of order by hearing judge which, in dismissing disciplinary proceeding pursuant to agreement in lieu of discipline, placed conditions on reopening of underlying disciplinary matter. Scope of such review was to determine whether hearing judge abused discretion in including condition in agreement in lieu of discipline which had not been agreed to by parties. *In the Matter of Respondent R* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227. **[1]**

An agreement in lieu of discipline is an agreement between the Office of the Chief Trial Counsel and the respondent to substitute terms and conditions in place of the disciplinary process, at least provisionally. Hearing judges have authority to dismiss or not dismiss disciplinary proceedings in light of such agreements, and may include conditions in dismissal order which are not contained in agreement if they are accepted by both parties, but judges do not have authority to modify such agreements without parties' consent or to append binding conditions or duties not agreed to by parties. *In the Matter of Respondent R* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227. **[2]**

119 Other Pretrial Matters

Note: Other pretrial matters include all motions made prior to trial (rule 5.45); stipulations (rules 5.53-5.58); and pretrial statements and conferences (rule 5.101).

Where respondent and State Bar stipulated to facts, legal conclusions on culpability, and discipline, but Supreme Court remanded matter for reconsideration of discipline in light of Standards, parties remained bound by stipulation with regard to facts and culpability. State Bar Court permitted parties to present additional evidence on aggravation and mitigation, and reconsidered degree of discipline. However, State Bar was bound by original stipulation that respondent's misconduct was not serious. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr.320. **[1a-d]**

When significant procedural opportunities are denied a litigant by steps taken during investigation before the filing of disciplinary charges, which place a litigant at a substantive disadvantage in the ensuing disciplinary

proceeding, it is appropriate for State Bar Court to exercise its jurisdiction to review those steps after the proceeding is filed. The deprivation of the opportunities (1) for respondent to meet with the State Bar prosecuting attorney 20 days before disciplinary charges were filed against respondent, which opportunity the State Bar routinely extends as a matter of policy, and (2) for respondent to request, in accordance with State Bar Rule of Procedure 75, an early neutral evaluation conference with a State Bar Court judge before disciplinary charges were filed are both significant procedural opportunities that the State Bar Court may review upon the filing of the formal notice of disciplinary charges. Accordingly, the State Bar Court had the authority to assess whether respondent was deprived of these pre-filing opportunities and, if so, to fashion an appropriate remedy. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721. **[1 a-f]**

In absence of specific statute or rule of procedure directing a specified mode of proceeding, it is not unreasonable or arbitrary for a hearing judge to utilize analogous civil procedures to resolve motions. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721. **[4]**

The State Bar was not barred from relying on Michigan proceedings to impose discipline in California under the authority of Business and Professions Code section 6049.1 notwithstanding that, at the time of a prior California disciplinary case in which the State Bar and respondent entered into a stipulation disposing of the charges, the State Bar knew of disciplinary proceedings pending in Michigan but nevertheless advised respondent in writing pursuant to Rules of Procedure of the State Bar, rule 133(a)(12) that there were no additional State Bar investigations pending against him. The clear purpose of Rules of Procedure of the State Bar, rule 133(a)(12) is to require the State Bar to give notice to respondents before the State Bar Court or to attorneys being investigated by the State Bar of the pendency of other complaints lodged with the State Bar against such attorneys, and to expand that requirement to include complaints lodged in other jurisdictions would impose a far greater burden than that contemplated. At the time of the stipulation, both respondent and the State Bar knew of the Michigan proceedings, yet the stipulation did not in any way deal with the California consequences of the Michigan matter, there was no evidence that the Michigan proceedings were included in discussions leading to the stipulation, respondent entered into the stipulation without inquiring about including the Michigan matter in the stipulation, and the State Bar had no way to evaluate the seriousness of the Michigan proceedings. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[1]**

Rule 219 of the Rules of Procedure of the State Bar provides that, after the party with the burden of proof has rested, the opposing party may move for a determination that the party with the burden of proof has failed to meet that burden. In deciding the motion, the hearing judge is required to consider all the evidence introduced, weigh that evidence and make determinations of credibility. The review department held that the hearing judge's ruling on a motion made pursuant to rule 219 is reviewable on plenary review under rule 301 of the Rules of Procedure of the State Bar and that such review is de novo. The review department must determine, based upon its independent review of the evidence before the hearing judge at the time the motion was made, whether clear and convincing evidence was presented of each element of the charged offenses. In deciding these issues, the review department must give great weight to the hearing judge's credibility determinations. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. **[1 a-c]**

In the Matter of Sheppard (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91.

Because jurisdiction vests in only one court at a time, once a review department opinion remanding the proceeding to hearing department for further proceedings becomes final, only the hearing department had jurisdiction to rule on State Bar's motion to expand the issues to be addressed at the trial on remand. Because the review department did not adjudicate the issue of petitioner's present moral fitness in its opinion remanding the proceeding to hearing department, the hearing judge's consideration of that issue on remand was not inconsistent with the review department's remanding opinion, and the hearing judge therefore did not error in admitting additional relevant evidence on the issue. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[3]**

Where the reason for each charged violation was specified by the State Bar in its pretrial statement and where respondent was not prejudiced at trial, the inadequate specification of the reasons for the charges in the notice to show cause was not grounds for reversal. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[3]**

Respondent's use of obstructive tactics during his disciplinary proceeding, including abuse of discovery and frivolous motions, constituted a serious aggravating circumstance. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[13]**

Pursuant to case law, selective prosecution claims should be raised by motion prior to trial, and as a practical matter, such claims have little chance of success if not raised initially by pretrial motion, due to difficulty of proving them without aid of discovery. However, it is not clear that such claims cannot be raised as part of respondent's defense case at trial; accordingly, review department considered such claim despite respondent's failure to raise it by pretrial motion. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[11]**

Respondent's failure to comply with proper pretrial procedures and to provide list of witnesses prior to day of trial was properly considered as aggravating circumstance. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[7]**

When a disciplinary proceeding is pending in State Bar Court, the respondent may be able to argue that evidence sought to be used by the State Bar which was obtained by improper means should be excluded. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[9]**

Where parties to a disciplinary proceeding reached a stipulation but agreed to preserve right to seek review as to one contested culpability issue, review department construed order approving stipulation and hearing judge's partial decision as together constituting a decision for the purpose of review. However, review department was obligated to review entire record independently and had authority to make findings, conclusions, and a disciplinary recommendation at variance with those of hearing department. (Trans. Rules Proc. of State Bar, rule 453(a).) Agreement between parties could not restrict review department's obligation of independent review. Accordingly, review department declined to limit its review to contested culpability decision, and was not bound by stipulated discipline recommendation. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[1]**

When judges are asked to approve stipulations, they cannot rely solely on State Bar's acquiescence in proposed discipline, but must exercise their independent judgment in carrying out their obligation to examine stipulation, admitted facts, and proposed discipline for fairness to parties and for extent to which public will be adequately protected thereby. (Trans. Rules Proc. of State Bar, rule 407(a).) *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[9]**

Where parties agreed to highly unusual stipulation expressly preserving right to seek review, but did not contemplate that review department would recommend discipline more severe than that set forth in order approving stipulation, parties' expectation that review department would be bound by stipulated discipline was unjustified. However, it was appropriate to relieve parties from stipulation due to their mutual mistake. Accordingly, review department vacated order approving stipulation and remanded proceeding for new stipulation or trial. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[11]**

Where notice to show cause charging client solicitation did not identify clients allegedly solicited, but did name persons who were alleged to have performed such solicitations and fixed the period of charged misconduct, and where respondents were informed of identities of allegedly solicited clients well before most pre-trial discovery was completed, and at least six months before trial, respondents' motion to dismiss notice to show cause based on alleged vagueness, which was not made until first day of trial, was properly denied. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[1]**

Duplicative allegations of misconduct serve little, if any purpose. It should be apparent by the time of the pretrial conference which charges are most apt, which other charges might show additional misconduct, and which are simply duplicative and unnecessary. Amendment or dismissal of charges, particularly at the time of filing the pretrial statement (rule 1222(k), Provisional Rules of Practice), serves the interest of litigant and judicial economy. Thus, where respondent failed to ensure payment of a medical lien when settling a personal injury case, there was no benefit to charging respondent with failing to act competently, when the charge that respondent violated the rule requiring proper payment of entrusted funds addressed the alleged misconduct far more aptly and supported identical or greater discipline. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[13]**

Negotiations regarding an agreement ordinarily result in a binding contract when all of the essential terms are definitely understood, even if a formal writing is to be executed later and even if there is uncertainty in a minor, nonessential detail. Where all elements of a stipulation settling a disciplinary proceeding were resolved at a settlement conference, and the settlement judge's ensuing order indicated that a final compromise had been reached, the settlement agreement was binding even though no formal written stipulation had yet been signed. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[4]**

Where a settlement judge's order following a settlement conference indicated that a final compromise had been reached, the order was binding and an attorney's failure to abide by it, without moving for relief therefrom, constituted a violation of the statutes requiring obedience to court orders and respect for courts and judicial officers. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[5]**

No method of enforcement of settlement agreements in disciplinary proceedings is set forth in the Transitional Rules of Procedure, but an express provision governing this subject is not essential to the court's inherent jurisdiction to exercise reasonable control over proceedings before it in order to avoid unnecessary delay. Where one party refused to abide by a settlement agreement, the other party could have made a motion to compel enforcement of the agreement, by analogy with the statutory motion permitted by Code of Civil Procedure section 664.6, or could have asserted the agreement as an affirmative defense in the pending proceeding. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[6]**

It is well established that an aggrieved party may properly bring to the court's attention the alleged breach of a settlement agreement arrived at before a judge and reflected in an ensuing court order. Rule 1231 of the Provisional Rules of Practice and Evidence Code sections 1152, subdivision (a) and 1154 only preclude evidence of settlement offers and negotiations that do not result in an agreement. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[7]**

Pretrial statements are an important tool in conducting an efficient multi-count trial. Unexcused failure to comply with an order requiring a pretrial statement (see rule 1222, Prov. Rules of Practice) should not be treated lightly. However, where counsel failed to make appropriate motions during trial resulting from the other party's failure to file a pretrial statement, no issue was preserved for appeal. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[1]**

State Bar's pretrial dismissal of three out of four original counts in notice to show cause did not entitle respondent to any relief, where respondent did not demonstrate how such dismissal caused specific prejudice. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[6]**

Hearing judge's request that respondent discuss mitigation evidence with examiner and try to "work something out," in order to promote stipulations for the introduction of character letters, did not constitute an improper requirement that respondent obtain the State Bar's prior approval to present mitigation evidence. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[9]**

The rule permitting a party to exclude rebuttal or impeachment witnesses from a pretrial statement (Prov. Rules of Practice, rule 1222(g)) has no bearing on the broader issue of discoverable information. Discovery of identities of individuals is not limited to persons who may be called in the opposing party's case in chief. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[7]**

Judges in State Bar proceedings have inherent authority to exercise reasonable control over the proceedings in front of them. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[15]**

Respondent's highly generalized argument regarding inadequate notice of certain hearings warranted no relief, where respondent had been made aware of duty to keep State Bar informed of current address and given opportunity to correct the official State Bar record thereof, and notices had been served on respondent at another address in addition to the address of record. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[1]**

Medical emergency might have excused respondent's failure to attend pre-trial conference, but did not excuse respondent's failure to file pre-trial statement which would have better preserved respondent's posture at trial. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[2]**

Where examiner's pre-trial statement listed respondent's prior record of discipline among exhibits to be offered at trial, but did not detail or characterize such prior record in any way, and copy of prior record was not considered by hearing judge until after determination of culpability, and respondent demonstrated no prejudice from reference in pre-trial statement and had failed to raise issue before hearing judge, respondent was not entitled to any relief based on asserted violation of rule 571, Trans. Rules Proc. of State Bar. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[4]**

The Transitional Rules of Procedure of the State Bar, unlike equivalent California and federal rules, provide for review as of right following the denial of a motion to dismiss, as well as the grant of such a motion. However, this does not affect the type of review to be afforded on the merits. (Trans. Rules Proc. of State Bar, rule 554.1.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[3]**

Both at hearing and on review, the court considering a motion to dismiss a notice to show cause for failure to state a disciplinable offense should disregard all factual matters outside the ambit of the notice, except for judicially noticeable facts. Accordingly, the review department considered respondent's uncontroverted statement that the alleged client referred to in the notice to show cause was respondent's spouse, and also considered respondent's date of admission to the bar and lack of any prior disciplinary record. However, respondent's other factual assertions in support of his motion to dismiss were not suited for judicial notice and were not considered on review. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[4]**

The Office of Trial Counsel has discretion whether or not to file formal charges in a matter eligible for disposition by admonition. The State Bar Court cannot dismiss a proceeding prior to hearing on the ground that it meets the criteria for admonition, unless a case for selective prosecution is established. (Trans. Rules Proc. of State Bar, rule 415.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[5]**

In order to establish a denial of a fair trial because of delay between the making of a complaint to the State Bar and the filing of a formal notice to show cause, an attorney must show specific instances of actual prejudice from the delay. Where information in support of respondent's claim of prejudice was available and known to respondent at the time of respondent's motion to dismiss before the hearing judge, but was not set forth in support of the motion, respondent could not improve on review the record he had the opportunity to make in the hearing department. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[2]**

The failure of the hearing judge to rule on respondent's motion to dismiss until after the hearing did not result from bias, but from respondent's filing of the motion less than a week prior to the hearing. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[7]**

Respondent's fundamental objections to disciplinary proceeding, based on lack of personal service, expiration of the statute of limitations, lack of jurisdiction, and failure of the notice to show cause to state grounds for discipline, should have been presented to the State Bar Court at the trial level by motion. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[15]**

Time to file answer to notice to show cause is extended twenty days by service of notice of application to enter default, and is extended an additional five days when the application is served by mail. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[2]**

Where respondent who filed motion for relief from default had previously submitted proposed answer to notice to show cause to State Bar Court and served it on examiner, and declaration accompanying motion to set aside default verified essential allegations of proposed answer, this constituted substantial compliance with rule requiring motion to set aside default to be accompanied by verified proposed answer. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[3]**

Where respondent, represented by experienced counsel, stipulated to facts which respondent conceded supported uncharged violation of failing to notify clients of receipt of client funds, and respondent did not object to referee's amendment of notice to show cause to reflect such charge, review department held that any such objection was waived, and found culpability despite omission of charge from notice to show cause. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[6]**

Stipulations by both parties in the interests of justice on a wide variety of issues, including the entire proposed disposition of disciplinary matters, are encouraged and are provided for in State Bar procedural rules. (Trans. Rules Proc. of State Bar, rules 401, 405-408.) *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[3]**

120 Conduct of Trial (5.102, 5.110)

Where respondent's therapist chose not to testify, in order to preserve confidential nature of therapeutic relationship, and respondent did not subpoena the therapist and did not identify any other evidence he was prevented from introducing, Review Department rejected respondent's argument that he was prevented from presenting evidence regarding his abstention from alcohol. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[1]**

Review Department will not grant relief on the basis of evidentiary errors without a showing of prejudice. Hearing judge properly permitted State Bar to call respondent as first witness, even though respondent had not yet decided whether to testify on his own behalf. State Bar also properly called witnesses without prior disclosure of their statements, where witnesses had made no written or recorded statements, and respondent could not show prejudice because he knew witnesses' identities, and had a summary of their testimony, in advance of trial. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[5]**

After the hearing judge gave respondent the express opportunity to present his evidence, respondent's unpersuasive reasons for failing to do so could not be the basis of any claim of error on review. *In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615. **[2]**

An offer of proof is a summary of proffered evidence excluded by a trial judge, which is presented (1) to the trial judge to insure that he knows what evidence he has excluded and to provide him with an opportunity to reconsider his denial and permit the introduction of the evidence before the end of trial and (2) to an appellate court so that it may effectively review the trial judge's exclusion of the evidence. Thus, where respondent subpoenaed three immigration court judges to testify on his behalf in State Bar Court disciplinary proceeding, but U.S. Department of Justice greatly restricted the scope of the testimony one immigration court judge could give and refused to permit the other two judges to testify at all, the declaration regarding the immigration judges' testimonies that was executed by respondent's counsel and filed in hearing department was not an offer of proof because hearing judge did not restrict or excluded immigration court judges' testimonies, Department of Justice did, and State Bar Court lacked jurisdiction to review Department's actions. Accordingly, review department struck all statements in respondent's brief based on the declaration of respondent's attorney. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[29 a-c]**

Because bankruptcy court's findings that attorney engaged in actual fraud when attorney incurred credit card debts were made under preponderance of the evidence standard and not clear and convincing standard applicable in disciplinary proceedings, hearing judge correctly (1) declined to apply principles of collateral estoppel to bind attorney with bankruptcy court's findings that attorney engaged in actual fraud; (2) reweighed evidence from bankruptcy court proceedings under clear and convincing standard after giving attorney fair opportunity to contradict, temper, and explain that evidence; and (3) permitted State Bar to present additional evidence regarding attorney's culpability. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[3]**

Collateral estoppel may be applied in the State Bar Court to deny an attorney the right to relitigate an issue that was litigated and resolved against him or her in a prior civil proceeding only if (1) the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, (2) the civil finding was made under the same burden of proof applicable to the same issue in the State Bar Court, (3) the attorney was a party to civil proceeding, (4) there is final judgment on the merits in the civil proceeding, (5) the attorney fails to demonstrate any unfairness in precluding the relitigation of the issue, and (6) the civil finding was necessary to the judgment in the civil proceeding. The requirement that the civil finding be necessary to the judgment in the civil proceeding is required by procedural fairness to insure that preclusive effect is not given to nonessential prior findings. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[2 a, b]**

Whenever the State Bar relies upon all or part of the record in prior civil proceeding to prove an element of a disciplinary violation or aggravating circumstance independent of the application of collateral estoppel, neither

the evidence nor any factual findings in the civil proceeding may be judicially noticed as conclusive or otherwise given preclusive effect in the State Bar Court, but must be independently assessed under the clear and convincing standard of proof. In addition, the attorney must be given a fair opportunity to contradict, temper, or explain the evidence and findings in the civil proceeding with other evidence, including the live testimony of the same witnesses who testified in the civil proceeding. The attorney need not be given free reign to completely retry the civil suit in the State Bar Court. The hearing judge retains the sound discretion to restrict or excluded cumulative evidence and otherwise control the introduction of evidence as in any other case.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[4 a, b]**

Even though the hearing judge properly admitted and judicially noticed the record in a prior civil proceeding in which respondent was a party, the hearing judge erred in making factual findings regarding the nature and extent of respondent's violations of the moral turpitude statute based upon the evidence in the civil record independent of the application of collateral estoppel because he did not first give respondent a fair opportunity to attempt to contradict, temper, or explain the evidence in it with other evidence. That error required the reversal of the hearing judge's findings as to the nature and extent of respondent's statutory violations and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the nature and extent of respondent's violations.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[7]**

In making his factual findings with respect to charged violations of the former rule of professional conduct governing business transactions with clients, the hearing judge erred in reweighing and relying upon the evidence in a prior civil proceeding in which respondent was a party without first giving respondent a fair opportunity to attempt to contradict, temper, or explain that evidence. That error required the reversal of the hearing judge's findings that respondent committed multiple violations of the former rule governing business transactions with clients and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the charged violations of that former rule.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[9 a, b]**

Whether hearings to determine witness's right to Fifth Amendment privilege should be held in camera rather than open court is left to trial court's discretion. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[10]**

Hearing judge properly had respondent physically removed from courtroom upon respondent's repeated failure to comply with hearing judge's orders and warning with respect to respondent's disruptive conduct. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[15 a-b]**

The hearing judge did not err in prohibiting respondent from presenting evidence of his willingness to settle the case by stipulating to the misconduct and a reasonable level of discipline and of the State Bar's unwillingness to present a settlement offer that contained what he considered to be a reasonable level of discipline. Respondent is afforded substantial mitigation for cooperation because, in addition to other instances of cooperation throughout the investigation of the matter, he stipulated to the facts underlying the misconduct and because the stipulated facts were not easily provable. Substantial mitigation is given without regard to the fact that the parties were unable to stipulate to an appropriate level of discipline. Not doing so would "punish" respondent merely for seeking his day in court as to the level of discipline. Not being able to reach a stipulated discipline does not have any effect on the court's analysis of the degree of mitigation awarded for respondent's overall cooperation in helping resolve the charged misconduct. *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902.**[1]**

The hearing judge's appropriate role is to decide the issues on the evidence presented. If that process leads the hearing judge to conclude that the party bearing the burden of proof had not prevailed, then the judge's duty is to find against the particular party on that issue or to recommend that only that degree of discipline, if any, which is warranted by the evidence presented. The party failing in its burden runs the very risk that the judge will so act. Absent extraordinary circumstances, a hearing judge is not authorized to require the production of added evidence beyond which the parties have chosen to present. If parties or witnesses testify, the hearing judge is at liberty to ask questions of a type consistent with the judicial function of supervising or regulating the trial. Moreover, allegations against other attorneys can be referred to the State Bar for new investigation. *In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.**[2]**

Absent the court granting a set aside, a partial stipulation to facts remains binding on the parties, and the facts recited in the stipulation are deemed established. *In the Matter of Rodriguez* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 884. **[1]**

Without, at least, a factual stipulation establishing aggravation and mitigation, neither the review department nor the Supreme Court have a complete record upon which to evaluate the appropriate discipline for the misconduct that occurred. Where the record consisted of the parties' partial stipulation to facts which did not address any aggravating or mitigating circumstances and two character letters proffered by respondent, the review department determined that the sparse record precluded it from fulfilling its duty to independently review the record and remanded the case for a trial de novo at which an adequate record was made. *In the Matter of Rodriguez* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 884. **[2]**

In its opinion remanding a petition for reinstatement for further proceeding not inconsistent with the opinion, the review department held, on the record then before it, that the petitioner had demonstrated his moral reform from the acts which lead him to resign from the Bar with disciplinary charges pending. Accordingly, under law of the case, it would be improper for hearing department to reconsider petitioner's moral reform on remand in the absence of additional evidence. As to events that predated the petition, and were disclosed on the petition, it is clear that reopening would be impermissible. The same would be true of events about which the State Bar had a reasonable opportunity to investigate and present at a hearing. However, one of the underlying purpose of reinstatement proceedings is to insure that only persons of present good moral character are reinstated to the practice of law in this state. Accordingly, with the exceptions noted, the State Bar Court may consider any act or conduct that is relevant to a petitioner's moral character regardless of when or where the act or conduct occurred. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[1]**

Because jurisdiction vests in only one court at a time, once a review department opinion remanding the proceeding to hearing department for further proceedings becomes final, only the hearing department had jurisdiction to rule on State Bar's motion to expand the issues to be addressed at the trial on remand. Because the review department did not adjudicate the issue of petitioner's present moral fitness in its opinion remanding the proceeding to hearing department, the hearing judge's consideration of that issue on remand was not inconsistent with the review department's remanding opinion, and the hearing judge therefore did not error in admitting additional relevant evidence on the issue. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[3]**

Neither the law nor the facts supported respondent's contention that by denying two continuance requests during the six days of trial, the hearing judge deprived him of a reasonable opportunity to be represented by counsel. An attorney in a disciplinary hearing has no constitutional right to the assistance of counsel. Further, continuances of State Bar Court hearings are disfavored. (State Bar Court Rules of Practice, rule 1131.) To prevail on a procedural argument in a disciplinary matter, an attorney must show both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged procedural error. Respondent proved neither where respondent's counsel set a murder trial for the day before the scheduled start of the disciplinary hearings and failed to provide timely information about this conflict to the State Bar Court, where respondent failed to show that his counsel could not have anticipated or avoided the conflict, and where respondent failed to show that the only proper means of handling the conflict was to grant a continuance. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[1]**

A party may not recall a witness who has been excused from giving further testimony without leave of court, which may be granted or withheld in the court's discretion. Hearing judge did not deny due process to respondent by denying respondent's motion to recall State Bar witness who had been excused from giving further testimony. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[6]**

Where State Bar witness had not been excused from giving further testimony, hearing judge erred in not permitting respondent to recall such witness for questioning about document respondent did not possess at time witness first testified. However, where such additional testimony was relevant only to refute factual contention later abandoned by State Bar, hearing judge's error did not result in prejudice to respondent. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[7]**

Respondent's cooperation with State Bar in agreeing to allow complaining former client to testify by telephone at disciplinary hearing constituted mitigating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[23]**

Pursuant to case law, selective prosecution claims should be raised by motion prior to trial, and as a practical matter, such claims have little chance of success if not raised initially by pretrial motion, due to difficulty of proving them without aid of discovery. However, it is not clear that such claims cannot be raised as part of respondent's defense case at trial; accordingly, review department considered such claim despite respondent's failure to raise it by pretrial motion. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[11]**

Where hearing judge's oral comments at close of case regarding appropriate discipline deviated from the recommendation made in judge's written decision, but hearing overall was fair and respondent's counsel had opportunity to present argument regarding degree of discipline, hearing judge's written decision controlled, and respondent was not denied due process. Respondent could not, as a matter of law, rely on hearing judge's oral or written discipline recommendation since it was not binding on review department or Supreme Court. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[10]**

The question of the proper degree of discipline in a conviction referral matter may rest on a wide scope of evidence not directly connected with the crimes themselves. Evidence that respondent's real estate license had been revoked over a year before his crimes was improperly excluded from rebuttal evidence. Such evidence was not an essential element of the State Bar's case in chief, and could properly be reserved to rebut respondent's contention that his crimes were aberrational. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[9]**

Testimony of expert witness who did not know facts of specific case but could only give opinion as to respondents' practices was proper expert testimony. Where hearing judge limited expert's testimony to proper opinion testimony on subjects of his qualifications, fair hearing was ensured. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[9]**

An attorney's unauthorized practice of law while on suspension is an appropriate matter to be considered in aggravation. Where, during the trial in a disciplinary matter, the respondent made a court appearance in a client's case while suspended for nonpayment of dues, the deputy trial counsel was not obligated to wait to file another disciplinary action to address the issue. Where respondent's counsel agreed that the deputy trial counsel could introduce evidence regarding respondent's court appearance during a later phase of the hearing, respondent received proper notice of the charge in aggravation. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[15]**

Pretrial statements are an important tool in conducting an efficient multi-count trial. Unexcused failure to comply with an order requiring a pretrial statement (see rule 1222, Prov. Rules of Practice) should not be treated lightly. However, where counsel failed to make appropriate motions during trial resulting from the other party's failure to file a pretrial statement, no issue was preserved for appeal. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[1]**

Where respondent was not charged with failure to return an unearned advance fee, no finding of culpability for such misconduct could be entered absent an amendment of the charges. Where evidence was insufficient to support such charge, motion to amend was properly denied as an idle act. However, where, despite a clear directive as to the need to amend and an opportunity to move for such amendment in advance of trial, deputy trial counsel waited until after evidence was in to move to amend to conform to proof, motion to amend could also have been denied simply for inexcusable delay in seeking amendment. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[3]**

The fact that no live witness appeared for the prosecution in a proceeding did not preclude the hearing judge from making a credibility determination based on prior recorded trial testimony which was subject to cross-examination. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[4]**

Although Business and Professions Code section 6026.5(f) permits appeals from decisions of the Board of Legal Specialization to the Board of Governors of the State Bar to be treated as confidential, the Board of Governors,

in delegating its authority to hear such appeals to the State Bar Court, did not expressly indicate whether it intended to preserve the confidentiality of such appeals. (Trans. Rules Proc. of State Bar, rule 225(a)(1).) Where a legal specialization proceeding was treated as public by the hearing judge, the parties were deemed to have waived any argument that the review department should treat the proceeding as confidential by their failure to raise a timely objection to such treatment. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[1]**

In determining whether evidence of additional uncharged ethical misconduct should be admitted as aggravating evidence in the discipline phase of the hearing, the hearing judge must balance the desire for additional relevant evidence against the due process requirement of fair notice of all discipline charges. Where there was sufficient evidence in the record to warrant a recommendation of disbarment, it was unnecessary for the review department to resolve a claim that the hearing judge erred in failing to admit aggravating evidence of uncharged misconduct. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[18]**

Under California civil evidence rules, which apply generally in State Bar proceedings, a hearing judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice. Undue consumption of time alone is not in itself grounds for exclusion. Nor is unfair surprise, where the fairness if the trial may otherwise be ensured, if necessary by a continuance. Where evidence is cumulative or remote, however, there is discretion to exclude it. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[10]**

Where hearing judge determined that proffered evidence of additional uncharged misconduct was of marginal relevance; that it could be fully examined and made the basis of separate discipline, if appropriate, in a separate proceeding, and that its admission would involve a delay to permit respondent time to address the issues it raised, the exclusion of the evidence was not an abuse of discretion. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[11]**

A showing of specific prejudice is required to invalidate a hearing judge's decision based on procedural errors. Where respondent did not allege and/or demonstrate that he suffered any specific prejudice as a result of numerous alleged procedural errors, he was not entitled to relief. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[3]**

Hearing judge's refusal to permit respondent to present evidence that value of one estate asset increased during respondent's delay in completing probate did not entitle respondent to relief, where such increase in value did not justify respondent's misconduct in delaying distribution of other estate assets. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[7]**

Hearing judge's request that respondent discuss mitigation evidence with examiner and try to "work something out," in order to promote stipulations for the introduction of character letters, did not constitute an improper requirement that respondent obtain the State Bar's prior approval to present mitigation evidence. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[9]**

Transcript of superior court trial regarding probate matter which was subject of disciplinary proceeding was admissible pursuant to Bus. & Prof. Code, § 6049.2, and hearing judge did not err in admitting entire transcript, even though much of testimony was not relevant to disciplinary proceeding, where transcript was admitted subject to respondent's motion to strike parts that were not material or relevant, and respondent failed to make such motion. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[10]**

Judges in State Bar proceedings have inherent authority to exercise reasonable control over the proceedings in front of them. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[15]**

Where notice to show cause could have been more clearly phrased with respect to duration of respondent's alleged misconduct, but hearing judge correctly concluded after colloquy at trial that it encompassed misconduct prior to as well as after a certain date, and where hearing judge prohibited introduction of evidence as to respondent's conduct prior to such date only after respondent had had ample time to present such evidence, and where respondent gave no offer of proof or explanation regarding any additional evidence on such issue, respondent's claims of denial of adequate notice of charges and fair opportunity to present evidence were without merit. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[8]**

Even if it was error for hearing judge to allow examiner to ask leading questions of complaining witness on direct examination, and to admit testimony as to witness's state of mind when such state of mind was not relevant, such errors were not prejudicial where complaining witness's testimony was clearly insufficient to establish State Bar's case and was not relied on in hearing judge's findings. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[8]**

Where respondent's testimony regarding statements made to respondent by complaining witness was offered to impeach complaining witness on a crucial issue, at a time when complaining witness was still subject to recall for further testimony, such testimony should not have been excluded except in the interests of justice. Exclusion of the testimony might have been justified by the length of the proceedings and respondent's lack of an explanation for failing to cross-examine complaining witness regarding statements at issue. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[9]**

State Bar disciplinary proceedings are unique—not criminal, civil or administrative. Nonetheless, the respondent is entitled to a guarantee of a fair hearing, one of the elements of which is the right to offer relevant and competent evidence on a material issue. Denial of such right is almost always reversible error. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[10]**

Although not constituting a factor in aggravation, respondent's trial tactics in not revealing exhibits to examiner in advance undermined respondent's credibility with hearing judge, created risk that exhibits would be excluded, and unnecessarily prolonged hearing. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[25]**

A hearing judge may question witnesses in order to elicit or clarify testimony and test credibility, but may not, in so doing, become an advocate for one of the parties. Where the judge's treatment of witnesses on both sides was evenhanded and did not overstep the judge's factfinding role, there was no evidence of prejudice or bias. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[4]**

A hearing judge's denial of respondent's request to remove and copy exhibits already admitted into evidence, due to concern for the integrity of the record, was not improper, and did not show bias. Moreover, by failing to seek relief before the hearing judge after being denied access to the exhibits by the State Bar Court clerk's office, respondent waived his right to raise the issue before the review department. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[5]**

A variance between the hearing judge's tentative findings on culpability from the bench, and the judge's detailed written findings of fact and conclusions of law, did not demonstrate bias. The ultimate written decision controlled, and where it was supported by the evidence, the judge's remarks in summing up the evidence were not a basis for reversal. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[6]**

A hearing judge's announcement of tentative findings on culpability from the bench may be necessary due to the bifurcated nature of State Bar Court proceedings coupled with the desire to avoid an extra day of hearing. (Rules 1250, 1260, Provisional Rules of Practice.) *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[8]**

The hearing judge is entitled to exert reasonable control over the conduct of the hearing. Such measures as requiring one counsel to question a witness, requesting respondent not to consult with respondent's attorneys while the judge was speaking to them, and expecting counsel to note objections for the record and then move forward with the case, were reasonable, did not demonstrate bias under the circumstances and did not deprive respondent of the statutory right to legal assistance. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[11]**

In State Bar Court proceedings, the court acts as an administrative arm of the Supreme Court, and State Bar Court judges and referees function as "judicial officers." Therefore, under Code of Civil Procedure section 1990, any person present at a State Bar Court hearing may be compelled to take the witness stand by the judge or referee. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[31]**

Where respondent refused to take the witness stand when ordered to do so by the referee at the disciplinary hearing, and invoked the protection of the Fifth Amendment through counsel and not in response to specific

questions, respondent's actions were improper. If appearing under subpoena, respondent's actions could have been certified for contempt before the Superior Court. If culpability had been found on the underlying misconduct charges, respondent's actions could have been considered evidence in aggravation. However, the referee did not have contempt power and lacked the authority to sanction respondent by striking respondent's answer to the notice to show cause and deeming the allegations admitted by default as a matter of law. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[33]**

In a disciplinary action, an attorney does not have a privilege not to be called to testify, but may refuse to answer specific questions on the grounds that answering the question may subject the attorney to criminal prosecution. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[13]**

Even if the procedure for a motion for judgment at the close of the moving party's case, as set forth in Code of Civil Procedure section 631.8, does apply in State Bar proceedings, it was not error for the hearing referee to take respondent's motion under submission and rule on it after respondent had presented the defense case, and the motion was impliedly ruled on when the referee made initial rulings as to culpability. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[20]**

The hearing department has wide latitude to receive all admissible evidence, especially since it sits without a jury. Where respondent's ex-spouse's testimony was properly admitted, but because there was little corroboration and due to the marital dissolution the chance of bias was great, the hearing department properly disregarded such testimony, respondent could not successfully claim prejudicial error. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[6]**

Respondent's stipulation to the charges at the outset of the hearing constituted cooperation carrying mitigating weight. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[18]**

Error in admitting evidence in State Bar proceedings does not invalidate a finding of fact unless the error resulted in the denial of a fair hearing. (Trans. Rules Proc. of State Bar, rule 556.) In light of deposition witness's hazy memory and respondent's contrary testimony, proper determination weighing the conflicting testimony could not be made without face-to-face assessment, and admission of witness's deposition transcript therefore denied respondent a fair trial. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[19]**

Rule 232 of the California Rules of Court contemplates preparation of a tentative decision after the completion of the trial, not in midstream, as a preliminary stage in the procedure for requesting a statement of decision. Therefore, rule 232 does not support the legitimacy of issuing a tentative decision when only one side has presented evidence. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[3]**

Duty of trial judge differs from that of juror with respect to expressing opinions on aspects of case before its submission, and there is nothing wrong with preparing tentative findings after culpability phase of hearing. However, where referee prepared preliminary findings before defense had put on its case, and lengthy delay ensued which referee indicated had affected the fact-finding process, this gave the appearance that a decision had been reached as to the basic facts at issue before respondent testified. When tentative findings were prepared and presented to the parties after only one side had presented evidence, it gave the appearance that the judge did not truly retain an open mind. Thus, certain of referee's findings were improperly reached. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[4]**

Although referee indicated that he had not reached a final decision despite preparation of draft findings, he appeared to have placed a greater burden of proof on the respondent than permitted by law. If a trier of fact imposes the wrong burden of proof, that itself can constitute reversible error. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[6]**

An attorney's prior record of discipline is a record of the Supreme Court and also of the State Bar, and as such it is the proper subject of judicial notice. (Evid. Code, §§ 451 et seq.) Even when judicial notice is taken of such records, the documents composing them should be identified, introduced in evidence, and made part of the record in the proceeding. (Rule 571, Rules Proc. of State Bar; rules 1260-1262, Prov. Rules of Practice of State Bar Ct.) *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[5]**

125 Post–trial motions (rules 5.112-5.115)

The State Bar's posttrial effort to amend the hearing judge's decision could not be characterized as anything other than a posttrial motion covered by Rules of Procedure of the State Bar, rule 221, since no language in rule 221 limits its applicability to rules 222 through 224 and no language indicates that rules 222 through 224 are intended to be an exclusive roster of posttrial motions. Thus, when the State Bar filed a motion to amend the decision in the hearing department, it had the effect of vacating the request for review filed on the same date in the review department, rendering the request for review void *ab initio*. Moreover, the State Bar's second request for review was vacated because it was filed prior to the hearing judge's final ruling on the motion to amend, which final ruling was made when the hearing judge realized she had prematurely issued a ruling before respondent filed a timely opposition. *In the Matter of Ozowski* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67. **[1 a–c]**

Although the State Bar apparently believed that it had perfected its right to appeal due to having filed two requests for review, no timely request for review was filed after service of a final order disposing of a posttrial motion, and therefore the review department was without jurisdiction to hear the appeal. Due to the *sui generis* nature of disciplinary proceedings, as well as the differences between statutes and rules regarding notices of appeal applicable in civil matters and those applicable in disciplinary matters, the review department could not apply civil rules and statutes so as to consider the requests for review as prematurely filed or to stay proceedings at the trial level after a request for review had been filed. Although the State Bar asked for relief on the grounds that it never received a copy of the hearing judge's final order and that it was misled when the review department clerk's office did not reject pleadings filed after the requests for review, the evidence established that service of the hearing judge's final order was properly effectuated, and the review department clerk's failure to issue a notice of rejection of pleadings was not a ground for relief under any rule but merely a courtesy function. More importantly, because the review department was divested of jurisdiction, it was powerless to relieve against mistake, inadvertence, accident, or misfortune. *In the Matter of Ozowski* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67. **[2 a–g]**

Once the hearing judge who tried this case left the State Bar Court, he became ineligible to take any further action in the case. Of necessity, that judge was unavailable to consider respondent's post-trial motions. *In the Matter of Lindmark* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668. **[1]**

Because respondent failed to competently perform legal services both before and after the September 14, 1992, effective date of the revised version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110), he violated both the "former" and the "current" versions of that rule. Thus, State Bar erred when it amended the charges to "conform to proof" by deleting the charge that respondent violated the "current" rule and replacing it with a charge that he violated the "former" rule. State Bar should not have deleted the charge that respondent violated the "current" rule, but should have added to it a charge that respondent also violated the "former" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[2]**

Even though State Bar erroneously amended the charges to "conform to proof" by deleting the charge that respondent violated the revised (i.e., "current") version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110 as amended eff. Sept. 14, 1992) and replacing it with a charge that respondent violated the "former" version of that rule instead of correctly amending the charges by adding, to the charged violation of the "current" rule, a charge that respondent also violated the "former" rule, no due process violation occurred when review department held that respondent was culpable of violating both the "former" rule and the "current" rule because (1) the text of both rules was virtually identical, (2) respondent did not argue lack of notice, and (3) the trial in hearing department covered respondent's conduct during the time period in which the "former" rule was in effect and after the effective date of the "current" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[3]**

Statutory provision granting attorneys the right to recover costs from State Bar provides that attorneys who have been exonerated of all disciplinary charges following a trial are entitled to reimbursement from the State Bar "in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparing for [trial]" without defining "reasonable expenses" (other than expressly excluding fees for attorneys and experts) and without prescribing the method by which State Bar is to determine what they are. Accordingly, State Bar Board of Governors properly exercised its statutory rule making authority and adopted State Bar Rule of Procedure 283 to define what expenses (or costs) are allowable as "reasonable expenses" for which exonerated

attorneys may obtain reimbursement under statute and to provide the procedure by which exonerated attorneys are to seek reimbursement from the State Bar for those expenses. In absence of Supreme Court authority to the contrary, the State Bar Court may award exonerated attorneys reimbursement from the State Bar for reasonable expenses only if they are specified as allowable expenses in Rule of Procedure 283. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[2]**

Under clear language of State Bar Rule of Procedure 283(b)(5), State Bar Court may award attorneys exonerated of all disciplinary charges after trial reimbursement for expenses incurred in obtaining transcripts of court proceedings only if the court ordered that the transcripts be prepared. Fact that exonerated attorney could not obtain plenary review of hearing judge's decision finding him culpable of professional misconduct without first obtaining and paying for trial transcript is not synonymous with the court ordering the preparation of a transcript. In fact, requirement of obtaining trial transcript for plenary review is not imposed by court, but by State Bar Rule of Procedure 301(a)(2), which makes clear that it is the party seeking review that orders the trial transcript. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[3]**

Even though plenary review is sought, the issue of whether a hearing judge erred in setting aside a default as to the limited issue of the degree of discipline is reviewed under the limited scope of review customarily used for procedural questions, testing whether the hearing judge committed legal error or abuse of discretion. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831. **[1]**

The hearing judge erred in using the State Bar's request to add a quarterly reporting probation condition to conclude that limited relief under rule 203(e)(3)(B), Rules of Procedure of the State Bar, warranted the setting aside of the default on the issue of discipline. Rule 203(e)(2) allows a judge to vacate a default subject to appropriate conditions. Rule 203(e)(3)(B) allows a judge to vacate a default entered after filing of the decision, for limited purposes. There is nothing in rule 203(e) that eliminates the burden the respondent must sustain under rule 203(c), Rules of Procedure of the State Bar. Only after a defaulting respondent has made a sufficient showing for relief under rule 203(c), may a hearing judge set aside a default unconditionally or on appropriate conditions or for a limited purpose under rule 203(e). Since the judge's decision on its face concluded that respondent had not made the required showing under rule 203(c)(2), the judge erred when setting aside respondent's default. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831. **[2]**

In a motion for relief from default, general allegations of despondency and depression do not meet decisional law standards for relief, even under the more liberal requirements of rule 202(c)(1), Rules of Procedure of the State Bar. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831. **[3]**

Petitioner failed to establish that the hearing judge abused his discretion in denying petitioner's post-decision motion to reopen the record to present additional evidence because petitioner did not establish that the evidence he sought to proffer was newly discovered or that it could not have been presented at trial with the exercise of reasonable diligence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[6]**

Respondent was not entitled to present evidence for the first time on review that a State Bar official had engaged in improper conduct in a separate civil proceeding against respondent, where respondent had the opportunity to make this allegation and present evidence in support of it at the hearing level. Also, respondent failed to show how such evidence had any bearing on either his culpability of the charges against him or the appropriate discipline for his misconduct. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[4]**

In reinstatement proceeding, where petitioner moved to augment record on review with medical evidence regarding recovery from alcoholism which hearing judge had declined to consider on motion for reconsideration, and review department concluded that petitioner made favorable showing on all other aspects of rehabilitation, review department considered petitioner's evidence in accordance with case law holding that extrinsic evidence will not be ignored where it is the only means of proving rehabilitation from serious physical or emotional problems. Where such evidence added support to conclusion that petitioner had not demonstrated that recovery program was adequate, and State Bar expressed concern that evidence had been offered without opportunity for cross-examination, review department remanded for further hearing and expert testimony regarding petitioner's recovery. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[5]**

The Office of Trial Counsel waived its right to argue on review that certain evidence should not have been admitted when it withdrew its opposition to a post-trial motion before the hearing judge for introduction of the evidence. Accordingly, the review department did not address in detail the Office of Trial Counsel's objections to the evidence. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[5]**

Where disciplinary proceeding was dismissed due to State Bar's failure to bring forth clear and convincing evidence to support any of the charges, respondent was entitled by statute to reimbursement for the reasonable expenses of preparation for hearing, but State Bar Court was not authorized to award respondent any amount for attorney fees. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[9]**

On a motion to present additional evidence, the moving party did not show good cause where the substance of the evidence sought to be admitted was not summarized and there was no claim that the witnesses or affiants were unavailable to present their evidence at the disciplinary hearing or that their evidence related to events or observations which occurred after the disciplinary hearing. (Rules Proc. of State Bar, rule 562.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[5]**

Examiner's belated post-trial motion seeking to introduce evidence of additional acts of misconduct was properly denied, where examiner failed to explain why motion was not made until after trial even though evidence was brought to examiner's attention prior to trial. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[6]**

Examiner's post-decision motion for reconsideration and request for receipt of additional evidence of culpability was properly denied, where there was no showing why the proffered additional evidence could not have been presented at the time of the original hearing. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[9]**

Attorneys facing charges of professional misconduct must present to the hearing department all evidence favorable to themselves. A failure to do so may justify denial of a motion for rehearing to present additional evidence. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[4]**

Under rule 555.1(b), Transitional Rules of Procedure, a respondent has until 75 days after the entry of his default to file, as a matter of right, a motion to set aside the default. This 75-day time period is not jurisdictional; however, after it has run, a much greater showing must be made to justify setting aside the default. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[3]**

126 Petition for Disbarment after Default (rules 5.85, 5.86)

Where hearing judge properly granted respondent limited relief from default, to extent of requiring hearing on State Bar's petition for disbarment after default, and respondent sought review of hearing judge's ultimate decision, Review Department declined to dismiss respondent's petition for review, exercising its power to permit respondent to participate in proceeding notwithstanding default. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[1]**

Prior to 2011, the Rules of Procedure of the State Bar permitted imposition of a discipline less than disbarment even if the defaulting attorney did not seek relief from default. (See former rule 200 et seq. of the Rules of Procedure of the State Bar.) The rules now require that when a member's default has been entered and the member fails to have it set aside or vacated, the Office of the Chief Trial Counsel must file a petition seeking the member's disbarment. (Rule 5.85(A).) In turn, a hearing judge must grant the petition and recommend disbarment provided (1) the member has failed to file a response to the petition for disbarment or (2) the court has denied a motion to set aside or vacate the default. (Rule 5.85(F)(1).) *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[2 a,b]**

Where respondent filed opposition to petition for disbarment after default, and sought review of hearing judge's order granting petition, and Review Department remanded to permit hearing judge to exercise discretion regarding what relief was appropriate, hearing judge did not abuse discretion on remand by declining to set aside default except for limited purpose of conducting hearing on culpability, aggravation, and level of discipline, in which respondent was not permitted to participate. Hearing judge also properly deemed allegations in notice of disciplinary charges to be admitted. By allowing his default to be entered, respondent waived right to participate

in proceedings, to make evidentiary objections, and to present evidence in mitigation. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[4 a-c]**

Where respondent's default was set aside for limited purpose of conducting discipline hearing, neither amended default rules nor discipline standards provided for presumptive discipline of disbarment. Even two-year actual suspension was excessive discipline for violation of probation conditions attached to prior public reproval. Rather, appropriate discipline, under standard 2.10 and case law, was 90-day actual suspension and lengthy probation with conditions. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[8 a-c]**

130 Procedure on Review (rules 5.150-5.160)

Review Department will not grant relief on the basis of evidentiary errors without a showing of prejudice. Hearing judge properly permitted State Bar to call respondent as first witness, even though respondent had not yet decided whether to testify on his own behalf. State Bar also properly called witnesses without prior disclosure of their statements, where witnesses had made no written or recorded statements, and respondent could not show prejudice because he knew witnesses' identities, and had a summary of their testimony, in advance of trial. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[5]**

Where hearing judge properly granted respondent limited relief from default, to extent of requiring hearing on State Bar's petition for disbarment after default, and respondent sought review of hearing judge's ultimate decision, Review Department declined to dismiss respondent's petition for review, exercising its power to permit respondent to participate in proceeding notwithstanding default. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[1]**

A member in default has various opportunities to seek relief from default. (Rules Proc. of State Bar, rules 5.83(A), (C), (D), and 5.85(E).) Because the effects of a default may deny a disposition of the case on the merits irrespective of the charges or potential mitigation, the review department closely scrutinizes orders denying relief from default and any doubts must be resolved in favor of the member. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[3]**

Where State Bar presented no evidence or witnesses to rebut respondent's testimony that her inaccurate report of her MCLE compliance was unintentional, and hearing judge declined to find that respondent acted intentionally, Review Department rejected argument that respondent's conduct intentionally misrepresented her MCLE compliance. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330. **[2]**

Where State Bar did not argue at trial that respondent's inaccurate reporting of her MCLE compliance harmed administration of justice because State Bar expended resources to conduct investigation, it waived argument regarding this potential aggravating factor, and Review Department declined to consider it. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330. **[3 a,b]**

Where State Bar conceded at trial that respondent's conviction did not involve moral turpitude, but argued on review that conviction did involve moral turpitude, State Bar's unexplained change of position was troubling, because it denied respondent opportunity to develop trial record on the issue. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283. **[2 a,b]**

Under rule 9.12 of California Rules of Court, and rule 5.152(C) of Rules of Procedure of State Bar, Review Department independently reviews record, but considering only specific factual findings raised by parties; factual errors not raised on review are waived by parties. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[1]**

Review Department gives great deference to hearing judge's credibility findings. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[2 a,b]**

Review Department declined to find uncharged misconduct where State Bar had ample opportunity but did not move to amend the notices of disciplinary charges to include new charges; therefore, respondent did not have sufficient notice or opportunity to defend against them. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250. **[7]**

Where State Bar had notice of respondent's additional alleged acts of misconduct and failed to charge them in initial pleading and to amend charges to conform to proof at trial, respondent was denied fair opportunity to

defend against additional charges, and Review Department declined State Bar's late request on review to consider them in aggravation. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221. **[12]**

Review department would not consider exhibits not admitted into evidence by Hearing Judge, or portions of briefs relying on or referencing those exhibits. *In the Matter of Allen* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198 **[2]**

In reviewing a hearing judge's decision not to terminate an attorney from the Alternative Discipline Program, the review department's examination of the issue is limited to deciding whether the hearing judge committed legal error or abused his discretion. *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74 **[1]**

To determine if an abuse of discretion occurred, the review department is required to conclude that the judge contravened the uncontradicted evidence. *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74 **[2]**

Where a hearing judge failed to terminate respondent from participating in the Alternative Discipline Program despite uncontroverted and overwhelming evidence demonstrating the respondent's repeated failure to comply with court orders and to cooperate in seven pending investigations involving serious misconduct, the hearing judge abused his discretion. *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74 **[3]**

The State Bar's posttrial effort to amend the hearing judge's decision could not be characterized as anything other than a posttrial motion covered by Rules of Procedure of the State Bar, rule 221, since no language in rule 221 limits its applicability to rules 222 through 224 and no language indicates that rules 222 through 224 are intended to be an exclusive roster of posttrial motions. Thus, when the State Bar filed a motion to amend the decision in the hearing department, it had the effect of vacating the request for review filed on the same date in the review department, rendering the request for review void *ab initio*. Moreover, the State Bar's second request for review was vacated because it was filed prior to the hearing judge's final ruling on the motion to amend, which final ruling was made when the hearing judge realized she had prematurely issued a ruling before respondent filed a timely opposition. *In the Matter of Ozowski* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67. **[1 a–c]**

Although the State Bar apparently believed that it had perfected its right to appeal due to having filed two requests for review, no timely request for review was filed after service of a final order disposing of a posttrial motion, and therefore the review department was without jurisdiction to hear the appeal. Due to the *sui generis* nature of disciplinary proceedings, as well as the differences between statutes and rules regarding notices of appeal applicable in civil matters and those applicable in disciplinary matters, the review department could not apply civil rules and statutes so as to consider the requests for review as prematurely filed or to stay proceedings at the trial level after a request for review had been filed. Although the State Bar asked for relief on the grounds that it never received a copy of the hearing judge's final order and that it was misled when the review department clerk's office did not reject pleadings filed after the requests for review, the evidence established that service of the hearing judge's final order was properly effectuated, and the review department clerk's failure to issue a notice of rejection of pleadings was not a ground for relief under any rule but merely a courtesy function. More importantly, because the review department was divested of jurisdiction, it was powerless to relieve against mistake, inadvertence, accident, or misfortune. *In the Matter of Ozowski* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67. **[2 a–g]**

The scope of interlocutory review is limited to deciding whether the hearing judge committed legal error or abused his or her discretion. Under this standard, review is not undertaken with the intention of substituting the view of the review department for that of the hearing judge, but rather with the intention of employing the equivalent of the substantial evidence test by accepting the trial court's resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[1]**

A judge has broad discretion to impose discovery sanctions and is subject to reversal only for arbitrary, capricious, or whimsical action. The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[2]**

While the power to impose discovery sanctions is broad, there are two requirements that must be met before the imposition of a sanction: 1) there must be a failure to comply with court–ordered discovery; and 2) the failure must be willful. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[3]**

Discovery sanctions should be appropriate to the dereliction and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. A court will generally impose lesser sanctions regarding a discovery request unless the lesser sanctions will not bring about the compliance of the offending party. A court's exercise of discretion should not reward the disobedient party, let alone at the expense of the fundamental reasons supporting the discovery process. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[5 a–c]**

The review department declined to consider applicant's argument that the Supreme Court's order in his previous disciplinary matter, filed in 1998, was void on its face because of numerous constitutional infirmities. The review department simply does not have the authority to set aside the Supreme Court's order. Once the record in applicant's previous disciplinary cases was transmitted to the Supreme Court, the review department no longer retained jurisdiction over the matter. Accordingly, the review department declined to consider applicant's collateral attack on his prior discipline.*In the Matter of Applicant B* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 731.**[1]**

After a review department opinion remanding a case to the hearing department for a new trial had become final, respondent could not, on a subsequent review following the new trial, continue to attack the findings and conclusions set forth in that opinion.*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.**[1 a-c]**

After the hearing judge gave respondent the express opportunity to present his evidence, respondent's unpersuasive reasons for failing to do so could not be the basis of any claim of error on review.*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.**[2]**

When a party supports a statement in its brief with a reference to a finding or conclusion in the hearing judge's decision, party must also provide references to where the evidence supporting the hearing judge's finding or conclusion may be found in the record in order to comply with rules of procedure and rule of practice mandating that statements in briefs be supported with proper references to the record. (Rules Proc. of State Bar, rules 302(a), 303(a); State Bar Ct. Rules of Prac., rule 1320.)*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[1]**

Because parties failed to address relevant immigration court and Board of Immigration Appeals rules and procedures that are set forth in the Code of Federal Regulation and have the force and effect of law, hearing judge and review department were required to take and did take judicial notice of those rules and procedures sua sponte. (Rules Proc. of State Bar, rule 214; Evid. Code, §§ 451, subd. (b), 459, subd. (a).)*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[8]**

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

An offer of proof is a summary of proffered evidence excluded by a trial judge, which is presented (1) to the trial judge to insure that he knows what evidence he has excluded and to provide him with an opportunity to reconsider his denial and permit the introduction of the evidence before the end of trial and (2) to an appellate court so that it may effectively review the trial judge's exclusion of the evidence. Thus, where respondent subpoenaed three immigration court judges to testify on his behalf in State Bar Court disciplinary proceeding, but U.S. Department of Justice greatly restricted the scope of the testimony one immigration court judge could give and refused to permit the other two judges to testify at all, the declaration regarding the immigration judges' testimonies

that was executed by respondent's counsel and filed in hearing department was not an offer of proof because hearing judge did not restrict or excluded immigration court judges' testimonies, Department of Justice did, and State Bar Court lacked jurisdiction to review Department's actions. Accordingly, review department struck all statements in respondent's brief based on the declaration of respondent's attorney.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[29 a-c]**

In view of the review department's duty to independently review the record and make findings of fact and conclusions of law, any alleged denial of due process by the hearing judge's failure to clearly identify respondent's misconduct in the hearing judge's decision was remedied by the review department's issuance of an opinion that superseded the hearing judge's decision. Therefore, respondent's due process contention was rendered moot and was not addressed on the merits.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[2]**

Where neither the State Bar nor respondent addressed certain culpability issues on review, and further determinations regarding these culpability issues would not affect in any way the discipline recommendation, the review department determined that this was one of the rare instances in which it need not independently determine these culpability issues.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[3 a-c]**

Even though the parties entered into a stipulation as to facts and conclusions of law (Rules Proc. of State Bar, rule 132) in which they agreed to be bound by stipulated facts regardless of the degree of discipline recommended or imposed and in which respondent pleaded nolo contendere to the disciplinary charges in the stipulation (Bus. & Prof. Code, § 6085.5, subd. (c)) and acknowledged that her "the plea of nolo contendere shall be considered the same as an admission of culpability" for disciplinary purposes, the State Bar Court still had an affirmative duty to independently determine whether the parties' stipulated conclusions of law were supported by the record before accepting them.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[1a-c]**

Regardless of whether respondent had the right on review to challenge the conclusions of culpability to which she stipulated to in the hearing department, the review department still had an affirmative duty to determine if the culpability findings were supported by the record.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[2]**

In reviewing a motion to dismiss a disciplinary charge based on a contention that the notice of disciplinary charges is defective due to its failure to state a disciplinable offense, the review department treats the factual allegations of the notice of disciplinary charges as true and disregards all factual matters outside the ambit of the notice of disciplinary charges except for judicially noticeable facts, since the purpose of the motion is to test the sufficiency of the notice of disciplinary charges and not to contest the charges. Where the notice of disciplinary charges alleged (1) that respondent, as general partner of a California limited partnership having a fiduciary duty to the limited partners, made preliminary distributions of partnership profits but failed to disburse any funds to one limited partner due to that limited partner's refusal to sign a release of liability and (2) that despite the limited partner's repeated request for the funds, respondent never released the funds and subsequently informed the limited partner that he no longer had the funds, the notice of disciplinary charges was sufficient to state a disciplinary offense, i.e., that respondent committed an act involving moral turpitude by breaching his fiduciary duty to the limited partner and misappropriating funds to which the limited partner was entitled.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[3a-c]**

In reviewing a pretrial motion to dismiss the notice of disciplinary charges on the ground that it was barred by the applicable period of limitations, we treat the factual allegations of the notice of disciplinary charges as true. Where the notice of disciplinary charges alleged that respondent, a general partner of a California limited partnership, informed a limited partner within five years before the notice of disciplinary charges was filed that the limited partner's share of funds from a partnership distribution was gone, the charge that respondent committed an act involving moral turpitude by breaching a fiduciary duty and misappropriating funds was timely filed under Rules of Procedure of the State Bar, rule 51.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[5a,b]**

Where respondent asserted for the first time at oral argument that Business and Professions Code section 6049.1 was being unconstitutionally applied because a Michigan disciplinary action required only a preponderance of the evidence for a finding of culpability and that California reliance on that lower standard deprived him of due

process and equal protection of the law, respondent's failure to have raised the issue before the hearing department or in his briefs on review constituted a waiver of the issue. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[2]**

The hearing judge did not abuse his discretion or make an error of law in denying respondent's motion to modify his probation on the ground that respondent was dilatory in bringing the motion where respondent was aware or should have been aware of both the factual and legal need to modify the probation long before the motion was filed. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[1]**

In reviewing a hearing judge's decision on a standard 1.4(c)(ii) petition for relief from actual suspension, the standards of review are abuse of discretion and error of law. (Rules Proc. of State Bar, rules 300(k), 639.) Under abuse of discretion standard, review department does not review hearing judge's decision with the intention of substituting its view for that of hearing judge, but rather with the intention of employing the equivalent of the substantial evidence test by accepting hearing judge's resolution of credibility and conflicting evidence and hearing judge's choice of possible reasonable inferences. Review department reviews the record to determine if hearing judge's findings are supported by substantial evidence and whether any errors of law were committed. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[2]**

Even though the hearing judge properly admitted and judicially noticed the record in a prior civil proceeding in which respondent was a party, the hearing judge erred in making factual findings regarding the nature and extent of respondent's violations of the moral turpitude statute based upon the evidence in the civil record independent of the application of collateral estoppel because he did not first give respondent a fair opportunity to attempt to contradict, temper, or explain the evidence in it with other evidence. That error required the reversal of the hearing judge's findings as to the nature and extent of respondent's statutory violations and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the nature and extent of respondent's violations. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[7]**

In making his factual findings with respect to charged violations of the former rule of professional conduct governing business transactions with clients, the hearing judge erred in reweighing and relying upon the evidence in a prior civil proceeding in which respondent was a party without first giving respondent a fair opportunity to attempt to contradict, temper, or explain that evidence. That error required the reversal of the hearing judge's findings that respondent committed multiple violations of the former rule governing business transactions with clients and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the charged violations of that former rule. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[9 a, b]**

Rule 219 of the Rules of Procedure of the State Bar provides that, after the party with the burden of proof has rested, the opposing party may move for a determination that the party with the burden of proof has failed to meet that burden. In deciding the motion, the hearing judge is required to consider all the evidence introduced, weigh that evidence and make determinations of credibility. The review department held that the hearing judge's ruling on a motion made pursuant to rule 219 is reviewable on plenary review under rule 301 of the Rules of Procedure of the State Bar and that such review is de novo. The review department must determine, based upon its independent review of the evidence before the hearing judge at the time the motion was made, whether clear and convincing evidence was presented of each element of the charged offenses. In deciding these issues, the review department must give great weight to the hearing judge's credibility determinations. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. **[1 a-c]**

Issues raised in State Bar's petition for interlocutory review as to (1) whether Rules of Procedure required petitioner for reinstatement to provide proof, at time he presented his petition for filing, that he had passed a professional responsibility examination within last year (i.e., one before filing of petition) and (2) whether hearing judge erred in finding that petitioner had not previously resigned from State Bar with disciplinary charges pending were proper for interlocutory review because they could determine outcome of proceeding and determine whether petitioner's rehabilitation was an issue in proceeding. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[1 a-e]**

Where hearing judge did not issue written ruling on his denial of State Bar's motion to dismiss former attorney's petition for reinstatement, review department determined hearing judge's reasoning from written transcript of hearing on motion, which was included in appendix to State Bar's petition for interlocutory review. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.91.**[2]**

Where statements could have been offered not to prove the truth of the matter stated, but for the purpose of showing that they were made in respondent's presence to disprove respondent's claim of lack of knowledge, the statements were not hearsay. In the absence of an objection and a request, made in accordance with Evidence Code section 355, that the use of the statements be admitted into evidence for the limited purpose, any error in their admission was waived. In any case, the statements were admissible under the adoptive admissions exception to the hearsay rule. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.**[4]**

Even if issue had properly been before review department on summary review, respondent would not have been entitled to any mitigating credit for self reporting to State Bar his misdemeanor conviction for paying for referral of clients because respondent had a pre-existing statutory duty to report his criminal conviction. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.**[1]**

Where factual findings were used by the hearing judge to find culpability, it would be improper to again consider those same findings as factors in aggravation. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.**[7]**

Past Supreme Court practice in considering automatic or summary disbarment was not found by the review department to entail weighing and balancing issues such as the motive of the attorney in committing the crime, the extent to which harm did or did not occur, whether the offenses were limited or repeated or other issues pertaining to evidence bearing on either mitigating or aggravating circumstances. Therefore, to the extent that language in the review department opinions *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71, and *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729, would require the review department to undertake such an analysis, such language was disapproved. Although respondent denies that his offense was serious enough to warrant disbarment, all the facts are not before us nor are they undisputed. What is undisputed is that respondent stands finally convicted, inter alia, of mail fraud, a felony which unquestionably involves moral turpitude; and, as we observed collectively in *Segall* and *Salameh*, is the type of offense which has often resulted in disbarment. Our reading of the summary disbarment law and past Supreme Court practice, would not warrant any exception to a summary disbarment recommendation based on respondent's claims. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942.**[2]**

With respect the considered views of the federal judge who presided over the criminal proceeding, the review department was bound by Supreme Court precedent rejecting consideration of very similar remarks by a sentencing judge expressing an opinion on an issue within the unique province of the Supreme Court and of the State Bar Court acting as the Supreme Court's arm. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942.**[3]**

Without, at least, a factual stipulation establishing aggravation and mitigation, neither the review department nor the Supreme Court have a complete record upon which to evaluate the appropriate discipline for the misconduct that occurred. Where the record consisted of the parties' partial stipulation to facts which did not address any aggravating or mitigating circumstances and two character letters proffered by respondent, the review department determined that the sparse record precluded it from fulfilling its duty to independently review the record and remanded the case for a trial de novo at which an adequate record was made. *In the Matter of Rodriguez* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 884.**[2]**

An essential element to establishing an attorney's violation of his statutory duty to maintain the respect due the courts and judicial officers by making a statement that impugns the honesty or integrity of a court or judicial officer is the falsity of the disparaging statement. Even though the State Bar has the burden of proving the essential element of falsity, it did not proffer any evidence to establish the falsity of the respondent's disparaging statements regarding various judicial officers because the hearing judge made a erroneous pre-trial ruling relieving the State Bar of its burden to prove falsity. Therefore, the review department remanded the matter to the hearing department to allow the State Bar an opportunity to prove that respondent's statements were false. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[3]**

The rule requiring the review department to give great weight to the hearing judge's findings of fact that resolve issues pertaining to the credibility of the witnesses, which rule is premised on the hearing judge's ability to see the witnesses' demeanor and conduct during trial, is not applicable when a witness's testimony is present only through a written transcript of the witness's deposition. Thus, in such a case, the review department may independently evaluate the credibility of the witness's deposition testimony without giving great weight to the hearing judge's findings. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[3]**

Because none of the hearing judge's material findings of fact were challenged on review, State Bar's contention that the hearing judge's disciplinary recommendation was incomplete in that it did not contain a probation condition requiring respondent to file quarterly probation reports fell explicitly within the purview of the rule of procedure permitting summary review. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[1]**

Even though the review department retains its authority to independently review the full record in summary review proceedings, it gives deference to the litigants' identification of the issues and ordinarily limits the scope of review to those issues. The review department followed this practice in the present proceeding except that it modified the costs provision because of recent statutory changes. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[2]**

On review of a discovery order on appeal of a hearing judge's decision that fully disposes of an entire proceeding, not only must an abuse of discretion be shown, but also the erroneous ruling must be shown to have been so prejudicial that it constituted a miscarriage of justice. No abuse of discretion was found where respondent presented no competent evidence that the place of the depositions he sought to compel was within the 150-mile range; and no showing of a miscarriage of justice was made where the apparent reason for seeking the depositions was to show that the complaining clients had repudiated their State Bar complaint, a fact not relevant to the disciplinary charges. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[3]**

A hearing judge's determination to dismiss specified charges in the furtherance of justice with prejudice over the State Bar's objection that the dismissals should be without prejudice is reviewed under an abuse of discretion standard. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[1]**

If an appellee wishes to address issues not raised by the appellant, the party should request its own review. Even though the review department is obligated to conduct de novo review, it seeks to discourage the obviously unfair practice of requesting review in a responsive brief of issues not raised by the appellant. In such a case the appellee has not shared in the cost of record preparation, and it reduces appellant's time to respond to such issues. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[4]**

Even though the review department's duty to independently determine the appropriate level of discipline precludes it from giving excess weight to the State Bar's discipline recommendation, the review department gave it some consideration. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[5]**

Review department is very reluctant to consider State Bar's request for a holding that respondent's failure to comply with the terms of a civil settlement agreement was an aggravating circumstance because the State Bar did not request such a holding from the hearing judge, but requested it for the first time on review. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[3]**

Whenever an appellee wishes to address issues different from those raised by the appellant, that party should file its own request for review. (Rule 301, Rules of Proc. of State Bar.) *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[1]**

Respondent waived any due process violation resulting from the State Bar's failure to notify him in the notice of hearing that the cancellation of his license to practice law would be an issue at the trial where he did not allege in his appellant's brief, with supporting references to the record, that he presented his lack of notice objection to, and obtained a ruling on it from, the hearing judge. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[8]**

Where the State Bar raised the question of the amount of respondent's actual suspension in a summary review proceeding, but did so only as a function of respondent's time to make restitution, where prior to oral argument, the review department notified the State Bar (the only party entitled to participate) that it considered the issue of

appropriate discipline to be before it and the State Bar agreed, the review department held that the amount of discipline was the larger issue for review. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. **[1]**

Summary review was designed to streamline and reduce the costs of review. Among the matters eligible for summary review are those raising issues concerning the appropriate degree of discipline and those without dispute over the hearing judge's material findings of fact. As these were the issues here, the case was appropriate for summary review. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. **[2]**

Neither the law nor the facts supported respondent's contention that by denying two continuance requests during the six days of trial, the hearing judge deprived him of a reasonable opportunity to be represented by counsel. An attorney in a disciplinary hearing has no constitutional right to the assistance of counsel. Further, continuances of State Bar Court hearings are disfavored. (State Bar Court Rules of Practice, rule 1131.) To prevail on a procedural argument in a disciplinary matter, an attorney must show both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged procedural error. Respondent proved neither where respondent's counsel set a murder trial for the day before the scheduled start of the disciplinary hearings and failed to provide timely information about this conflict to the State Bar Court, where respondent failed to show that his counsel could not have anticipated or avoided the conflict, and where respondent failed to show that the only proper means of handling the conflict was to grant a continuance. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[1]**

Respondent was not entitled to present evidence for the first time on review that a State Bar official had engaged in improper conduct in a separate civil proceeding against respondent, where respondent had the opportunity to make this allegation and present evidence in support of it at the hearing level. Also, respondent failed to show how such evidence had any bearing on either his culpability of the charges against him or the appropriate discipline for his misconduct. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[4]**

On de novo review, entire record is before the review department, and it may rely on evidence introduced at any point in the trail, including the disciplinary phase. *In the Matter of Respondent V*(Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[5]**

The State Bar Court must address all charges unless they are dismissed on motion of the prosecutor. *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390. **[1]**

Delay in prosecution bars a disciplinary proceeding only if the delay caused specific actual prejudice resulting in the denial of a fair trial. *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390. **[2]**

Review department is very reluctant to consider a legal theory raised by an appellant for the first time on review. *In the Matter of Wolfgram* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355. **[4]**

Where the notice to show cause did not charge respondent with committing acts of moral turpitude on account of a violation of fiduciary duty, but did charge respondent with making a misrepresentation to a court, and the hearing judge and the parties understood that the charged moral turpitude violation was based on the misrepresentation, the review department declined the State Bar's request, made for the first time on review, that it find moral turpitude based on respondent's breach of fiduciary duty. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[2]**

Rehabilitation from alcoholism or drug addiction is a mitigating circumstance only if the substance abuse caused the attorney's misconduct. Where respondent failed to present clear and convincing evidence of a causal nexus between her substance abuse and her misconduct, the review department denied her request for a remand to the hearing department to provide evidence of her continued sobriety, and did not consider her steps toward recovery a mitigating circumstance. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[1]**

Augmentation of the record on review is appropriate only if the record is incorrect or incomplete. Where respondent failed to take advantage of the ample opportunity she had at trial to seek to show that her misconduct resulted from her alcoholism, the review department denied her request to augment the record with declarations about her recovery from alcoholism as the record was neither incorrect nor incomplete. However, where respondent challenged the hearing judge's finding that respondent made a deliberate misrepresentation at a pretrial conference, the review department granted the State Bar's request to augment the record with the transcript of the conference

as the record was incomplete without the transcript. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(e)(3); former Provisional Rules of Practice of State Bar, rule 1304.) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[2]**

The review department denied respondent's request for judicial notice of general facts about alcoholism and declined to consider several character references stressing respondent's recovery from alcoholism on the aggregate grounds that respondent had not shown at the disciplinary hearing that her alcoholism caused her misconduct, that she failed to show why she should be excused from not having presented the proffered evidence at the disciplinary hearing, and that she failed to show that the specific matters which she wanted to be judicially noticed were proper subjects of judicial notice. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (h).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[3]**

Where respondent stated at oral argument that she did not object to judicial notice of her conviction for the unlicensed practice of law and admitted that she had improperly practiced law, the review department augmented the record on review to note the record of her conviction and considered the unlicensed practice as an aggravating circumstance. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (d)(1).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[4]**

Review department took judicial notice of stipulation and Court of Appeal opinion in civil cases involving respondent that post-dated hearing department proceedings and concerned matters discussed at hearing. (Rule 1304, Prov. Rules of Practice.) *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[1]**

Where case was briefed and argued prior to effective date of revised Rules of Procedure and Rules of Practice, review department applied former Transitional Rules of Procedure and Provisional Rules of Practice. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[2]**

Where respondent sought to place documents, some of which were not before hearing judge, in record on review by including them in appendix to brief, without filing motion with reasons why documents could not have been produced at hearing, and without indicating how documents would correct or complete record, review department declined to take judicial notice of documents. (Rule 1304, Prov. Rules of Practice.) *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[3]**

Where respondent moved to augment record on review to include documentary evidence regarding respondent's pro bono activities, but respondent did not establish good cause why such evidence could not have been presented to hearing department, review department declined to consider such evidence. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[15]**

Review Department had jurisdiction under rule 113 of Transitional Rules of Procedure to review portion of order by hearing judge which, in dismissing disciplinary proceeding pursuant to agreement in lieu of discipline, placed conditions on reopening of underlying disciplinary matter. Scope of such review was to determine whether hearing judge abused discretion in including condition in agreement in lieu of discipline which had not been agreed to by parties. *In the Matter of Respondent R* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227. **[1]**

Where hearing judge concluded that certain alleged rule violations were duplicative and inconsequential in considering level of discipline, and State Bar did not take issue with such conclusion, and review department determined that respondent should be disbarred based on other findings, review department did not address allegations found to be duplicative. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[10]**

The Supreme Court order in a probation revocation matter can become effective earlier than the Supreme Court order in an original discipline matter. (Cal. Rules of Court, rule 952(a), (b).) Accordingly, where a probation revocation matter and an original discipline matter were consolidated, the review department made a separate disciplinary recommendation for each matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[1]**

Where respondent in probation revocation matter was already precluded from practicing law for other reasons, review department ordered respondent's inactive enrollment effective immediately, without first issuing order to show cause. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[26]**

Even where State Bar did not contest on review hearing judge's finding that respondent had not violated Rules of Professional Conduct, review department's obligation was to review record independently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[2]**

Where a respondent in a probation revocation matter is already on inactive enrollment at the time the review department concludes that the respondent has violated disciplinary probation, it is appropriate for the review department to order the respondent's immediate inactive enrollment pursuant to Business and Professions Code section 6007(d). However, where the respondent in a probation revocation matter is entitled to practice law at the time the review department's opinion finding a probation violation is filed, the review department's practice is to issue an order to show cause with a short response time regarding why the respondent should not be enrolled inactive. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 89. **[1]**

Because time to seek Supreme Court review is shorter for probation revocation matters than for original disciplinary matters, it is necessary to make separate discipline recommendations when such cases are consolidated. (Cal. Rules of Court, rule 952(a), (b).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[1]**

Where respondent's default had been entered in hearing department, and motion for relief from default was denied, respondent's sole remedy on review was to seek review of denial of relief from default. (Prov. Rules of Practice, rule 1400(e)(vii).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[2]**

State Bar's motion for emergency relief from hearing judge's order regarding conduct of disciplinary investigation was not properly brought before review department under either rule 350 of Transitional Rules of Procedure or rule 1400 of Provisional Rules of Practice. However, motion by State Bar to stay or vacate order issued by hearing judge based on argument that hearing judge acted without jurisdiction was properly brought under rule 113 of Transitional Rules of Procedure. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[1]**

In order to promote membership understanding of lawyers' professional obligations and to enhance public awareness of review department dispositions, review department initially followed policy of publishing its opinions in all public matters in which oral argument was held. After reaching point at which automatic publication of all such matters no longer appeared necessary, review department began to publish its opinions in public matters generally in accordance with standards governing other intermediate appellate courts in California. (Cal. Rules of Court, rule 976(b).) *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[1]**

Petitions to augment the record on review are generally granted only if it is demonstrated that the record below is incomplete or incorrect. (Prov. Rules of Practice, rule 1304.) The general rule is not to entertain evidence not heard by the hearing judge unless it is the only means of presenting limited evidence of subsequent rehabilitation. It is also unusual for petitions to augment to be granted if contested. Where respondent requested to augment the record with documents relating to one of his complaining clients, and with two newspaper articles, respondent did not show good cause for the review department to consider such evidence over the State Bar's objection. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[9]**

Evidence of uncharged misconduct can be considered in aggravation or for purposes such as impeaching witness credibility. However, where hearing judge's findings on uncharged misconduct were too tentative to warrant consideration for enhanced discipline, review department did not adopt them as findings or conclusions, although it declined to strike them from the decision. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[1]**

Even though primary focus of respondent's arguments on review was degree of discipline, review department's review of the record was independent and therefore, review department was required to determine whether hearing judge's findings of fact and conclusions of law were supported by record. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[1]**

Where review department imposed public reproval, it was statutorily required to order that respondent pay costs of disciplinary proceeding. Respondent's request to be relieved of such order to pay costs, on ground that State Bar abused its discretion in filing one of the charges, was rejected as premature in light of statute and rules permitting respondent to seek relief from order assessing costs after its effective date. (Trans. Rules Proc. of State Bar, rules 460-464.) *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[10]**

List of representative cases respondent had handled, including pro bono matters, which was attached to respondent's brief on review, and expanded from similar list introduced at trial, was of minimal value in terms of mitigation, especially without explanation. Review department therefore declined to augment record to include list and did not consider it. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[11]**

In reinstatement proceeding, where petitioner moved to augment record on review with medical evidence regarding recovery from alcoholism which hearing judge had declined to consider on motion for reconsideration, and review department concluded that petitioner made favorable showing on all other aspects of rehabilitation, review department considered petitioner's evidence in accordance with case law holding that extrinsic evidence will not be ignored where it is the only means of proving rehabilitation from serious physical or emotional problems. Where such evidence added support to conclusion that petitioner had not demonstrated that recovery program was adequate, and State Bar expressed concern that evidence had been offered without opportunity for cross-examination, review department remanded for further hearing and expert testimony regarding petitioner's recovery. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[5]**

Where respondent's brief on review referred to facts and newspaper articles regarding victim of respondent's misconduct which were not part of the record, review department declined to strike brief or admonish respondent or his counsel, but emphasized that its review is limited to the evidence properly made a part of the record. (Prov. Rules of Practice, rules 1303-1304.) *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[1]**

Where bankruptcy court order which was not already part of record showed that restitution payments had been made to victim of respondent's misconduct, review department granted request to take judicial notice of such order. Undisputed evidence bearing on issue of restitution is important, if for no other purpose than to create an accurate record on the status of restitution. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[2]**

Where parties to a disciplinary proceeding reached a stipulation but agreed to preserve right to seek review as to one contested culpability issue, review department construed order approving stipulation and hearing judge's partial decision as together constituting a decision for the purpose of review. However, review department was obligated to review entire record independently and had authority to make findings, conclusions, and a disciplinary recommendation at variance with those of hearing department. (Trans. Rules Proc. of State Bar, rule 453(a).) Agreement between parties could not restrict review department's obligation of independent review. Accordingly, review department declined to limit its review to contested culpability decision, and was not bound by stipulated discipline recommendation. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[1]**

Where parties jointly requested augmentation of record with exhibits which they had provided to hearing judge for consideration in rendering decision and had intended to make part of record, and which hearing judge had relied on in reaching decision, and which were vital to review, record would have been incomplete without exhibits, and request to augment was granted. (Prov. Rules of Practice, rule 1304.) *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[2]**

Where parties agreed to highly unusual stipulation expressly preserving right to seek review, but did not contemplate that review department would recommend discipline more severe than that set forth in order approving stipulation, parties' expectation that review department would be bound by stipulated discipline was unjustified. However, it was appropriate to relieve parties from stipulation due to their mutual mistake. Accordingly, review department vacated order approving stipulation and remanded proceeding for new stipulation or trial. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[11]**

Review department's general practice is not to publish opinions in matters where oral argument has not been heard. However, where the only party which had appeared in a proceeding requested publication of an order issued without oral argument, and the order dealt with a situation which had not been addressed in review department's

prior published opinions, the request for publication was granted. The effective date of the order was not affected by its modification due to the request for publication. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[1]**

Even though a disciplinary proceeding is a public matter, the respondent's name is not publicized in the review department's opinion when the disposition at the hearing level was dismissal and the review department cannot determine what the ultimate disposition of the proceeding will be. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[1]**

Where, due to the dismissal of all charges, a disciplinary hearing had included a culpability phase but not a sanction phase, and where the review department found respondent culpable of misconduct, it would be inappropriate for the review department to recommend or impose any sanction even if the State Bar wished to waive its opportunity to introduce evidence regarding aggravation, because respondent wanted and was entitled to the opportunity to offer evidence in mitigation. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[14]**

Where respondent had been given notice that if his disciplinary probation were revoked he could be placed on inactive enrollment, and where the Office of Trials expressed grave concerns as to the threat posed by respondent to clients and the public, the Office of Trials could have sought to have respondent placed on inactive enrollment at the time the hearing judge revoked probation. Where it did not do so, respondent was allowed to continue to practice pending review of the hearing judge's order. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[18]**

Because the review department must review the record independently and is not bound by the hearing judge's findings or recommendation (Trans. Rules Proc. of State Bar, rule 453(a)), the issue of appropriate discipline in a matter involving violation of rule 955, California Rules of Court and other misconduct did not turn on the one narrow issue argued on review by the parties regarding the appropriateness of a retroactive suspension. The review department therefore considered whether any form of suspension was adequate discipline given Supreme Court precedent generally ordering disbarment for rule 955 violations. Although the State Bar's declination to recommend disbarment was accorded considerable weight, it could not be reconciled with the precedent making disbarment the appropriate discipline. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[1]**

Where review department recommended respondent's disbarment, issue of whether respondent should be given credit toward required waiting period to apply for reinstatement (Trans. Rules Proc. of State Bar, rule 662), on account of time spent on continuous suspension prior to disbarment, was properly reserved for consideration by a hearing judge on an appropriate petition following the disbarment. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[7]**

Where, as a result of a hearing judge's dismissal of a disciplinary proceeding, the hearing judge did not make findings regarding aggravation/mitigation and concluded there was no need to rule on the admissibility of certain exhibits, thus foreclosing respondent's opportunity to substitute other evidence if the exhibits were not admitted, the review department concluded, when the dismissal was overturned, that it was appropriate to remand the matter to the hearing judge for further proceedings on the degree of discipline. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[13]**

Respondents in public proceedings should anticipate that their names will be published in any opinion except those resulting in dismissal or private reproval or, in the case of remanded proceedings, those which may potentially result in dismissal or private reproval. Accordingly, where respondent was on notice that petition for review of order denying relief from costs would probably be referred to review department in bank, and where respondent had already been required to notify clients, courts and opposing counsel of his suspension, review department declined to omit respondent's name from published opinion in relief from costs matter. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[1]**

Where a party did not seek review of that portion of an order on a motion for relief from costs with which it disagreed, but stated its disagreement in its brief on review without seeking affirmative relief, that party's challenge to the order was not properly before the review department in a proceeding resulting from the opposing party's petition for review of a different portion of the same order. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[2]**

Although Business and Professions Code section 6026.5(f) permits appeals from decisions of the Board of Legal Specialization to the Board of Governors of the State Bar to be treated as confidential, the Board of Governors, in delegating its authority to hear such appeals to the State Bar Court, did not expressly indicate whether it intended to preserve the confidentiality of such appeals. (Trans. Rules Proc. of State Bar, rule 225(a)(1).) Where a legal specialization proceeding was treated as public by the hearing judge, the parties were deemed to have waived any argument that the review department should treat the proceeding as confidential by their failure to raise a timely objection to such treatment. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[1]**

Where the record of a legal specialization proceeding contained no documents explaining the basis for the denial of specialist certification and where responses by the deputy trial counsel to interrogatories clarified the basis for the denial, augmentation of the record with the interrogatory responses was appropriate. (Prov. Rules of Practice, rule 1304.) *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[2]**

Due to the requirement that the review department undertake an independent review of the record, the review department cannot be bound by a stipulation by the parties attempting to limit the scope of review. Also, the review department has the authority to adopt findings, conclusions, and a decision or recommendation at variance with those of the hearing judge. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[3]**

Because section 1013 of the Code of Civil Procedure applies by rule in State Bar Court proceedings, service of a hearing department decision by mail to an address within California extends by five days the 30-day period for filing a request for review. (Rule 450, Trans. Rules Proc. of State Bar; rule 1111(b), Provisional Rules of Practice.) *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[3]**

Restitution payments made under pressure of disciplinary proceedings are entitled to little or no weight in mitigation of discipline. However, whether restitution has been completed is important to deciding whether it should be required as a condition of probation, or, if disbarment is recommended, to whether respondent must make restitution as an issue bearing on rehabilitation for reinstatement. Thus, evidence of restitution payments made by respondent's father was relevant and properly admissible, even though not constituting mitigation, and review department granted motion to admit such evidence on review where hearing judge had declined to accept it. However, other evidence offered by respondent on review regarding Client Security Fund claim filed by respondent's client was not admitted by review department where it was not relevant to issues in proceeding. (See rule 570, Trans. Rules Proc. of State Bar.) *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[12]**

In determining whether evidence of additional uncharged ethical misconduct should be admitted as aggravating evidence in the discipline phase of the hearing, the hearing judge must balance the desire for additional relevant evidence against the due process requirement of fair notice of all discipline charges. Where there was sufficient evidence in the record to warrant a recommendation of disbarment, it was unnecessary for the review department to resolve a claim that the hearing judge erred in failing to admit aggravating evidence of uncharged misconduct. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[18]**

The required five-year waiting period before a disbarred attorney can apply for reinstatement may be shortened to three years for good cause. By rule, the five-year and three-year periods run from the date of any interim suspension, and Supreme Court precedent has given the same effect to inactive enrollment. (Trans. Rules Proc. of State Bar, rule 662.) The issue whether the waiting period may run from the start of a suspension other than an interim suspension has not been decided, and did not need to be addressed by the review department in recommending disbarment, but could be raised by respondent before a hearing judge if respondent wished to seek reinstatement at the earliest possible time. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[22]**

Normally, no published opinion results from a petition to set aside an interim suspension order based on a criminal conviction. Where final discipline had not been entered and might not be warranted, the review department could not determine whether it was appropriate to publicize respondent's name in connection with opinion and order vacating interim suspension. Opinion therefore did not name respondent, although proceeding remained public. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[1]**

Because hearings and records regarding inactive enrollment under Business and Professions Code section 6007(b) are confidential, respondent was not identified in review department's opinion regarding issues raised by such inactive enrollment. However, where such issues arose during a disciplinary proceeding, the record in that proceeding remained public, subject to the hearing judge's discretion to seal specific portions of the record where proper grounds appeared. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[1]**

Where respondent violated Supreme Court order imposing disciplinary probation, and hearing judge properly found that respondent had violated statute requiring compliance with probation conditions, respondent was also culpable of violating statute requiring compliance with court orders. However, review department did not need to modify hearing judge's decision to include additional statute and rule violations where review department's recommendation did not depend on whether the misconduct also violated those additional duplicative violations. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[2]**

In probation revocation matter, where notice to show cause informed respondent who was subject to stayed suspension that he could be enrolled inactive upon finding of probation violation and recommendation of actual suspension therefor, it would have been appropriate for hearing judge to order such inactive enrollment with or without request from Office of Trial Counsel, and where hearing judge had not done so, review department made such order. Under statute providing that inactive enrollment for probation violation shall be credited against ensuing actual suspension, review department recommended that respondent's one-year actual suspension commence as of the date of his inactive enrollment. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[7]**

Where Office of Trials argued that recommended discipline was too low in light of existing findings, and also suggested supplemental findings, and on de novo review, review department agreed that discipline was insufficient in light of findings made by hearing judge, review department did not need to address issue of supplemental findings. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[1]**

Review department, in recommending respondent's disbarment for failure to comply with rule 955, California Rules of Court, was not required to address issue whether time respondent had already spent on inactive enrollment due to probation violation, or on suspension due to failure to pass professional responsibility examination, should be counted toward required waiting period to apply for reinstatement. (Trans. Rules Proc. of State Bar, rule 662.) Respondent could raise those issues before a hearing judge at the time he wished to file a reinstatement petition. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[5]**

The review department will not consider disputed, extrinsic evidence on review. Where respondent's counsel referred at oral argument to respondent's current activity, the review department permitted the parties an opportunity to file a stipulation regarding this subject, but when no stipulation was reached, the review department declined to consider the parties' separate declarations setting forth their individual views of the facts. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[2]**

It is not improper for the Office of Trials to pursue on review a challenge to the exclusion of evidence of uncharged misconduct in one proceeding while simultaneously prosecuting a second proceeding based on the same misconduct, so long as both courts are made aware of the pendency of the other proceeding. The second proceeding could be abated until resolution of the first case. Where this did not occur, it was proper for the hearing judge to adjudicate the second case promptly and then request that the review department take judicial notice of the decision in the second case, thus permitting the review department to consolidate the cases on review. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[5]**

Because there was no procedure for entering a default in a referral proceeding for alleged wilful violation of rule 955, the respondent was not precluded by lack of participation in the hearing department from filing an opposition brief on review. However, when respondent failed to file such a brief, the review department issued an order precluding respondent from appearing at oral argument. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[1]**

It was appropriate for both the hearing judge and the review department to take judicial notice of the status, at the time of their respective decisions, of a separate pending disciplinary matter involving the same respondent. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[5]**

The law of the case doctrine does not preclude the current review department from reviewing the former review department's decision de novo. If review is sought in a proceeding which had been previously decided by the former review department, the entire matter is before the review department for independent de novo review, and it may act on an issue regardless of whether the parties have raised it. (Rule 453(a), Trans. Rules Proc. of State Bar.) Accordingly, review department could reopen a charge dismissed by the former review department. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[1]**

Former review department's alleged lack of quorum was moot where all issues in proceeding were before current review department for independent de novo review. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[3]**

Where two unrelated matters were consolidated in the hearing department, and a party requested review in order to challenge the result in one of the matters, the entire matter was placed before the review department and reviewed by it even though in the other matter neither party challenged the findings and conclusions of the hearing judge. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[1]**

Where reinstatement petitioner's employer offered favorable character testimony at trial, and petitioner requested augmentation of the record to add the employer's declaration executed over 14 months later updating and reiterating such testimony, the review department considered the record incomplete without the declaration and granted petitioner's unopposed request to augment the record with the declaration. (Prov. Rules of Practice, rule 1304.) *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[2]**

Normally, discovery objections not raised in a timely fashion will not be considered, and this provision applies in discovery in moral character proceedings even though the Civil Discovery Act has not been made applicable to such proceedings in its entirety. However, where a claim of privilege from discovery had been belatedly presented to the hearing judge without objection and raised an important issue, the review department considered its applicability on review. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[5]**

Generally, when a lower court ruling favors disclosure of materials requested in discovery, in camera inspection cannot be requested for the first time on review. There is an exception for questions of first impression, but this exception did not apply where the authority relied on in requesting the inspection had been decided over 30 years earlier. Where the party requesting in camera inspection did so for the first time on a motion for reconsideration before the review department in bank, and gave no explanation of its failure to request such inspection earlier, the review department declined to conduct an in camera inspection. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[8]**

Declaration regarding facts relating to discovery motion was stricken as untimely, where it related to facts which should have been presented to hearing judge, not offered for the first time on review. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[12]**

Where a party sought review by the Presiding Judge of an order granting relief from costs under rule 462(c) of the Transitional Rules of Procedure, and the matter presented an important question of first impression, the Presiding Judge referred the matter to the review department in bank. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[4]**

Where examiner failed to introduce appropriate documentary evidence of respondent's prior discipline record, review department notified parties of intent to take judicial notice of specified documents from official State Bar Court records regarding such discipline, and took such notice after neither party objected. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[7]**

Where respondent sought no relief from hearing judge on account of respondent's inability to attend pre-trial conference, which respondent contended was excusable due to medical emergency, respondent could not be heard to complain for the first time on review. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[3]**

Review by review department is not the same as civil or criminal appeal. Even where neither party addressed issue of culpability on review, review department was not limited by issues raised by parties, and was required to analyze record independently, to determine whether clear and convincing evidence supported hearing judge's

findings and conclusions regarding culpability, and to determine appropriate degree of discipline to recommend. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[7]**

The Transitional Rules of Procedure of the State Bar, unlike equivalent California and federal rules, provide for review as of right following the denial of a motion to dismiss, as well as the grant of such a motion. However, this does not affect the type of review to be afforded on the merits. (Trans. Rules Proc. of State Bar, rule 554.1.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[3]**

Both at hearing and on review, the court considering a motion to dismiss a notice to show cause for failure to state a disciplinable offense should disregard all factual matters outside the ambit of the notice, except for judicially noticeable facts. Accordingly, the review department considered respondent's uncontroverted statement that the alleged client referred to in the notice to show cause was respondent's spouse, and also considered respondent's date of admission to the bar and lack of any prior disciplinary record. However, respondent's other factual assertions in support of his motion to dismiss were not suited for judicial notice and were not considered on review. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[4]**

Failure to file an opening brief by the party requesting review may result in dismissal of the request for review or in the requesting party not being permitted to participate at oral argument. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[1]**

Record of respondent's criminal conviction, which had been judicially noticed by hearing department, was admitted into evidence by review department in order to make it part of record in disciplinary proceeding for Supreme Court review, but was considered solely for purpose of establishing criminal complaint, charges, plea, and conviction. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[2]**

Hearing department findings that were based on evidence admitted in discipline phase of trial were considered by review department solely with respect to discipline and not culpability. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[3]**

Where respondent failed to brief a contention raised on review, addressing it for the first time at oral argument, the review department was reluctant to consider it. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[9]**

In order to establish a denial of a fair trial because of delay between the making of a complaint to the State Bar and the filing of a formal notice to show cause, an attorney must show specific instances of actual prejudice from the delay. Where information in support of respondent's claim of prejudice was available and known to respondent at the time of respondent's motion to dismiss before the hearing judge, but was not set forth in support of the motion, respondent could not improve on review the record he had the opportunity to make in the hearing department. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[2]**

The respondent's name does not appear in an opinion imposing a private reproval, although the proceeding remains public. (Trans. Rules Proc. of State Bar, rule 615.) *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[1]**

The review department's inquiry into a matter does not end when it determines that the arguments of the party seeking review are unpersuasive. In all cases brought before it, the review department must independently review the record. In so doing, the review department accords great weight to findings of fact made by the hearing department which resolve testimonial issues. However, the review department has the authority to make findings, conclusions and recommendations that differ from those made by the hearing department. Moreover, the issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department. (Rule 453, Trans. Rules Proc. of State Bar.) *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[3]**

The rule extending any prescribed period of notice five days for service by mail applies to the State Bar Court's service of its decisions as well as to service of papers between parties. Thus, the time to file a motion for reconsideration of a review department decision was extended due to service of the decision by mail. (Trans. Rules Proc. of State Bar, rules 243, 455.) *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[1]**

A respondent who receives a private reproval is entitled to have his or her name omitted from the published review department opinion, although the disciplinary proceeding itself is, and remains, public. (Trans. Rules Proc. of State Bar, rule 615.)*In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[1]**

On review, a respondent cannot challenge culpability of misconduct to which the respondent stipulated at the hearing level. *In the Matter of Robins (*Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[3]**

Requests to augment the record at the review department level will be granted only if the original record is incomplete or incorrect. (Rule 1304, Provisional Rules of Practice.) Out-of-court evidence offered at the appellate level is ordinarily hearsay, and impossible to evaluate because of the absence of cross-examination to test the credibility of the declarant. The rule is to rely only on evidence which was presented to the trier of fact. The only general exception is to permit documentary evidence of subsequent rehabilitation when it is the only means to meet the heavy burden of demonstrating recovery from substance abuse or mental disorder. Where proffered additional evidence was derived from the record in another proceeding involving respondent, and was not offered to correct any omission in the record, the review department declined to grant respondent's motion to augment the record. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[2]**

Where there was no evidence in the record that a reinstatement petitioner had taken and passed a professional responsibility examination, and neither the parties nor the hearing judge focused on the issue when evaluating petitioner's request for reinstatement, the matter was remanded to give the petitioner an opportunity to take and pass the examination if he had not already done so, and for findings on the issue. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[7]**

Where review department saw no justifiable reason to deviate from hearing judge's recommendation of suspension in felony conviction matter which had resulted in interim suspension, and effect of examiner's request for review had been to extend interim suspension, review department believed it appropriate to attempt to place respondent in same position as if examiner had not requested review, by modifying length of suspension and giving increased credit for interim suspension. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[14]**

The review department may appropriately exercise its independent review authority to reach an issue which is otherwise moot as a result of the hearing judge's disposition of the matter below, where the issue comes before the State Bar Court on a regular basis or is an issue of public importance likely to recur. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[3]**

Where respondent's counsel withdrew after the hearing, and respondent did not file a brief on review, the Presiding Judge ordered respondent precluded from presenting oral argument on review. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[1]**

Where, at the time of the hearing, respondent's prior discipline record consisted only of another hearing department decision, and the examiner moved to augment the record on review with the review department minutes in the prior matter, the motion was construed by the review department as a motion to take judicial notice and was granted. Thereafter, the review department took judicial notice on its own motion of the Supreme Court's order in the prior matter. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[11]**

An attorney seeking review of a disciplinary decision must present all points when filing the request for review, as the State Bar Court's rules do not provide for bifurcated review. (Trans. Rules Proc. of State Bar, rules 450-455.) A respondent could not file a second brief addressing the merits of the matter after the review department rejected respondent's claims of procedural error. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[3]**

Issues raised or addressed by parties on review do not limit scope of issues to be resolved by review department. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[4]**

Decisions in involuntary inactive enrollment proceedings under section 6007(b) are reviewable by the review department pursuant to rules 450-453, Trans. Rules Proc. of State Bar. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[1]**

Even though party requesting review did not challenge certain of hearing department's conclusions as to culpability, review department reviewed these determinations as part of its independent de novo review of the record. (Rule 453(a), Trans. Rules Proc. of State Bar.) *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[3]**

Given the deference to be accorded to the referee's findings on issues of fact and credibility, the party requesting review does not advance his or her cause very effectively by ignoring those findings, especially when no contention is advanced that the findings are not supported by the evidence. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[9]**

In all cases brought before it, the review department must independently review the trial record just as the Supreme Court does upon review of the review department recommendation. (Rule 453(a), Trans. Rules Proc. of State Bar.) In doing so, the review department accords great weight to findings of fact made by the hearing department which resolve testimonial issues. However, the review department also has the authority to make findings, conclusions and recommendations that differ from those made by the hearing department. Moreover, the issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department; despite a party's initial failure to request review on one count which was addressed in the party's brief, the review department would address the propriety of the findings on that count. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[1]**

Although party requesting review raised only one issue regarding a legal conclusion drawn by the hearing judge, review department had duty to conduct independent, de novo review of record. (Trans. Rules Proc. of State Bar, rule 453(a).) Review department therefore undertook to determine whether remainder of hearing judge's findings and conclusions were supported by record, and whether recommended discipline was appropriate. In so doing, review department held that hearing judge erred in rejecting culpability on one charge. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[1]**

Rule 453 of the Transitional Rules of Procedure provides that in all cases brought before it, the review department, like the Supreme Court, must independently review the record. The review department accords great weight to findings of fact made by the hearing judge which resolve issues pertaining to testimony, but the review department may make findings, conclusions and recommendations that differ from those made by the hearing judge. The issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[2]**

Where document was marked as exhibit at hearing and clearly related to central issue in case, and both parties referred to it in briefs on review, review department had it made part of official court file despite offering party's failure to move it into evidence. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[2]**

In administrative mandamus proceedings where the court is authorized to exercise independent judgment on the evidence, abuse of discretion by the lower tribunal is established if the court determines that the findings are not supported by the weight of the evidence. Where the court is not authorized to exercise independent judgment, then it must determine whether the findings are supported by substantial evidence in the light of the whole record. In such cases, due process requires that the body deciding the case must at least review a transcript of the evidence. The argument that this standard had been violated on earlier review by the former review department was mooted by the full-time review department's de novo review of the record on a second review after the former review department's remand for further hearing. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[1]**

Party seeking review is expected to set forth challenged finding, conclusion, or ruling below and point out wherein error lies. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[2]**

Issues must be addressed on de novo review despite lack of appropriate briefing. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[3]**

In order to reach merits on review of decision recommending discipline following default hearing, review department first had to be satisfied with the propriety of the entry of the respondent's default and the order denying respondent's motion for relief from default. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[1]**

General rule is that where record is silent, all intendments and presumptions are indulged to support a lower court order; moreover, inadvertent misuse of terms in an order does not require reversal. Review department therefore presumed that referee considered and denied alternate ground for relief from default which was addressed in moving papers of both parties but not listed in referee's order denying motion. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[4]**

Although respondent's default precluded respondent from seeking review and the State Bar examiner did not request review, the review department had a duty to review on an ex parte basis a proceeding heard by a referee of the former volunteer State Bar Court, as part of the transition to the new State Bar Court system. (Trans. Rules Proc. of State Bar, rules 109, 452(a).) *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[1]**

Review department will not consider misappropriation implied by evidence but not charged in notice to show cause, and not mentioned at trial, in hearing department decision, or in briefs on review. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[1]**

Ambiguity in the record, created when hearing referee took judicial notice of respondent's prior record of discipline but failed to admit it into evidence, was removed when review department admitted in evidence the prior record of discipline that was previously offered at trial and judicially noticed. *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[6]**

The State Bar Court retains jurisdiction over a matter until it transmits the record to the Supreme Court. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[1]**

The issues raised or addressed by the parties on review do not limit the scope of issues in a case that can be considered and resolved by the review department. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[2]**

Although the examiner sought review on the issue of degree of discipline, once the review department had jurisdiction over the proceeding, all issues were subject to its independent review. (Trans. Rules Proc. of State Bar, rule 453(a).) The review department's review of the record is an independent one and not limited by the examiner's position. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[1]**

Where a related proceeding was pending in the hearing department, the respondent's argument in favor of a remand by the review department carried more weight, because the pendency of the related proceeding created an opportunity for a fuller record to be prepared in the remanded matter without undue delay. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[5]**

Examiner's brief violated rule 1306 of the Provisional Rules of Practice of the State Bar Court by failing to include topical index and authorities table, but review department declined to strike it due to recent adoption of rule and lack of asserted prejudice to opposing party. Review department noted that rule 1312 of the Provisional Rules of Practice of the State Bar Court provides for clerk's office to return, unfiled, papers not conforming to rules, absent application to and order from Presiding Judge. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[7]**

The State Bar Office of Trial Counsel was bound by the ruling of the Supreme Court in a matter in which its counsel, the State Bar Office of General Counsel, did not request a rehearing before the Supreme Court. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[3]**

Government Code section 68081 does not apply to the review department of the State Bar Court, which has a different standard of review than that of a court of appeal. However, opportunities are afforded to the parties under State Bar Court procedure which parallel those provided by Government Code section 68081. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[6]**

Proceedings before the review department are governed by rule 453 of the [Transitional] Rules of Procedure, which provides that the review department shall independently review the record and may adopt findings, conclusions and a decision or recommendation at variance with the hearing department and may take action as to an issue whether or not that issue was raised in the request for review or briefs of any party. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[7]**

While the review department is not required to afford the parties an opportunity to brief additional issues raised by it on review, it is the preference of the review department to have issues thoroughly briefed, and rule 1311(a) of the [Provisional] Rules of Practice expressly allows for deferral of submission of cases after oral argument to permit supplementary briefs when considered appropriate. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[8]**

Where the review department addresses an issue in its opinion which was not previously addressed by the parties in their briefs or at oral argument, rule 455 of the [Transitional] Rules of Procedure permits a motion for reconsideration affording the parties an opportunity to brief such issues. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[9]**

131 Procedural Issues re Admonitions (rule 5.126)

Since an admonition does not constitute either an exoneration or the imposition of discipline, neither respondent nor State Bar is entitled to an award of costs. *In The Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227. **[7]**

Supreme Court and State Bar Court have unquestioned jurisdiction over attorneys' convictions of crime whether or not they are eligible for summary disbarment. There is no requirement that notice of time and place of hearing in conviction referral matter charge commission of "serious" offense for which admonition would be unavailable (Trans. Rules Proc. of State Bar, rule 415), or offense for which State Bar Court may recommend summary disbarment. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[3]**

Admonitions are not discipline and may be reopened and proceed anew as a formal disciplinary proceeding if a formal proceeding is brought with two years based on other misconduct. The rules of procedure define the start of a formal proceeding as the issuance of a notice to show cause. (Trans. Rules Proc. of State Bar, rules 415, 550.) *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[20]**

The Office of Trial Counsel has discretion whether or not to file formal charges in a matter eligible for disposition by admonition. The State Bar Court cannot dismiss a proceeding prior to hearing on the ground that it meets the criteria for admonition, unless a case for selective prosecution is established. (Trans. Rules Proc. of State Bar, rule 415.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[5]**

132 Agreements in Lieu of Discipline (rule 5.124(H))

Review Department had jurisdiction under rule 113 of Transitional Rules of Procedure to review portion of order by hearing judge which, in dismissing disciplinary proceeding pursuant to agreement in lieu of discipline, placed conditions on reopening of underlying disciplinary matter. Scope of such review was to determine whether hearing judge abused discretion in including condition in agreement in lieu of discipline which had not been agreed to by parties. *In the Matter of Respondent R* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227. **[1]**

An agreement in lieu of discipline is an agreement between the Office of the Chief Trial Counsel and the respondent to substitute terms and conditions in place of the disciplinary process, at least provisionally. Hearing judges have authority to dismiss or not dismiss disciplinary proceedings in light of such agreements, and may include conditions in dismissal order which are not contained in agreement if they are accepted by both parties, but judges do not have authority to modify such agreements without parties' consent or to append binding conditions or duties not agreed to by parties. *In the Matter of Respondent R* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227. **[2]**

133 Award of Costs to Exonerated Respondent (rule 5.131)

In the Matter of Allen (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198

135 Application of former Transitional Rules of Procedure (pre-1995)

Trial judge did not prejudicially err in exercising discretion to excuse witness where respondent failed to either request that the witness be recalled or to make an offer of proof as to the testimony respondent expected to elicit from the witness. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[1]**

Where respondent neither identified an exhibit for the record nor made an offer of proof demonstrating what the exhibit would have established, respondent failed to perfect his right to claim on appeal the that hearing judge improperly excluded the exhibit from evidence. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[2]**

The State Bar was not barred from relying on Michigan proceedings to impose discipline in California under the authority of Business and Professions Code section 6049.1 notwithstanding that, at the time of a prior California disciplinary case in which the State Bar and respondent entered into a stipulation disposing of the charges, the State Bar knew of disciplinary proceedings pending in Michigan but nevertheless advised respondent in writing pursuant to Rules of Procedure of the State Bar, rule 133(a)(12) that there were no additional State Bar investigations pending against him. The clear purpose of Rules of Procedure of the State Bar, rule 133(a)(12) is to require the State Bar to give notice to respondents before the State Bar Court or to attorneys being investigated by the State Bar of the pendency of other complaints lodged with the State Bar against such attorneys, and to expand that requirement to include complaints lodged in other jurisdictions would impose a far greater burden than that contemplated. At the time of the stipulation, both respondent and the State Bar knew of the Michigan proceedings, yet the stipulation did not in any way deal with the California consequences of the Michigan matter, there was no evidence that the Michigan proceedings were included in discussions leading to the stipulation, respondent entered into the stipulation without inquiring about including the Michigan matter in the stipulation, and the State Bar had no way to evaluate the seriousness of the Michigan proceedings. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[1]**

Hearing judge erred as a matter of law in finding that petitioner for reinstatement had not previously resigned from State Bar with disciplinary charges pending where petitioner's resignation was entitled "resignation with charges pending;" stated that charges were pending against him; was in form prescribed by California Rule of Court 960; was accepted by Supreme Court without prejudice to further proceedings; and where petitioner stated in his petition for reinstatement that, at time he resigned from State Bar, no formal charges were filed against him by State Bar, but only a number of minor client complaints that he had responded to, taken adequate measures to deal with, and answered State Bar in writing denying any misconduct. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[3]**

Neither due process nor former Transitional Rules of Procedure, rules 508 and 509 required State Bar to give respondent exhaustive list of each complaint against her before filing notice of disciplinary charges. Former rules 508 and 509 merely gave respondent right to deny or explain her actions to State Bar and inquire of State Bar concerning the charges against her. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[7 a-h]**

California Rules of Court, rule 951, which explicitly authorizes the State Bar Court to extend the time within which an attorney must take and pass a professional responsibility examination, applies only when the Supreme Court orders the attorney take and pass such an examination. It does not apply when the State Bar Court orders an attorney to take and pass the examination as a condition attached to a reproval. When the State Bar Court imposes such a condition, its authority to extend the time for the attorney to comply is derived from California Rules of Court, rule 956, which authorizes the State Bar Court to attach conditions to the reprovals that it imposes. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[1]**

Even after respondent's private reproval became final, the State Bar Court retained jurisdiction over the conditions attached to it under the Former Transitional Rules of Procedure of the State Bar (now the Rules of Procedure of the State Bar, title II, State Bar Court Proceedings). Thus, when the hearing judge extended the time for respondent to comply with the conditions attached to the reproval after the time to comply had expired, the hearing judge did not act without jurisdiction; but in excess of jurisdiction. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[2]**

The current procedures squarely place on the State Bar the responsibility of monitoring, investigating, and initiating proceedings alleging probation violations. Imposing a hearing judge supervised probation condition presented a number of problems under this structure. The review department declined to recommend such a condition, especially where, as here, there was no showing that the procedures in place for probation proceedings were not adequate to achieve the goals of attorney disciplinary probation. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[3]**

The complaining clients' settlement of their civil matter against respondent and the clients' release of all claims against him does not preclude the State Bar from proceeding with the disciplinary matter. A disciplinary proceeding is not a controversy between two individuals, the complainant and the accused attorney, but is an adverse proceeding against the accused attorney and may be instituted and prosecuted upon the complaint of any person knowing the facts upon which the proceeding is based. The complaining person or client is not a party to the disciplinary proceeding, and need not appear and testify at trial. Thus, the disciplinary case was not a right, claim, or cause of action that accrued to the complaining clients; and therefore it was not a claim that they could release or otherwise compromise. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[1]**

The review department denied respondent's request for judicial notice of general facts about alcoholism and declined to consider several character references stressing respondent's recovery from alcoholism on the aggregate grounds that respondent had not shown at the disciplinary hearing that her alcoholism caused her misconduct, that she failed to show why she should be excused from not having presented the proffered evidence at the disciplinary hearing, and that she failed to show that the specific matters which she wanted to be judicially noticed were proper subjects of judicial notice. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (h).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[3]**

Where respondent stated at oral argument that she did not object to judicial notice of her conviction for the unlicensed practice of law and admitted that she had improperly practiced law, the review department augmented the record on review to note the record of her conviction and considered the unlicensed practice as an aggravating circumstance. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (d)(1).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[4]**

Where case was briefed and argued prior to effective date of revised Rules of Procedure and Rules of Practice, review department applied former Transitional Rules of Procedure and Provisional Rules of Practice. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[2]**

Review Department had jurisdiction under rule 113 of Transitional Rules of Procedure to review portion of order by hearing judge which, in dismissing disciplinary proceeding pursuant to agreement in lieu of discipline, placed conditions on reopening of underlying disciplinary matter. Scope of such review was to determine whether hearing judge abused discretion in including condition in agreement in lieu of discipline which had not been agreed to by parties. *In the Matter of Respondent R* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227. **[1]**

Before the State Bar files charges, it has a duty to determine whether reasonable cause exists to charge statutory or rule violations. (Trans. Rules Proc. of State Bar, rule 510.) *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[2]**

The State Bar Court may take judicial notice of the records of any California court. (See Evid. Code, § 452, subd. (d)(1); Trans. Rules Proc. of State Bar, rule 556.) Such notice may include the facts stated in court orders, findings of fact, conclusions of law, and judgments. Although civil findings bear a strong presumption of validity if supported by substantial evidence, they must be assessed independently under the more stringent standard of proof applicable to disciplinary proceedings. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[4]**

An attorney's wilful failure to cite controlling authority squarely contradicting the attorney's position could be held to violate statute and rule prohibiting attorneys from misleading judges. However, attorneys as advocates are under no duty to reveal decisions which do not constitute controlling precedent. In State Bar Court, only decisions of review department, subject to relevant Supreme Court case law, are considered controlling precedent. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[15]**

In original disciplinary proceedings for violation of statute requiring adherence to conditions of disciplinary probation, standard of proof is clear and convincing evidence, and discipline may be disbarment. In proceedings on motion to revoke probation, standard of proof is preponderance of evidence and recommended actual suspension may not exceed entire period of stayed suspension. (Trans. Rules Proc. of State Bar, rules 610-614 (eff. Jan. 1, 1993).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[4]**

Notice to show cause under rule 550 of Transitional Rules of Procedure of State Bar is not required in conviction referral proceeding. Pursuant to Supreme Court's delegation of authority to State Bar Court in conviction referral matters (Cal. Rules of Court, rule 951(a)), only State Bar Court referral order and notice of time and place of hearing are needed to initiate a conviction referral proceeding. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[2]**

Supreme Court and State Bar Court have unquestioned jurisdiction over attorneys' convictions of crime whether or not they are eligible for summary disbarment. There is no requirement that notice of time and place of hearing in conviction referral matter charge commission of "serious" offense for which admonition would be unavailable (Trans. Rules Proc. of State Bar, rule 415), or offense for which State Bar Court may recommend summary disbarment. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[3]**

State Bar's motion for emergency relief from hearing judge's order regarding conduct of disciplinary investigation was not properly brought before review department under either rule 350 of Transitional Rules of Procedure or rule 1400 of Provisional Rules of Practice. However, motion by State Bar to stay or vacate order issued by hearing judge based on argument that hearing judge acted without jurisdiction was properly brought under rule 113 of Transitional Rules of Procedure. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[1]**

Respondent's attempts to have clients withdraw pending State Bar complaints as part of settlements of actions which were not for malpractice did not violate statute prohibiting attorneys from conditioning malpractice settlements on agreement by client not to file State Bar complaint. The State Bar may proceed with a disciplinary matter whether or not the complainant is willing. (Trans. Rules Proc. of State Bar, rule 507.) *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[12]**

Respondent's letters to client demanding release from all liability, including for malpractice, in exchange for settling outstanding business disputes between them, violated rule prohibiting attorneys from attempting to exonerate themselves from liability for malpractice except in settlement of a malpractice claim. However, respondent's attempt to persuade client to withdraw State Bar complaint did not violate statute prohibiting attorneys from requiring as a condition of malpractice settlement that plaintiff agree to not file a complaint with the State Bar. The plain language of the statute is limited to settlements involving the agreement not to file a disciplinary complaint. The effect of withdrawal of charges is not the same as not filing them. Once the State Bar becomes aware of possible misconduct by the filing of a complaint, it does not need a complaining witness in order to go forward with its investigation. (Trans. Rules Proc. of State Bar, rule 507.) *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[11]**

Where review department imposed public reproval, it was statutorily required to order that respondent pay costs of disciplinary proceeding. Respondent's request to be relieved of such order to pay costs, on ground that State Bar abused its discretion in filing one of the charges, was rejected as premature in light of statute and rules permitting respondent to seek relief from order assessing costs after its effective date. (Trans. Rules Proc. of State Bar, rules 460-464.) *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[10]**

Where parties to a disciplinary proceeding reached a stipulation but agreed to preserve right to seek review as to one contested culpability issue, review department construed order approving stipulation and hearing judge's partial decision as together constituting a decision for the purpose of review. However, review department was obligated to review entire record independently and had authority to make findings, conclusions, and a disciplinary recommendation at variance with those of hearing department. (Trans. Rules Proc. of State Bar, rule 453(a).) Agreement between parties could not restrict review department's obligation of independent review. Accordingly, review department declined to limit its review to contested culpability decision, and was not bound by stipulated discipline recommendation. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[1]**

Rules of evidence in civil cases are generally applicable in State Bar proceedings (Trans. Rules Proc. of State Bar, rule 556) and include taking judicial notice of records of any federal court of record. Where neither party specifically requested augmentation of record with federal court's opinion on appeal in related matter, but respondent attached copy of such opinion to review brief, review department took judicial notice of such opinion. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[3]**

When judges are asked to approve stipulations, they cannot rely solely on State Bar's acquiescence in proposed discipline, but must exercise their independent judgment in carrying out their obligation to examine stipulation, admitted facts, and proposed discipline for fairness to parties and for extent to which public will be adequately protected thereby. (Trans. Rules Proc. of State Bar, rule 407(a).) *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[9]**

The purpose of the notice to show cause in a disciplinary proceeding is to serve as a determination that probable cause exists to warrant formal charges. (Trans. Rules Proc. of State Bar, rule 510.) Accordingly, statements of probable cause, which identified clients allegedly involved in solicitation charged in notice to show cause, served as equivalent of amendments to notice to show cause. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[2]**

A State Bar disciplinary matter does not deal with civil responsibility where a party might be under a duty to mitigate harm or damages. The State Bar is entitled to investigate whatever information it acquires about misconduct without notifying the attorney involved contemporaneously, and it did not act improperly by failing to notify attorneys promptly when it learned of solicitation of clients by attorneys' agents. State Bar rules require only that attorneys be given an opportunity to explain or deny matters under investigation prior to issuance of notice to show cause. (Trans. Rules Proc. of State Bar, rule 509(b).) *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[3]**

In State Bar disciplinary proceedings, the formal rules of evidence apply as in civil cases, with the proviso that no error in admitting or excluding evidence invalidates a finding or decision unless the error deprived the party of a fair hearing. (Trans. Rules Proc. of State Bar, rule 556.) Accordingly, hearsay evidence is not admissible unless the opposing party agrees to its admission or otherwise waives any hearsay objections, or the evidence is subject to an exception to the hearsay rule. Where facts needed to establish past recollection recorded exception were shown, hearsay statements in witness's notebooks were properly admitted, and admission of notebooks themselves, even if error, did not prejudice opposing parties. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[8]**

On the issue of whether a respondent acted in good faith, the credibility determinations of the hearing judge deserve great weight. (Trans. Rules Proc. of State Bar, rule 453(a).) In addition, the State Bar Court must resolve all reasonable doubts about culpability in favor of the accused attorney and must choose the inference leading to innocence if equally reasonable inferences may be drawn from the facts. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[6]**

Because the review department must review the record independently and is not bound by the hearing judge's findings or recommendation (Trans. Rules Proc. of State Bar, rule 453(a)), the issue of appropriate discipline in a matter involving violation of rule 955, California Rules of Court and other misconduct did not turn on the one narrow issue argued on review by the parties regarding the appropriateness of a retroactive suspension. The review department therefore considered whether any form of suspension was adequate discipline given Supreme Court precedent generally ordering disbarment for rule 955 violations. Although the State Bar's declination to recommend disbarment was accorded considerable weight, it could not be reconciled with the precedent making disbarment the appropriate discipline. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[1]**

Where review department recommended respondent's disbarment, issue of whether respondent should be given credit toward required waiting period to apply for reinstatement (Trans. Rules Proc. of State Bar, rule 662), on account of time spent on continuous suspension prior to disbarment, was properly reserved for consideration by a hearing judge on an appropriate petition following the disbarment. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[7]**

No method of enforcement of settlement agreements in disciplinary proceedings is set forth in the Transitional Rules of Procedure, but an express provision governing this subject is not essential to the court's inherent jurisdiction to exercise reasonable control over proceedings before it in order to avoid unnecessary delay. Where one party refused to abide by a settlement agreement, the other party could have made a motion to compel enforcement of the agreement, by analogy with the statutory motion permitted by Code of Civil Procedure section 664.6, or could have asserted the agreement as an affirmative defense in the pending proceeding. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[6]**

Both the Legislature, by statute, and the Supreme Court, by case law, have recognized that the Supreme Court has inherent authority over regulation of the practice of law. The Supreme Court has not felt constrained by lack of authorizing legislation to exercise this inherent power, and has concerned itself with comparable treatment of respondents in comparable situations. Accordingly, Supreme Court case law constituted appropriate authority for review department recommendation that a disbarred respondent be permitted to credit time spent on inactive enrollment toward waiting period to apply for reinstatement, just as an interimly suspended attorney-felon can do by rule (rule 662, Trans. Rules Proc. of State Bar). *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[5]**

By rule, convicted felons are always entitled to credit for time spent on interim suspension against the waiting period for seeking reinstatement. (Rule 662, Trans. Rules Proc. of State Bar.) Inactive enrollment has the same effect as interim suspension in banning the practice of law pending a final order of discipline, and is similarly designed to protect the public during the pendency of a disciplinary case against the malfeasant attorney. Giving credit for interim suspension against the waiting period for reinstatement reflects the decision that five years removal from practice is a sufficient minimum opportunity for rehabilitation, even if the time period precedes the order of disbarment. No policy interest would be served by treating inactively enrolled attorneys differently from interimly suspended attorneys in this regard. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[6]**

Because of due process concerns, time spent on involuntary inactive enrollment pending disciplinary proceedings is limited to one year absent proof of delay by respondent or respondent's counsel or other circumstances justifying lack of compliance. (See rules 799, 799.8, Trans. Rules Proc. of State Bar.) Where review department had ruled on earlier appeal that respondent would receive credit against final discipline for time spent on involuntary inactive enrollment, and respondent had not sought to terminate inactive enrollment during pendency of proceedings on remand and second appeal, respondent would be prejudiced if period of over five years spent on inactive enrollment were not credited against waiting period to apply for reinstatement. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[7]**

In order to gain readmission to the State Bar, a petitioner must pass the Professional Responsibility Examination and must demonstrate (1) rehabilitation and present moral qualifications for readmission and (2) present ability and learning in the general law. (Trans. Rules Proc. of State Bar, rule 667.) *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[1]**

Although Business and Professions Code section 6026.5(f) permits appeals from decisions of the Board of Legal Specialization to the Board of Governors of the State Bar to be treated as confidential, the Board of Governors, in delegating its authority to hear such appeals to the State Bar Court, did not expressly indicate whether it intended to preserve the confidentiality of such appeals. (Trans. Rules Proc. of State Bar, rule 225(a)(1).) Where a legal specialization proceeding was treated as public by the hearing judge, the parties were deemed to have waived any argument that the review department should treat the proceeding as confidential by their failure to raise a timely objection to such treatment. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[1]**

Due to the requirement that the review department undertake an independent review of the record, the review department cannot be bound by a stipulation by the parties attempting to limit the scope of review. Also, the review department has the authority to adopt findings, conclusions, and a decision or recommendation at variance with those of the hearing judge. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[3]**

Because section 1013 of the Code of Civil Procedure applies by rule in State Bar Court proceedings, service of a hearing department decision by mail to an address within California extends by five days the 30-day period for filing a request for review. (Rule 450, Trans. Rules Proc. of State Bar; rule 1111(b), Provisional Rules of Practice.) *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[3]**

Restitution payments made under pressure of disciplinary proceedings are entitled to little or no weight in mitigation of discipline. However, whether restitution has been completed is important to deciding whether it should be required as a condition of probation, or, if disbarment is recommended, to whether respondent must make restitution as an issue bearing on rehabilitation for reinstatement. Thus, evidence of restitution payments made by respondent's father was relevant and properly admissible, even though not constituting mitigation, and review

department granted motion to admit such evidence on review where hearing judge had declined to accept it. However, other evidence offered by respondent on review regarding Client Security Fund claim filed by respondent's client was not admitted by review department where it was not relevant to issues in proceeding. (See rule 570, Trans. Rules Proc. of State Bar.) *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[12]**

Admonitions are not discipline and may be reopened and proceed anew as a formal disciplinary proceeding if a formal proceeding is brought with two years based on other misconduct. The rules of procedure define the start of a formal proceeding as the issuance of a notice to show cause. (Trans. Rules Proc. of State Bar, rules 415, 550.) *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[20]**

The required five-year waiting period before a disbarred attorney can apply for reinstatement may be shortened to three years for good cause. By rule, the five-year and three-year periods run from the date of any interim suspension, and Supreme Court precedent has given the same effect to inactive enrollment. (Trans. Rules Proc. of State Bar, rule 662.) The issue whether the waiting period may run from the start of a suspension other than an interim suspension has not been decided, and did not need to be addressed by the review department in recommending disbarment, but could be raised by respondent before a hearing judge if respondent wished to seek reinstatement at the earliest possible time. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[22]**

Orders for inactive enrollment under section 6007(b)(1), like those under section 6007(b)(3), are subject to independent review pursuant to rule 450 of the Transitional Rules of Procedure. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[2]**

Review department, in recommending respondent's disbarment for failure to comply with rule 955, California Rules of Court, was not required to address issue whether time respondent had already spent on inactive enrollment due to probation violation, or on suspension due to failure to pass professional responsibility examination, should be counted toward required waiting period to apply for reinstatement. (Trans. Rules Proc. of State Bar, rule 662.) Respondent could raise those issues before a hearing judge at the time he wished to file a reinstatement petition. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[5]**

An attorney who resigns with disciplinary charges pending rather than being disbarred must still establish rehabilitation through a reinstatement proceeding. (Trans. Rules Proc. of State Bar, rule 662.) *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[1]**

A petitioner for reinstatement must pass the Professional Responsibility Examination and must show present ability and learning in the general law, as well as rehabilitation and present moral qualifications for readmission. (Trans. Rules Proc. of State Bar, rule 667.) A claim that the petitioner has held himself or herself out as entitled to practice law pertains to the issue of rehabilitation and moral qualifications. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[3]**

Underlying evidence of uncharged misconduct was not made inadmissible by rule prohibiting admission in evidence, except in rebuttal, of records of complaints or charges, where such evidence was offered in aggravation and impeachment in a contested proceeding after respondent testified regarding rehabilitation. (Rule 573, Trans. Rules Proc. of State Bar.) *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[9]**

The law of the case doctrine does not preclude the current review department from reviewing the former review department's decision de novo. If review is sought in a proceeding which had been previously decided by the former review department, the entire matter is before the review department for independent de novo review, and it may act on an issue regardless of whether the parties have raised it. (Rule 453(a), Trans. Rules Proc. of State Bar.) Accordingly, review department could reopen a charge dismissed by the former review department. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[1]**

Initiation of disciplinary proceeding against respondent was not barred under former rule 511 of the Rules of Procedure of the State Bar by State Bar's decision to monitor appeal in malpractice case against respondent instead of pursuing formal investigation. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[2]**

Former review department's admission of certain exhibits into evidence without allowing respondent an opportunity to present rebuttal evidence was error. Nevertheless, no error in admitting or excluding evidence invalidates a finding of fact, decision or determination unless the error resulted in a denial of a fair hearing. (Rule 556, Trans. Rules Proc. of State Bar.) Where such exhibits were not relied upon in determining culpability and discipline, respondent failed to show that the admission of the documents deprived him of a fair hearing. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[5]**

The fact that a person resigned with disciplinary charges pending instead of suffering disbarment does not affect the necessity for a reinstatement proceeding. (Trans. Rules Proc. of State Bar, rule 662.) *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[1]**

A petitioner for reinstatement must pass the Professional Responsibility Examination, show present ability and learning in the general law, and show rehabilitation and present moral qualifications for readmission. (Trans. Rules Proc. of State Bar, rule 667.) *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[4]**

A petition for reinstatement may be filed five years after the effective date of interim suspension, disbarment, or resignation. For good cause, reinstatement may be sought three years after disbarment. (Trans. Rules Proc. of State Bar, rule 602.) *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[9]**

Under rule 835 of the Transitional Rules of Procedure, various discovery provisions applicable in disciplinary proceedings are also applicable in moral character proceedings. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[2]**

Rule XI of the Rules Regulating Admission to Practice Law in California, providing that the files of the Committee of Bar Examiners are confidential, does not have any bearing on the Committee's duty to respond to interrogatories from the applicant in a moral character proceeding, and, when read in conjunction with other applicable rules, only precludes the Office of Trials from disclosing documents voluntarily as opposed to pursuant to appropriate discovery requests or by court order. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[3]**

The Civil Discovery Act has not been adopted in its entirety in the conduct of State Bar proceedings. The imposition of monetary costs as discovery sanctions is precluded under rule 321, Trans. Rules Proc. of State Bar. Authorized discovery sanctions include orders precluding a party from supporting or opposing designated claims or defenses or from introducing evidence or testimony. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[14]**

Under rules 460 and 461 of the Transitional Rules of Procedure, the costs assessed in discipline matters are derived from a formula established by a committee of the State Bar Board of Governors which reflects average chargeable costs. The level of costs assessed depends on the stage at which a matter is resolved. The use of these cost models is appropriate as a simple and efficient means of assessing costs, but does not prevent a respondent from seeking, or a hearing judge from granting, relief from costs in an appropriate case. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[1]**

Under Business and Professions Code section 6086.10(c) and rules 462 and 464 of the Transitional Rules of Procedure, an attorney ordered to pay disciplinary costs may be granted full or partial relief from such order, or an extension of time to pay, based on hardship, special circumstances, or other good cause. Good cause for such relief may include consideration of the conduct of counsel for the State Bar. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[2]**

Where a party sought review by the Presiding Judge of an order granting relief from costs under rule 462(c) of the Transitional Rules of Procedure, and the matter presented an important question of first impression, the Presiding Judge referred the matter to the review department in bank. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[4]**

Review department did not need to reach respondent's challenges to hearing judge's evidentiary rulings in order to uphold hearing judge's ultimate findings, where all essential elements of charged violation were established by evidence to which respondent did not object, and any evidentiary errors did not result in denial of a fair hearing. Where factual findings based on challenged evidence were not necessary to decision, remand

for new hearing was not necessary even if evidentiary errors underlay some non-essential findings. (Rule 556, Trans. Rules Proc. of State Bar.) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[1]**

Nothing in lengthy pendency of probation revocation proceeding delayed or prevented respondent's filing of application for termination of suspension pursuant to standard 1.4(c)(ii). (Trans. Rules Proc. of State Bar, rules 810-826.) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[17]**

Where respondent in probation revocation matter had been continually suspended from practice of law for preceding four years, review department did not need to order that respondent be placed on inactive enrollment under Business and Professions Code section 6007(d) pending final Supreme Court order. (Trans. Rules Proc. of State Bar, rule 612(b).) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[23]**

Where examiner's pre-trial statement listed respondent's prior record of discipline among exhibits to be offered at trial, but did not detail or characterize such prior record in any way, and copy of prior record was not considered by hearing judge until after determination of culpability, and respondent demonstrated no prejudice from reference in pre-trial statement and had failed to raise issue before hearing judge, respondent was not entitled to any relief based on asserted violation of rule 571, Trans. Rules Proc. of State Bar. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[4]**

Under Supreme Court precedent and the State Bar Rules of Procedure, before entering into a stipulation resolving a disciplinary matter, the State Bar should notify the respondent of any other pending investigations or complaints. However, where respondent had been notified of a second complaint before respondent entered into a stipulation to a public reproval in an earlier, separate matter, respondent demonstrated no prejudice from the failure of the earlier stipulation to refer to the pendency of the second complaint. (Rules Proc. of State Bar, rule 406.) *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[2]**

On review of a facial challenge to the legal sufficiency of charges in the notice to show cause, the sole issue presented is whether the facts alleged in the notice, if proven, would constitute a disciplinable offense. For the purpose of such review, the review department treats the factual allegations of the notice as true, but draws independent conclusions regarding the legal import of those facts. (Trans. Rules Proc. of State Bar, rule 554.1.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[1]**

The Transitional Rules of Procedure of the State Bar, unlike equivalent California and federal rules, provide for review as of right following the denial of a motion to dismiss, as well as the grant of such a motion. However, this does not affect the type of review to be afforded on the merits. (Trans. Rules Proc. of State Bar, rule 554.1.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[3]**

The Office of Trial Counsel has discretion whether or not to file formal charges in a matter eligible for disposition by admonition. The State Bar Court cannot dismiss a proceeding prior to hearing on the ground that it meets the criteria for admonition, unless a case for selective prosecution is established. (Trans. Rules Proc. of State Bar, rule 415.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[5]**

Even where the examiner does not seek review of the dismissal of a count of the notice to show cause, the review department is obligated to conduct a de novo review of the hearing judge's disposition of that count, and may reach a different conclusion based on the record. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[2]**

A disciplinary proceeding was not barred under rule 511, Transitional Rules of Procedure of the State Bar, even though a letter was sent from the Los Angeles office of the State Bar ostensibly closing the case, where there remained a separate open, active investigative file in the San Francisco office. The closure of the Los Angeles investigation did not serve to extinguish the open investigation by the San Francisco office. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[1]**

The respondent's name does not appear in an opinion imposing a private reproval, although the proceeding remains public. (Trans. Rules Proc. of State Bar, rule 615.) *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[1]**

Factual findings made by a hearing judge and resolving issues concerning testimony deserve great weight, but may be supplemented by the review department's own findings interpreting documentary evidence. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[10]**

The review department's inquiry into a matter does not end when it determines that the arguments of the party seeking review are unpersuasive. In all cases brought before it, the review department must independently review the record. In so doing, the review department accords great weight to findings of fact made by the hearing department which resolve testimonial issues. However, the review department has the authority to make findings, conclusions and recommendations that differ from those made by the hearing department. Moreover, the issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department. (Rule 453, Trans. Rules Proc. of State Bar.) *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[3]**

The rule extending any prescribed period of notice five days for service by mail applies to the State Bar Court's service of its decisions as well as to service of papers between parties. Thus, the time to file a motion for reconsideration of a review department decision was extended due to service of the decision by mail. (Trans. Rules Proc. of State Bar, rules 243, 455.) *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[1]**

A respondent who receives a private reproval is entitled to have his or her name omitted from the published review department opinion, although the disciplinary proceeding itself is, and remains, public. (Trans. Rules Proc. of State Bar, rule 615.) *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[1]**

The review department gives great weight to credibility determinations by hearing judges. (Trans. Rules Proc. of State Bar, rule 453.) *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[3]**

On a motion to present additional evidence, the moving party did not show good cause where the substance of the evidence sought to be admitted was not summarized and there was no claim that the witnesses or affiants were unavailable to present their evidence at the disciplinary hearing or that their evidence related to events or observations which occurred after the disciplinary hearing. (Rules Proc. of State Bar, rule 562.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[5]**

Where a standard for judicial disqualification in the State Bar's Rules of Procedure was drawn from a similar provision in the Code of Civil Procedure, case law under the statute could be looked to in applying the State Bar rule. (Rule 230, Rules Proc. of State Bar.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[10]**

Attorney discipline proceedings are sui generis, neither criminal nor civil, and ordinary criminal procedural safeguards do not apply. The proceedings are conducted pursuant to the Rules of Procedure adopted by the State Bar, which contain procedural safeguards that have been held to be adequate to assure procedural due process. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[26]**

The rules of evidence in civil cases in courts of record, including applicable sections of the Code of Civil Procedure and judicial decisions as well as the Evidence Code, are followed in State Bar disciplinary proceedings. (Rule 556, Rules Proc. of State Bar.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[27]**

Passage of a professional responsibility examination is one of the basic requirements for reinstatement. Although a State Bar rule permits the State Bar Court to grant a petitioner up to two years after the reinstatement hearing to pass the examination, the Supreme Court requires proof of passage to precede reinstatement. Thus, the State Bar rule is interpreted to require passage of the examination as a condition precedent to a State Bar Court recommendation of reinstatement to the Supreme Court. (Trans. Rules Proc. of State Bar, rule 667.) *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[5]**

Where the testimony of the State Bar's witnesses was in conflict with that of respondent, and the referee resolved those conflicts against respondent, respondent could not show error in the findings merely by repeating his own version of the facts, and respondent's generalized challenge to the complainant's credibility was not sufficient to persuade the review department to reject the referee's findings. In the absence of a strong showing

that the referee was mistaken, the review department is required to defer to the referee's determinations as to credibility, and it is reluctant to deviate from the referee's credibility-based findings in the absence of a specific showing that they were in error. (Rule 453, Trans. Rules Proc. of State Bar.) *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[1]**

In general, State Bar disciplinary proceedings are governed exclusively by the State Bar's rules of procedure, and the provisions of the Code of Civil Procedure do not apply unless expressly incorporated by reference. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[21]**

A respondent's default results in the admission of the facts alleged in the charging allegations of the notice to show cause, and no further proof is required to establish the truth of those charges. (Trans. Rules Proc. of State Bar, rules 552.1(e), 555(e).) *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[2]**

Pursuant to Transitional Rules of Procedure 453(a), review department's independent fact finding authority permits it to delete erroneous finding from hearing department's decision. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[2]**

Where hearing referee's decision contained virtually no findings of fact and did not relate the conclusions of law either to the facts or to specific counts of the notice to show cause, review department was compelled to exercise its authority to make its own findings and conclusions based on independent review of the record, as authorized by rule 453 of the Transitional Rules of Procedure. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[1]**

Under applicable expedited hearing procedures, a respondent may apply for a hearing pursuant to standard 1.4(c)(ii) up to 150 days before the respondent's actual suspension is set to expire. (Rules 810-826, Trans. Rules Proc. of State Bar.) *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[15]**

Probation revocation proceedings are disciplinary proceedings, and no additional discipline can be imposed for a breach of probation absent proof of such violation in conformity with fundamental due process (notice and an opportunity to be heard), as set forth in rules 612-613, Trans. Rules Proc. of State Bar. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[4]**

Although non-final prior discipline recommendation for probation violation, still pending before Supreme Court, is record of prior discipline under rule 571, Trans. Rules Proc. of State Bar, review department does not apply rigidly, or without regard to facts of prior matters, disciplinary standard indicating disbarment as appropriate sanction for third disciplinary proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[22]**

Given that the examiner's pretrial statement indicated that facts and circumstances surrounding respondent's perjury conviction would be at issue and that the record would include the transcript of a related infraction trial as well as respondent's perjury trial, and given the rule permitting the hearing judge to consider evidence of facts not directly connected with respondent's conviction if such facts are material to the issues stated in the order of reference, respondent had sufficient notice that all relevant facts and circumstances would be considered in the disciplinary proceeding. (Trans. Rules Proc. of State Bar, rule 602.) *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[3]**

Where examiner was concerned to obtain detailed, complete information regarding respondent's anticipated application to resume practice pursuant to standard 1.4(c)(ii), review department recommended that respondent follow same format in application as in an application for reinstatement; otherwise, examiner could seek such information by a discovery request which would be more time consuming. (Trans. Rules Proc. of State Bar, rules 810-826.) *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[14]**

An attorney seeking review of a disciplinary decision must present all points when filing the request for review, as the State Bar Court's rules do not provide for bifurcated review. (Trans. Rules Proc. of State Bar, rules 450-455.) A respondent could not file a second brief addressing the merits of the matter after the review department rejected respondent's claims of procedural error. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[3]**

Rule 453, Trans. Rules Proc. of State Bar, requires review department, in all cases brought before it, to independently review record. Review department accords great weight to findings of fact by hearing department resolving testimonial issues. However, it may make findings, conclusions and recommendations differing from those of the hearing department. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[3]**

Discovery in State Bar proceedings must be completed within 90 days after service of notice to show cause, subject to reasonable extension. (Trans. Rules Proc. of State Bar, rule 316.) Where examiner noticed and took deposition well after 90-day cutoff, and did not seek extension of discovery period, deposition was clearly discovery, even though examiner's purpose in taking it was to preserve evidence for trial. However, provision of Civil Discovery Act governing time to object to deposition notice on certain grounds did not apply, because respondent's objection was not based on grounds set forth in Civil Discovery Act but on examiner's failure to comply with State Bar rules of procedure. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[17]**

Error in admitting evidence in State Bar proceedings does not invalidate a finding of fact unless the error resulted in the denial of a fair hearing. (Trans. Rules Proc. of State Bar, rule 556.) In light of deposition witness's hazy memory and respondent's contrary testimony, proper determination weighing the conflicting testimony could not be made without face-to-face assessment, and admission of witness's deposition transcript therefore denied respondent a fair trial. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[19]**

Decisions in involuntary inactive enrollment proceedings under section 6007(b) are reviewable by the review department pursuant to rules 450-453, Trans. Rules Proc. of State Bar. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[1]**

The rules governing the proceedings for the transfer of an attorney to inactive status incorporate by reference Code of Civil Procedure section 2032(d). (Rules 315, 321, 643, Trans. Rules Proc. of State Bar.) Proceedings to obtain an order for a mental examination under section 6053 must comply with the procedural and substantive requirements of Code of Civil Procedure section 2032(d). *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[7]**

Although rule 644 of the Transitional Rules of Procedure purports to allow a presumption affecting the burden of proof if an attorney fails without good cause to undergo an ordered mental examination, rule 644 must be interpreted as merely allowing a permissive inference of mental infirmity, in order to ensure due process. Rule 644 would not be valid if it operated to relieve the examiner of the burden of proving mental incompetence by clear and convincing evidence. The presumption authorized by rule 644, if applied, would conflict with the appropriate presumption that an attorney remains mentally competent to practice law in the absence of proof to the contrary, and would be tantamount to the imposition of a default judgment for failure to obey a discovery order, in violation of rule 321 of the Transitional Rules of Procedure. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[11]**

Where attorney represented to State Bar Court that no disciplinary investigations against him were pending, examiner's failure to rebut this contention, as permitted by rule 573, Trans. Rules Proc. of State Bar, warranted inference that State Bar did not dispute attorney's representation. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[16]**

Even though party requesting review did not challenge certain of hearing department's conclusions as to culpability, review department reviewed these determinations as part of its independent de novo review of the record. (Rule 453(a), Trans. Rules Proc. of State Bar.) *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[3]**

The review department's review of hearing decisions is independent; it may make findings of fact or adopt conclusions at variance with those of the hearing department. Nevertheless, the review department accords great weight to the hearing department's findings resolving issues pertaining to testimony. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[2]**

In a reinstatement proceeding, the petitioner bears the burden of establishing rehabilitation, present moral qualifications for readmission and present ability and learning in the general law. (Rule 952(d), Cal. Rules of Court;

rule 667, Trans. Rules Proc. of State Bar.) *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[4]**

To be accurate, petitioner should have stated that the minimum waiting period to apply for reinstatement is five years (Trans. Rules Proc. of State Bar, rule 662), rather than stating that he had been disbarred for five years. Nonetheless, petitioner's statement as a whole clearly indicated that petitioner was not then licensed to practice law, so misstatement was not serious. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[12]**

In all cases brought before it, the review department must independently review the trial record just as the Supreme Court does upon review of the review department recommendation. (Rule 453(a), Trans. Rules Proc. of State Bar.) In doing so, the review department accords great weight to findings of fact made by the hearing department which resolve testimonial issues. However, the review department also has the authority to make findings, conclusions and recommendations that differ from those made by the hearing department. Moreover, the issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department; despite a party's initial failure to request review on one count which was addressed in the party's brief, the review department would address the propriety of the findings on that count. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[1]**

Although party requesting review raised only one issue regarding a legal conclusion drawn by the hearing judge, review department had duty to conduct independent, de novo review of record. (Trans. Rules Proc. of State Bar, rule 453(a).) Review department therefore undertook to determine whether remainder of hearing judge's findings and conclusions were supported by record, and whether recommended discipline was appropriate. In so doing, review department held that hearing judge erred in rejecting culpability on one charge. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[1]**

Rule 453 of the Transitional Rules of Procedure provides that in all cases brought before it, the review department, like the Supreme Court, must independently review the record. The review department accords great weight to findings of fact made by the hearing judge which resolve issues pertaining to testimony, but the review department may make findings, conclusions and recommendations that differ from those made by the hearing judge. The issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[2]**

The Rules of Procedure of the State Bar require that the review department give great weight to the hearing department's findings of fact resolving issues pertaining to testimony. This rule rests on the sound policy that when evidence turns on the assessment of credibility, the evaluation of such evidence should be made by a judicial officer who sees and hears the witnesses and can translate the credibility accorded witnesses into the weight to be given their testimony as it relates to other evidence in the case. Before disregarding any such credibility assessments, the review department must have a very good reason for doing so. (Trans. Rules Proc. of State Bar, rule 453.) *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[6]**

In a default matter, the well-pleaded allegations in the notice to show cause must be deemed admitted even if the State Bar did not so request. (Rules Proc. of State Bar, rule 552.1(d)(iii).) *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[18]**

Upon respondent's application for retransfer to active status from involuntary inactive enrollment under section 6007(c), based on delay in processing of disciplinary proceeding on underlying charges, hearing judge must determine to what extent respondent or respondent's counsel was responsible for such delays, and whether circumstances otherwise justified any delays. (Trans. Rules Proc. of State Bar, rules 799, 799.7, 799.8.) *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[26]**

The review department must independently review all matters coming before it, and may adopt findings of fact, conclusions of law and recommendations at variance to those of hearing department. (Rule 453, Trans. Rules Proc. of State Bar.) *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[1]**

Evidence provided by State Bar demonstrated that closure and reopening of investigation of disciplinary matter was in compliance with applicable rules and did not bar disciplinary proceedings; respondent had not been prejudiced by delay. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[12]**

The review department gives great weight to the findings of the hearing judge, who saw and heard the witnesses and resolved matters of testimonial credibility. Nevertheless, under rule 453(a), Trans. Rules Proc. of State Bar, the hearing judge's decision serves as a recommendation to the review department, which undertakes an independent review and may make findings of fact or draw conclusions of law at variance with those of the judge. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[3]**

By obtaining a 30-day extension of the 90-day period to investigate a petition for reinstatement before referral for hearing, State Bar examiner did not violate State Bar procedural rules, which allow investigation even after the 90-day period or any extension of it. (Rule 664, Trans. Rules Proc. of State Bar.) *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[4]**

As a formal proceeding of the State Bar Court, a reinstatement hearing is governed by the formal rules of evidence applicable in civil proceedings. (Rule 556, Trans. Rules Proc. of State Bar.) More liberal evidentiary standards applicable in certain other types of statutory proceedings do not apply in State Bar proceedings. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[7]**

Petitioner for reinstatement could have presented additional character testimony from out-of-state witnesses without undue expense by taking their depositions. (Rules 318, 666, Trans. Rules Proc. of State Bar.) *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[13]**

Legal effect of entry of default in disciplinary proceeding is to admit allegations in notice to show cause and to preclude respondent attorney's further participation in proceeding unless default is set aside. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[1]**

In ruling on a motion to set aside default under Rule of Procedure 555.1(a), State Bar Court interprets and applies terms "mistake, inadvertence, surprise or excusable neglect" in same manner as in civil cases under section 473 of the Code of Civil Procedure. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[4]**

Rule of Procedure 555 does not require that motion to set aside default be made within a reasonable time, but only that it be made within 75 days. Motion to set aside default filed 75 days after entry of default was timely, and also was filed within a reasonable time, where it was filed approximately one month after respondent learned true status after receiving conflicting notices, less than two weeks after seeking a continuance for that purpose, and less than one week after obtaining counsel. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[7]**

Rule of Procedure 557, permitting amendment of notice to show cause to conform to proof without requiring additional time to prepare answer and defense, assumes respondent attorney's presence at disciplinary proceeding. Where respondent is not present due to entry of default, respondent does not have an opportunity to defend against charges. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[14]**

Time to file answer to notice to show cause is extended twenty days by service of notice of application to enter default, and is extended an additional five days when the application is served by mail. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[2]**

Where respondent who filed motion for relief from default had previously submitted proposed answer to notice to show cause to State Bar Court and served it on examiner, and declaration accompanying motion to set aside default verified essential allegations of proposed answer, this constituted substantial compliance with rule requiring motion to set aside default to be accompanied by verified proposed answer. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[3]**

The time limit for filing an answer to the notice to show cause is not jurisdictional, and an answer will be accepted for filing at any time prior to the actual entry of default, no matter how belatedly it is submitted. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[6]**

In proceedings to set aside default under Rule of Procedure 555.1(a), the terms "mistake, inadvertence, surprise or excusable neglect" are interpreted and applied in the same manner as in motions in civil cases pursuant to section 473 of the Code of Civil Procedure. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[8]**

Effective September 1, 1989, the former Rules of Procedure of the State Bar were replaced by the Transitional Rules of Procedure of the State Bar. A motion to set aside default filed and served prior to September 1, 1989, was governed by former Rules of Procedure. (Rule 109, Trans. Rules Proc. of State Bar.) *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[9]**

Pursuant to Rule of Procedure 552(a), an answer submitted for filing prior to the entry of default is not required to be verified. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[14]**

It would be an abuse of discretion to deny relief from default solely on the basis of the lack of a verification of respondent's proposed answer, without giving respondent a chance to cure the defect. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[15]**

Inadequacies in pleading not only made notice to show cause insufficient under rule 550, Trans. Rules Proc. of State Bar, but also caused questions as to whether notice met requirements of rule 554.1, providing that a notice to show cause may be dismissed on ground that it fails to state a disciplinable offense as a matter of law. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[11]**

Charges should only be filed when the Office of Trial Counsel ascertains that reasonable cause exists to charge that particular conduct occurred which violated a particular regulatory provision. (Rule 510, Rules Proc. of State Bar.) *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[18]**

The State Bar has the duty to distill from sources available to it whether reasonable cause exists for charging a member with statutory or rule violations. It is not only incumbent upon the Office of Trial Counsel to determine which specific conduct of the respondent is at issue, but to articulate the nature of the conduct with particularity in the notice to show cause, correlating the alleged misconduct with the rule or statute allegedly violated thereby. (Rules 510, 550, Rules Proc. of State Bar.) *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[19]**

The review department has an obligation to conduct an independent review of the entire record and make its own determinations of fact and conclusions of law; its findings are not limited to issues raised by the parties, and it has the power to correct errors in the hearing department's decision even when not requested to do so by the parties. (Rule 453, Trans. Rules Proc. of State Bar.) *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[1]**

Although respondent's default precluded respondent from seeking review and the State Bar examiner did not request review, the review department had a duty to review on an ex parte basis a proceeding heard by a referee of the former volunteer State Bar Court, as part of the transition to the new State Bar Court system. (Trans. Rules Proc. of State Bar, rules 109, 452(a).) *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[1]**

Rule 453 of the Transitional Rules of Procedure of the State Bar requires the review department to independently review the record as to all matters brought before it. The review department accords great weight to findings of fact by the hearing department resolving testimonial issues. However, the review department has the authority to adopt findings, conclusions and recommendations that differ from those of the hearing department. Moreover, the scope of review is not limited to the issues raised by the parties. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[3]**

An attorney's prior record of discipline is a record of the Supreme Court and also of the State Bar, and as such it is the proper subject of judicial notice. (Evid. Code, §§ 451 et. seq.) Even when judicial notice is taken of such records, the documents composing them should be identified, introduced in evidence, and made part of the record in the proceeding. (Rule 571, Rules Proc. of State Bar; rules 1260-1262, Prov. Rules of Practice of State Bar Ct.) *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[5]**

Under rule 555.1(b), Transitional Rules of Procedure, a respondent has until 75 days after the entry of his default to file, as a matter of right, a motion to set aside the default. This 75-day time period is not jurisdictional; however,

after it has run, a much greater showing must be made to justify setting aside the default. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[3]**

Under rule 453(a) of the Transitional Rules of Procedure, the review department independently reviews the record; that is, the review department treats the findings of the hearing referee as recommendations to it and may make findings or draw conclusions at variance with those of the referee. This type of review requires the review department to examine the record independently and reweigh the evidence and pass upon its sufficiency. As to any matter resolving issues concerning testimony, the review department gives great weight to the hearing referee who saw and heard the witness. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[2]**

The review department must independently review the record in all cases brought before the court. (Trans. Rules Proc. of State Bar, rule 453.) Since the review department does not have the opportunity to observe the demeanor of witnesses, it accords great weight to findings of fact made by the hearing department which involve resolving testimony and issues relating to testimony. However, the review department has the authority to make findings, conclusions and recommendations that differ from those made by the hearing department. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[1]**

The issues raised or addressed by the parties on review do not limit the scope of issues in a case that can be considered and resolved by the review department. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[2]**

In disciplinary matters, where the State Bar has the burden of proof, the examiner is obligated to produce sufficient evidence to permit the State Bar Court to make adequate determinations and appropriate recommendations to the Supreme Court as to discipline. (Rules Proc. of State Bar, rule 402.) *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[9]**

Although the examiner sought review on the issue of degree of discipline, once the review department had jurisdiction over the proceeding, all issues were subject to its independent review. (Trans. Rules Proc. of State Bar, rule 453(a).) The review department's review of the record is an independent one and not limited by the examiner's position. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[1]**

Stipulations by both parties in the interests of justice on a wide variety of issues, including the entire proposed disposition of disciplinary matters, are encouraged and are provided for in State Bar procedural rules. (Trans. Rules Proc. of State Bar, rules 401, 405-408.) *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[3]**

Consolidation may be ordered on the Presiding Judge's own motion, if no substantial rights will be prejudiced. (Trans. Rules Proc. of State Bar, rules 2.22, 2.25 and 262.) Consolidation is encouraged at the hearing department level where feasible to avoid substantial duplicate effort expended by counsel and the hearing department to create trial records. Consolidation was appropriate where at most a brief delay would result, and a substantial savings of time would result from a single proceeding on review. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[7]**

As to matters of testimonial credibility, the review department properly gives great weight to the hearing referee who saw and heard the witnesses and who resolved those issues. The review department should ordinarily be reluctant to deviate from the factual findings of the referee resolving testimonial matters. (Rule 453(a), Trans. Rules Proc. of State Bar.) *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[4]**

Under rule 453, Trans. Rules Proc. of State Bar, review by the review department is not an appeal from the hearing panel decision. The hearing panel's findings serve as a recommendation to the review department, which may make findings or draw conclusions at variance with those of the hearing referee. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[5]**

Proceedings before the review department are governed by rule 453 of the [Transitional] Rules of Procedure, which provides that the review department shall independently review the record and may adopt findings, conclusions and a decision or recommendation at variance with the hearing department and may take action as to an issue whether or not that issue was raised in the request for review or briefs of any party. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[7]**

Where the review department addresses an issue in its opinion which was not previously addressed by the parties in their briefs or at oral argument, rule 455 of the [Transitional] Rules of Procedure permits a motion for reconsideration affording the parties an opportunity to brief such issues. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[9]**

Pursuant to rule 453 of the Transitional Rules of Procedure, the review department independently reviews the record and may adopt findings, conclusions and a decision or recommendation at variance with the hearing department. Its decisions are in turn subject to review by the Supreme Court which likewise conducts independent review of the record below and is not bound by the factual findings of the State Bar Court. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[2]**

Procedural rules proposed by State Bar which would permit attorney in standard 1.4(c)(ii) hearing to make required showing by preponderance of evidence; would allow stipulation that attorney meets conditions; would guarantee opportunity to make required showing before expiration of two-year actual suspension; and would provide for expedited review, appeared to answer Supreme Court's concerns regarding conduct of such hearings. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[22]**

135.00 Amendments to the Rules of Procedure

135.01 Effective date/scope of applicability of 1995 version

The State Bar was not barred from relying on Michigan proceedings to impose discipline in California under the authority of Business and Professions Code section 6049.1 notwithstanding that, at the time of a prior California disciplinary case in which the State Bar and respondent entered into a stipulation disposing of the charges, the State Bar knew of disciplinary proceedings pending in Michigan but nevertheless advised respondent in writing pursuant to Rules of Procedure of the State Bar, rule 133(a)(12) that there were no additional State Bar investigations pending against him. The clear purpose of Rules of Procedure of the State Bar, rule 133(a)(12) is to require the State Bar to give notice to respondents before the State Bar Court or to attorneys being investigated by the State Bar of the pendency of other complaints lodged with the State Bar against such attorneys, and to expand that requirement to include complaints lodged in other jurisdictions would impose a far greater burden than that contemplated. At the time of the stipulation, both respondent and the State Bar knew of the Michigan proceedings, yet the stipulation did not in any way deal with the California consequences of the Michigan matter, there was no evidence that the Michigan proceedings were included in discussions leading to the stipulation, respondent entered into the stipulation without inquiring about including the Michigan matter in the stipulation, and the State Bar had no way to evaluate the seriousness of the Michigan proceedings. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[1]**

Where case was briefed and argued prior to effective date of revised Rules of Procedure and Rules of Practice, review department applied former Transitional Rules of Procedure and Provisional Rules of Practice. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[2]**

135.02 Comparison to former Transitional Rules of Procedure (pre-1995)

Hearing judge erred as a matter of law in finding that petitioner for reinstatement had not previously resigned from State Bar with disciplinary charges pending where petitioner's resignation was entitled "resignation with charges pending;" stated that charges were pending against him; was in form prescribed by California Rule of Court 960; was accepted by Supreme Court without prejudice to further proceedings; and where petitioner stated in his petition for reinstatement that, at time he resigned from State Bar, no formal charges were filed against him by State Bar, but only a number of minor client complaints that he had responded to, taken adequate measures to deal with, and answered State Bar in writing denying any misconduct. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[3]**

135.05 Effective date/scope of applicability of 2011 version

135.06 Comparison of 2011 version to 1995 version

Prior to 2011, the Rules of Procedure of the State Bar permitted imposition of a discipline less than disbarment even if the defaulting attorney did not seek relief from default. (See former rule 200 et seq. of the Rules of Procedure

of the State Bar.) The rules now require that when a member's default has been entered and the member fails to have it set aside or vacated, the Office of the Chief Trial Counsel must file a petition seeking the member's disbarment. (Rule 5.85(A).) In turn, a hearing judge must grant the petition and recommend disbarment provided (1) the member has failed to file a response to the petition for disbarment or (2) the court has denied a motion to set aside or vacate the default. (Rule 5.85(F)(1).) *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[2 a,b]**

Respondent's discovery rights under the revised Rules of Procedure of the State Bar, which are based on similar discovery provisions in the California Administrative Procedure Act, satisfy fair trial concerns. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[4]**

In the Matter of Respondent R (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227.

135.09 Other issues re amendments to Rules of Procedure generally

Even though Rules of Procedure adopted by State Bar's Board of Governors are not legislative acts, it is appropriate to construe them using rules for statutory interpretation/construction. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[4]**

State Bar Court must interpret State Bar Rule of Procedure 665(a) that requires all petitioners for reinstatement to take and pass professional responsibility examination within frame work of California Rule of Court 951(f) dealing with reinstatement because State Bar's rule making authority is subject to Supreme Court's inherent authority over attorney regulatory matters. And State Bar Court should endeavor to construe State Bar rule as consistent Rules of Court. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[5]**

135.10 General Rules (Division 1, rules 5.1-5.16 (2011); former Division 1, General Provisions, rules 1-32 (1995))

The complaining clients' settlement of their civil matter against respondent and the clients' release of all claims against him does not preclude the State Bar from proceeding with the disciplinary matter. A disciplinary proceeding is not a controversy between two individuals, the complainant and the accused attorney, but is an adverse proceeding against the accused attorney and may be instituted and prosecuted upon the complaint of any person knowing the facts upon which the proceeding is based. The complaining person or client is not a party to the disciplinary proceeding, and need not appear and testify at trial. Thus, the disciplinary case was not a right, claim, or cause of action that accrued to the complaining clients; and therefore it was not a claim that they could release or otherwise compromise. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[1]**

In the Matter of Respondent X (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592.

In a prior case, the Supreme Court expressed concern for the privacy of the targeted attorney's clients, and further noted that the proceedings of the State Bar were conducted in strict confidence. While such formal proceedings are now public, the investigative process is conducted in the same strict confidence that the Supreme Court noted in the prior case. In addition, in the event the records are sought to be used in a subsequent public proceeding following a confidential investigation, the attorney's duty of informing the client or clients whose trust account information may become public of that fact would come into play. The client or clients would then have the opportunity to seek relief from the State Bar Court under the rules of procedure that create a method for sealing portions of the record. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[3]**

135.20 Commencement/Venue/Filing/Service/Time Division 2, Ch. 1, rules 5.20-5.30 (2011); former Division II, rules 50-64 (1995)

Rule 51(a) imposes a five–year limitation on the commencement of disciplinary proceedings only in those instances where the proceedings are initiated as the result of a third–party complainant. Where the present matter was not initiated as the result of a third–party complainant, but by the State Bar after the Sacramento Superior Court entered a sanctions order, the case was not barred by a limitations period as a matter of law. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[1]**

In reviewing a pretrial motion to dismiss the notice of disciplinary charges on the ground that it was barred by the applicable period of limitations, we treat the factual allegations of the notice of disciplinary charges as true. Where the notice of disciplinary charges alleged that respondent, a general partner of a California limited partnership, informed a limited partner within five years before the notice of disciplinary charges was filed that the limited partner's share of funds from a partnership distribution was gone, the charge that respondent committed an act involving moral turpitude by breaching a fiduciary duty and misappropriating funds was timely filed under Rules of Procedure of the State Bar, rule 51. *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[5a,b]**

Except for service of initial pleading in a proceedings, State Bar Rules of Procedure and State Bar Court Rules of Practice require that attorney's response to notice of disciplinary charges contain an address of service for the attorney. Thus, clerk properly served copy of hearing judge's decision on attorney by mailing it to attorney at the address listed in the attorney's response to notice of disciplinary charges even though that address was not address that attorney maintained on State Bar's official membership records, particularly since attorney never notified clerk that he wished to be served at any address other than the address listed on the response. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[9]**

135.30 Pleadings/Motions/Stipulations (Division 2, Ch. 2, rules 5.40-5.58 (2011); former Division III, rules 100-135 (1995)).

In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.

Even though the parties entered into a stipulation as to facts and conclusions of law (Rules Proc. of State Bar, rule 132) in which they agreed to be bound by stipulated facts regardless of the degree of discipline recommended or imposed and in which respondent pleaded nolo contendere to the disciplinary charges in the stipulation (Bus. & Prof. Code, § 6085.5, subd. (c)) and acknowledged that her "the plea of nolo contendere shall be considered the same as an admission of culpability" for disciplinary purposes, the State Bar Court still had an affirmative duty to independently determine whether the parties' stipulated conclusions of law were supported by the record before accepting them. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[1a-c]**

Regardless of whether respondent had the right on review to challenge the conclusions of culpability to which she stipulated to in the hearing department, the review department still had an affirmative duty to determine if the culpability findings were supported by the record. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[2]**

Because respondent allowed herself to be disconnected from management of her law office over extended period of time and did not undertake any effort to fulfill her personal and nondelegable duty to monitor client funds and her trust account, hearing judge properly accepted parties' stipulation and correctly found, on respondent's plea of nolo contendere, that respondent was culpable of violating trust account rules even though respondent relied on her husband and law partner to manage the trust account. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[6]**

Because respondent failed to competently perform legal services both before and after the September 14, 1992, effective date of the revised version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110), he violated both the "former" and the "current" versions of that rule. Thus, State Bar erred when it amended the charges to "conform to proof" by deleting the charge that respondent violated the "current" rule and replacing it with a charge that he violated the "former" rule. State Bar should not have deleted the charge that respondent violated the "current" rule, but should have added to it a charge that respondent also violated the "former" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[2]**

Even though State Bar erroneously amended the charges to "conform to proof" by deleting the charge that respondent violated the revised (i.e., "current") version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110 as amended eff. Sept. 14, 1992) and replacing it with a charge that respondent violated the "former" version of that rule instead of correctly amending the charges by adding, to the charged violation of the "current" rule, a charge that respondent also violated the "former" rule, no due process violation occurred when review department held that respondent was culpable of violating both the "former" rule and the "current" rule because (1) the text of both rules was virtually identical, (2) respondent did not argue lack

of notice, and (3) the trial in hearing department covered respondent's conduct during the time period in which the "former" rule was in effect and after the effective date of the "current" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[3]**

Absent the court granting a set aside, a partial stipulation to facts remains binding on the parties, and the facts recited in the stipulation are deemed established. *In the Matter of Rodriguez* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 884. **[1]**

The current procedures squarely place on the State Bar the responsibility of monitoring, investigating, and initiating proceedings alleging probation violations. Imposing a hearing judge supervised probation condition presented a number of problems under this structure. The review department declined to recommend such a condition, especially where, as here, there was no showing that the procedures in place for probation proceedings were not adequate to achieve the goals of attorney disciplinary probation. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[3]**

135.40 Subpoenas and Discovery (Division 2, Ch. 3, rules 5.60-5.71 (2011); former Division IV, rules 150-189 (1995))

Respondent's discovery rights under the revised Rules of Procedure of the State Bar, which are based on similar discovery provisions in the California Administrative Procedure Act, satisfy fair trial concerns. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[4]**

In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.

Under State Bar Act and disciplinary case law, respondent had affirmative duty to insure that his answers to interrogatories propounded to him by the State Bar were true and correct even if he had to refresh his recollection of the facts by going to the immigration court and reviewing the court file and listening to the tapes of all relevant court hearings in each client matter that was a subject of the interrogatories. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[27]**

The Rules of Procedure of the State Bar presently in effect concerning the issuance and service of investigative subpoenas are not materially different than were the rules before the Supreme Court in a prior case. Where the subpoena duces tecum was issued based on a competent declaration that was presented to the designee of the Chief Trial Counsel which demonstrated that the records sought were, in fact, trust account records, that they were reasonably required for the matter under investigation, and that the matter under investigation concerned an attorney, the subpoena was issued in accordance with those rules. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[2 a, b]**

In a prior case, the Supreme Court expressed concern for the privacy of the targeted attorney's clients, and further noted that the proceedings of the State Bar were conducted in strict confidence. While such formal proceedings are now public, the investigative process is conducted in the same strict confidence that the Supreme Court noted in the prior case. In addition, in the event the records are sought to be used in a subsequent public proceeding following a confidential investigation, the attorney's duty of informing the client or clients whose trust account information may become public of that fact would come into play. The client or clients would then have the opportunity to seek relief from the State Bar Court under the rules of procedure that create a method for sealing portions of the record. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[3]**

Based on the determination that the provisions of the State Bar Act and the Rules of Procedure of the State Bar concerning investigative subpoenas for trust account records meet the standard as enunciated by the Supreme Court in a prior case, the review department concluded that there was no need to import either the provisions of Code of Civil Procedure section 1985 et seq., or the provisions of Government Code section 7470 et seq., for either due process or other reasons into the procedures for the issuance of State Bar investigative subpoenas. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[4]**

135.50 Defaults and Trials (Division 2, Ch. 4, Defaults, rules 5.80-5.86 (see also rules 5.250-5.253, 5.346), and Ch. 5, Trials, rules 5.100-5.115 (2011); former Division V, rules 200-224 (1995))

Prior to 2011, the Rules of Procedure of the State Bar permitted imposition of a discipline less than disbarment even if the defaulting attorney did not seek relief from default. (See former rule 200 et seq. of the Rules of Procedure of the State Bar.) The rules now require that when a member's default has been entered and the member fails to have it set aside or vacated, the Office of the Chief Trial Counsel must file a petition seeking the member's disbarment. (Rule 5.85(A).) In turn, a hearing judge must grant the petition and recommend disbarment provided (1) the member has failed to file a response to the petition for disbarment or (2) the court has denied a motion to set aside or vacate the default. (Rule 5.85(F)(1).) *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[2 a,b]**

A member in default has various opportunities to seek relief from default. (Rules Proc. of State Bar, rules 5.83(A), (C), (D), and 5.85(E).) Because the effects of a default may deny a disposition of the case on the merits irrespective of the charges or potential mitigation, the review department closely scrutinizes orders denying relief from default and any doubts must be resolved in favor of the member. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[3]**

Where respondent filed opposition to petition for disbarment after default, and sought review of hearing judge's order granting petition, and Review Department remanded to permit hearing judge to exercise discretion regarding what relief was appropriate, hearing judge did not abuse discretion on remand by declining to set aside default except for limited purpose of conducting hearing on culpability, aggravation, and level of discipline, in which respondent was not permitted to participate. Hearing judge also properly deemed allegations in notice of disciplinary charges to be admitted. By allowing his default to be entered, respondent waived right to participate in proceedings, to make evidentiary objections, and to present evidence in mitigation. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[4 a-c]**

Where respondent's default was set aside for limited purpose of conducting discipline hearing, neither amended default rules nor discipline standards provided for presumptive discipline of disbarment. Even two-year actual suspension was excessive discipline for violation of probation conditions attached to prior public reproval. Rather, appropriate discipline, under standard 2.10 and case law, was 90-day actual suspension and lengthy probation with conditions. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[8 a-c]**

Rules of Procedure of the State Bar, rule 220(b), which requires the court to file its decision within 90 days of taking a matter under submission, is not jurisdictional. Although filing a decision well beyond the prescribed 90 days undermines important objectives, an attorney's decision to abate his law practice pending filing of hearing decision is too speculative to establish specific, legally cognizable prejudice. *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 **[1]**

The State Bar's posttrial effort to amend the hearing judge's decision could not be characterized as anything other than a posttrial motion covered by Rules of Procedure of the State Bar, rule 221, since no language in rule 221 limits its applicability to rules 222 through 224 and no language indicates that rules 222 through 224 are intended to be an exclusive roster of posttrial motions. Thus, when the State Bar filed a motion to amend the decision in the hearing department, it had the effect of vacating the request for review filed on the same date in the review department, rendering the request for review void *ab initio*. Moreover, the State Bar's second request for review was vacated because it was filed prior to the hearing judge's final ruling on the motion to amend, which final ruling was made when the hearing judge realized she had prematurely issued a ruling before respondent filed a timely opposition. *In the Matter of Ozowski* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67. **[1 a–c]**

Where the hearing judge recommended for a defaulting attorney, among other things, an actual suspension of 60 days and until the attorney made restitution of unearned fees and until the State Bar Court granted the attorney's motion to terminate her actual suspension under Rules of Procedure of the State Bar, rule 205, the hearing judge should also have recommended compliance with paragraphs (a) and (c) of California Rules of Court, rule 955 if the actual suspension exceeded 90 days. *In the Matter of Copren* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861. **[2a, b]**

In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.

Rule of Procedure requiring hearing judges to file decisions within 90 days after taking cases under submission is neither mandatory nor jurisdictional. Thus, respondent's contention that the hearing judge's decision was void because it was filed four days after the expiration of the ninety-day time limit was rejected. Furthermore, because respondent failed to establish that he suffered any actual harm or prejudice, he was not entitled to any relief for the hearing judge's failure to file his decision timely. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[8]**

In default proceeding, period of stayed suspension and disciplinary provision authorizing probation conditions to be imposed on attorney in the future by State Bar Court ought not to be rejected by hearing judge merely because attorney's actual suspension will continue until attorney establishes rehabilitation under standard 1.4(c)(ii) or until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[3]**

In default proceeding, no loss of public protection occurs when specific probation conditions are not immediately imposed on attorney who is placed on actual suspension because such attorney will be prohibited from practicing law for duration of attorney's actual suspension and until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[4]**

Despite the mandate in State Bar Rule of Procedure, rule 290(a) that every imposition of discipline (other than reprovals) include a requirement that attorney attend State Bar Ethics School, the appropriate time to consider imposing State Bar Ethics School as a condition of probation in default proceeding in which attorney's actual suspension will continue until the attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205, is at the time of ruling on the rule 205 motion to terminate the actual suspension. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[7]**

Rule 219 of the Rules of Procedure of the State Bar provides that, after the party with the burden of proof has rested, the opposing party may move for a determination that the party with the burden of proof has failed to meet that burden. In deciding the motion, the hearing judge is required to consider all the evidence introduced, weigh that evidence and make determinations of credibility. The review department held that the hearing judge's ruling on a motion made pursuant to rule 219 is reviewable on plenary review under rule 301 of the Rules of Procedure of the State Bar and that such review is de novo. The review department must determine, based upon its independent review of the evidence before the hearing judge at the time the motion was made, whether clear and convincing evidence was presented of each element of the charged offenses. In deciding these issues, the review department must give great weight to the hearing judge's credibility determinations. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. **[1 a-c]**

Where the State Bar Court recommends that an attorney who has defaulted in a disciplinary proceeding be placed on actual suspension, rule 205(a) of the Rules of Procedure requires that the discipline recommendation contain two elements: (1) a specific period of actual suspension; and (2) a statement that the attorney's actual suspension shall continue unless the State Bar Court grants a motion to terminate the actual suspension at the conclusion of the specific period of actual suspension or upon such later date ordered by the court. In the present case the hearing judge recommended that respondent be actually suspended until he accomplishes certain tasks (i.e., provide evidence of reimbursement to his former client, attend Ethics School, pass the professional responsibility examination, and make a motion to the State Bar Court to terminate the actual suspension). This recommendation does not meet the requirement of rule 205(a) that the recommended discipline include a specific period of actual suspension. At best, the hearing judge's recommendation will result in an indefinite, as distinguished from a specific, period of actual suspension. To extend an attorney's recommended actual suspension until he or she moves the State Bar Court to terminate that suspension under rule 205 there must be a stated, defined and measurable period of actual suspension recommended. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[1 a, h]**

While rule 205 of the Rules of Procedure does not specifically preclude a hearing judge in a default matter from recommending a period of actual suspension be imposed as a condition of probation along with appropriate

additional conditions of probation, the rule clearly contemplates that probation and its attendant conditions be imposed at the time the defaulting attorney brings a motion under rule 205(c) to terminate his or her actual suspension. The entire purpose of rule 205 is to eliminate the necessity of multiple proceedings against an attorney who is unwilling to participate in the disciplinary process and evidences no interest in maintaining his or her membership in the bar. Under rule 205 the burden is placed on a defaulting attorney to bring forward to the State Bar Court his or her interest in continuing the right to practice. The appropriate time to consider imposing probation and its attendant conditions is when the attorney seeks relief from the actual suspension that may be imposed following his or her default in a disciplinary proceeding. It is only at that time that the court has before it an attorney who evidences a willingness to comply with conditions of probation and a full understanding of the reasons for the attorney's failure to participate in the disciplinary process. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[2 a, b]**

Attendant to a recommendation of suspension, the State Bar Court lacks the authority to impose conditions of probation without the prior approval of the Supreme Court. Therefore, it is appropriate, in any decision or opinion made under rule 205 of the Rules of Procedure recommending the actual suspension of an attorney, to recommend to the Supreme Court that the disciplined attorney be ordered to comply with the conditions of probation, if any, reasonably related to the found misconduct that the State Bar Court may impose as conditions of probation attendant on terminating the actual suspension of that attorney. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[3]**

Attorney discipline is under the control of the Supreme Court and the State Bar Court may only recommend such discipline for the approval of the Supreme Court. As a consequence the clear parameters of any proposed discipline must be included in the State Bar Court's recommendation to the Supreme Court. Both stayed and actual suspension are discipline within the context of attorney discipline. It follows that in any recommendation for discipline made to the Supreme Court under rule 205 of the Rules of Procedure must include, if appropriate, a period of stayed suspension. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[4 a, b]**

There is nothing in rule 205 of the Rules of Procedure that expressly precludes the State Bar Court from recommending appropriate preconditions to a defaulting and disciplined attorney bringing a motion to terminate his or her actual suspension under rule 205, such as recommended in this matter by the hearing judge, requiring respondent to make restitution and attend Ethics School. However, the requirement that respondent take and pass the Professional Responsibility Examination prior to bringing a motion for relief from suspension is in conflict with Supreme Court case law requiring that a disciplined attorney be given a minimum of one year within which to pass the examination. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[5 a, b]**

Hearing judge did not abuse her discretion in issuing a pretrial order precluding respondent from attempting to impeach State Bar's witnesses with evidence of witnesses' alleged criminal activities, terrorist activities, racism, hate crimes, molestation of foster children, etc. except by evidence of proved felonies introduced into evidence in strict compliance with Evidence Code. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[5 a-c]**

When respondent's refusal to provide names of any witnesses or identify any exhibits as required by Rules of Practice regarding pretrial statements and exchange of exhibits was based on respondent's dissatisfaction over hearing judge's pretrial order, hearing judge did not abuse discretion in sanctioning respondent for not complying with Rules of Practice by precluding respondent from presenting any evidence at trial. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[6 a-g]**

The hearing judge erred in using the State Bar's request to add a quarterly reporting probation condition to conclude that limited relief under rule 203(e)(3)(B), Rules of Procedure of the State Bar, warranted the setting aside of the default on the issue of discipline. Rule 203(e)(2) allows a judge to vacate a default subject to appropriate conditions. Rule 203(e)(3)(B) allows a judge to vacate a default entered after filing of the decision, for limited purposes. There is nothing in rule 203(e) that eliminates the burden the respondent must sustain under rule 203(c), Rules of Procedure of the State Bar. Only after a defaulting respondent has made a sufficient showing for relief under rule 203(c), may a hearing judge set aside a default unconditionally or on appropriate conditions or for a limited purpose under rule 203(e). Since the judge's decision on its face concluded that respondent had not made the required showing under rule 203(c)(2), the judge erred when setting aside respondent's default. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831. **[2]**

In a motion for relief from default, general allegations of despondency and depression do not meet decisional law standards for relief, even under the more liberal requirements of rule 202(c)(1), Rules of Procedure of the State Bar. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.**[3]**

135.60 Dispositions and Costs (Division 2, Ch. 6, rules 5.120-5.136 (2011); former Division VI, rules 250-284 (1995))

Rule of Procedure of State Bar 262, which authorizes proceedings to be dismissed in the furtherance of justice, is construed in the State Bar Court in the same manner as its analog Penal Code section 1385 is construed in criminal proceedings. State Bar rule does not permit respondents to make motions. Motions may be made only by the State Bar as the prosecutor or a dismissal may be entered on State Bar Court's own motion after taking required steps. Hearing judge's dismissal of proceeding comported with those required pre-dismissal steps because she issued an order to show cause to the parties, allowed for responses from them, considered all appropriate interests, and stated in detail her reason for dismissal, and since the hearing judge acted promptly after the proceeding was filed and since the dismissal was expressly without prejudice to refiling, review department saw no prejudice to the State Bar. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721.**[2 a-c]**

Hearing judge did not abuse her discretion in ordering the dismissal of proceeding without prejudice in furtherance of justice on her own motion under Rule of Procedure of State Bar 262 as an appropriate remedy for the deprivation of the opportunities (1) for respondent to meet and attempt to resolve the matter with the State Bar prosecuting attorney 20 days before any disciplinary charges were filed and (2) for respondent to request an early neutral evaluation conference with a State Bar Court judge before disciplinary charges were filed because the deprivation of the opportunities occurred when, as a consequence of respondent's prior incorrect change of address submission to the State Bar, respondent did not receive State Bar's letter notice of intent to file notice of disciplinary charges informing him of these pre-filing opportunities. Once the hearing judge contemplated dismissal under rule 262 and once the uncontroverted evidence emerged as to how respondent's change of address was mistakenly composed on the change of address form and mistakenly approved by respondent (essentially a typographical error), the hearing judge was justified in considering the mistake to come within the ambit of rule 262 and did not abuse her discretion in ordering dismissal. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721.**[3 a-e]**

In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.

In reviewing a motion to dismiss a disciplinary charge based on a contention that the notice of disciplinary charges is defective due to its failure to state a disciplinable offense, the review department treats the factual allegations of the notice of disciplinary charges as true and disregards all factual matters outside the ambit of the notice of disciplinary charges except for judicially noticeable facts, since the purpose of the motion is to test the sufficiency of the notice of disciplinary charges and not to contest the charges. Where the notice of disciplinary charges alleged (1) that respondent, as general partner of a California limited partnership having a fiduciary duty to the limited partners, made preliminary distributions of partnership profits but failed to disburse any funds to one limited partner due to that limited partner's refusal to sign a release of liability and (2) that despite the limited partner's repeated request for the funds, respondent never released the funds and subsequently informed the limited partner that he no longer had the funds, the notice of disciplinary charges was sufficient to state a disciplinary offense, i.e., that respondent committed an act involving moral turpitude by breaching his fiduciary duty to the limited partner and misappropriating funds to which the limited partner was entitled.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[3a-c]**

Because respondent's motion to dismiss the notice of disciplinary charges based on insufficient notice of one of the charges was filed later than the date his response to the notice of disciplinary charges was due, in violation of Rules of Procedure of the State Bar, rule 262(c)(2), respondent's assertion was waived as a basis for dismissal.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[4]**

In reviewing a pretrial motion to dismiss the notice of disciplinary charges on the ground that it was barred by the applicable period of limitations, we treat the factual allegations of the notice of disciplinary charges as true. Where the notice of disciplinary charges alleged that respondent, a general partner of a California limited partnership, informed a limited partner within five years before the notice of disciplinary charges was filed that the limited partner's share of funds from a partnership distribution was gone, the charge that respondent committed

an act involving moral turpitude by breaching a fiduciary duty and misappropriating funds was timely filed under Rules of Procedure of the State Bar, rule 51. *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[5a,b]**

Statutory provision granting attorneys the right to recover costs from State Bar provides that attorneys who have been exonerated of all disciplinary charges following a trial are entitled to reimbursement from the State Bar "in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparing for [trial]" without defining "reasonable expenses" (other than expressly excluding fees for attorneys and experts) and without prescribing the method by which State Bar is to determine what they are. Accordingly, State Bar Board of Governors properly exercised its statutory rule making authority and adopted State Bar Rule of Procedure 283 to define what expenses (or costs) are allowable as "reasonable expenses" for which exonerated attorneys may obtain reimbursement under statute and to provide the procedure by which exonerated attorneys are to seek reimbursement from the State Bar for those expenses. In absence of Supreme Court authority to the contrary, the State Bar Court may award exonerated attorneys reimbursement from the State Bar for reasonable expenses only if they are specified as allowable expenses in Rule of Procedure 283. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[2]**

Under clear language of State Bar Rule of Procedure 283(b)(5), State Bar Court may award attorneys exonerated of all disciplinary charges after trial reimbursement for expenses incurred in obtaining transcripts of court proceedings only if the court ordered that the transcripts be prepared. Fact that exonerated attorney could not obtain plenary review of hearing judge's decision finding him culpable of professional misconduct without first obtaining and paying for trial transcript is not synonymous with the court ordering the preparation of a transcript. In fact, requirement of obtaining trial transcript for plenary review is not imposed by court, but by State Bar Rule of Procedure 301(a)(2), which makes clear that it is the party seeking review that orders the trial transcript. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[3]**

The State Bar is correct that a private reproval is a sanction that constitutes discipline. And the State Bar is also correct that the plain and unambiguous language of rule 290(a), Rules of Procedure mandates that except as provided by order of the Supreme Court, a member shall be required to satisfactorily complete the State Bar Ethics School in all dispositions or decisions involving the imposition of discipline, unless the member previously completed the course within the prior two years. However, rule 956(a) of the California Rules of Court authorizes the attachment of conditions to reprovals. And that rule expressly requires that conditions attached to reprovals be based upon a finding that the protection of the public and the interests of the attorney will be served thereby. In fact, it is error to attach a condition to a reproval in the absence of such an express finding. Moreover, rule 271, Rules of Procedure, explicitly directs that any conditions attached to reprovals must be attached in the manner authorized by California Rules of Court rule 956. Accordingly, the review department held that the mandatory directive in rule 290 to impose ethics school is not applicable in proceedings in which the discipline imposed is a reproval. To conclude otherwise would strip all meaning from the requirement in rule 956(a) that conditions attached shall be based on a finding that the interests of the public and attorney will be served thereby. In addition, to conclude otherwise would render a portion of rule 271 surplusage. *In the Matter of Respondent Z* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 85. **[1 a-d]**

California Rules of Court, rule 951, which explicitly authorizes the State Bar Court to extend the time within which an attorney must take and pass a professional responsibility examination, applies only when the Supreme Court orders the attorney take and pass such an examination. It does not apply when the State Bar Court orders an attorney to take and pass the examination as a condition attached to a reproval. When the State Bar Court imposes such a condition, its authority to extend the time for the attorney to comply is derived from California Rules of Court, rule 956, which authorizes the State Bar Court to attach conditions to the reprovals that it imposes. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[1]**

135.70 Review Department/Delegated Powers (Division 3, rules 5.150-5.162 (2011); former Division VII, rules 300-321 (1995))

The State Bar's posttrial effort to amend the hearing judge's decision could not be characterized as anything other than a posttrial motion covered by Rules of Procedure of the State Bar, rule 221, since no language in rule 221 limits its applicability to rules 222 through 224 and no language indicates that rules 222 through 224 are intended to be an exclusive roster of posttrial motions. Thus, when the State Bar filed a motion to amend the decision in the

hearing department, it had the effect of vacating the request for review filed on the same date in the review department, rendering the request for review void *ab initio*. Moreover, the State Bar's second request for review was vacated because it was filed prior to the hearing judge's final ruling on the motion to amend, which final ruling was made when the hearing judge realized she had prematurely issued a ruling before respondent filed a timely opposition. *In the Matter of Ozowski* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67. **[1 a–c]**

Although the State Bar apparently believed that it had perfected its right to appeal due to having filed two requests for review, no timely request for review was filed after service of a final order disposing of a posttrial motion, and therefore the review department was without jurisdiction to hear the appeal. Due to the *sui generis* nature of disciplinary proceedings, as well as the differences between statutes and rules regarding notices of appeal applicable in civil matters and those applicable in disciplinary matters, the review department could not apply civil rules and statutes so as to consider the requests for review as prematurely filed or to stay proceedings at the trial level after a request for review had been filed. Although the State Bar asked for relief on the grounds that it never received a copy of the hearing judge's final order and that it was misled when the review department clerk's office did not reject pleadings filed after the requests for review, the evidence established that service of the hearing judge's final order was properly effectuated, and the review department clerk's failure to issue a notice of rejection of pleadings was not a ground for relief under any rule but merely a courtesy function. More importantly, because the review department was divested of jurisdiction, it was powerless to relieve against mistake, inadvertence, accident, or misfortune. *In the Matter of Ozowski* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 67. **[2 a–g]**

When a party supports a statement in its brief with a reference to a finding or conclusion in the hearing judge's decision, party must also provide references to where the evidence supporting the hearing judge's finding or conclusion may be found in the record in order to comply with rules of procedure and rule of practice mandating that statements in briefs be supported with proper references to the record. (Rules Proc. of State Bar, rules 302(a), 303(a); State Bar Ct. Rules of Prac., rule 1320.)*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[1]**

Even though the parties entered into a stipulation as to facts and conclusions of law (Rules Proc. of State Bar, rule 132) in which they agreed to be bound by stipulated facts regardless of the degree of discipline recommended or imposed and in which respondent pleaded nolo contendere to the disciplinary charges in the stipulation (Bus. & Prof. Code, § 6085.5, subd. (c)) and acknowledged that her "the plea of nolo contendere shall be considered the same as an admission of culpability" for disciplinary purposes, the State Bar Court still had an affirmative duty to independently determine whether the parties' stipulated conclusions of law were supported by the record before accepting them.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[1a-c]**

Regardless of whether respondent had the right on review to challenge the conclusions of culpability to which she stipulated to in the hearing department, the review department still had an affirmative duty to determine if the culpability findings were supported by the record.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[2]**

The hearing judge did not abuse his discretion or make an error of law in denying respondent's motion to modify his probation on the ground that respondent was dilatory in bringing the motion where respondent was aware or should have been aware of both the factual and legal need to modify the probation long before the motion was filed. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[1]**

In reviewing a hearing judge's decision on a standard 1.4(c)(ii) petition for relief from actual suspension, the standards of review are abuse of discretion and error of law. (Rules Proc. of State Bar, rules 300(k), 639.) Under abuse of discretion standard, review department does not review hearing judge's decision with the intention of substituting its view for that of hearing judge, but rather with the intention of employing the equivalent of the substantial evidence test by accepting hearing judge's resolution of credibility and conflicting evidence and hearing judge's choice of possible reasonable inferences. Review department reviews the record to determine if hearing judge's findings are supported by substantial evidence and whether any errors of law were committed. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[2]**

There is clear distinction between credibility and candor. The determination of a witness's credibility (i.e., believability) is primarily within province of the hearing judge who saw and heard the witness testify, while the

determination that a witness's testimony lacked candor (i.e., that the witness lied) must be found by clear and convincing evidence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[10]**

Even though a witness's candor must ordinarily be shown by clear and convincing evidence, great weight is still give to the hearing judge's findings on candor. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[11]**

Under clear language of State Bar Rule of Procedure 283(b)(5), State Bar Court may award attorneys exonerated of all disciplinary charges after trial reimbursement for expenses incurred in obtaining transcripts of court proceedings only if the court ordered that the transcripts be prepared. Fact that exonerated attorney could not obtain plenary review of hearing judge's decision finding him culpable of professional misconduct without first obtaining and paying for trial transcript is not synonymous with the court ordering the preparation of a transcript. In fact, requirement of obtaining trial transcript for plenary review is not imposed by court, but by State Bar Rule of Procedure 301(a)(2), which makes clear that it is the party seeking review that orders the trial transcript. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263.**[3]**

Rule 219 of the Rules of Procedure of the State Bar provides that, after the party with the burden of proof has rested, the opposing party may move for a determination that the party with the burden of proof has failed to meet that burden. In deciding the motion, the hearing judge is required to consider all the evidence introduced, weigh that evidence and make determinations of credibility. The review department held that the hearing judge's ruling on a motion made pursuant to rule 219 is reviewable on plenary review under rule 301 of the Rules of Procedure of the State Bar and that such review is de novo. The review department must determine, based upon its independent review of the evidence before the hearing judge at the time the motion was made, whether clear and convincing evidence was presented of each element of the charged offenses. In deciding these issues, the review department must give great weight to the hearing judge's credibility determinations. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166.**[1 a-c]**

Issues raised in State Bar's petition for interlocutory review as to (1) whether Rules of Procedure required petitioner for reinstatement to provide proof, at time he presented his petition for filing, that he had passed a professional responsibility examination within last year (i.e., one before filing of petition) and (2) whether hearing judge erred in finding that petitioner had not previously resigned from State Bar with disciplinary charges pending were proper for interlocutory review because they could determine outcome of proceeding and determine whether petitioner's rehabilitation was an issue in proceeding. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91.**[1 a-e]**

Where hearing judge did not issue written ruling on his denial of State Bar's motion to dismiss former attorney's petition for reinstatement, review department determined hearing judge's reasoning from written transcript of hearing on motion, which was included in appendix to State Bar's petition for interlocutory review. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91.**[2]**

California Rules of Court, rule 951, which explicitly authorizes the State Bar Court to extend the time within which an attorney must take and pass a professional responsibility examination, applies only when the Supreme Court orders the attorney take and pass such an examination. It does not apply when the State Bar Court orders an attorney to take and pass the examination as a condition attached to a reproval. When the State Bar Court imposes such a condition, its authority to extend the time for the attorney to comply is derived from California Rules of Court, rule 956, which authorizes the State Bar Court to attach conditions to the reprovals that it imposes. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[1]**

The rule requiring the review department to give great weight to the hearing judge's findings of fact that resolve issues pertaining to the credibility of the witnesses, which rule is premised on the hearing judge's ability to see the witnesses' demeanor and conduct during trial, is not applicable when a witness's testimony is present only through a written transcript of the witness's deposition. Thus, in such a case, the review department may independently evaluate the credibility of the witness's deposition testimony without giving great weight to the hearing judge's findings. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[3]**

Because none of the hearing judge's material findings of fact were challenged on review, State Bar's contention that the hearing judge's disciplinary recommendation was incomplete in that it did not contain a probation condition

requiring respondent to file quarterly probation reports fell explicitly within the purview of the rule of procedure permitting summary review.*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[1]**

Even though the review department retains its authority to independently review the full record in summary review proceedings, it gives deference to the litigants' identification of the issues and ordinarily limits the scope of review to those issues. The review department followed this practice in the present proceeding except that it modified the costs provision because of recent statutory changes. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[2]**

In summary review proceedings, the full record was not before the review department therefore it could not consider any issues other than those raised by the parties, absent the conversion of the matter into a plenary review proceeding. Accordingly, where the review department did not modify the hearing judge's decision as a result of the summary review proceeding, the hearing judge's decision remained the final decision of the State Bar Court. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[5]**

A hearing judge erroneously relied on an unpublished hearing department decision and a Supreme Court order in another case. The unpublished decision of the hearing department in another proceeding, involving another respondent, may not be relied on either as precedent or as evidence. While the hearing department could take judicial notice of the Supreme Court order, that order provided no information that would make it relevant as either evidence or precedent in the matter before the court. It merely recited the discipline ordered, without discussion of the relevant facts or law and therefore should not have been relied on in this proceeding. *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639. **[3]**

If an appellee wishes to address issues not raised by the appellant, the party should request its own review. Even though the review department is obligated to conduct de novo review, it seeks to discourage the obviously unfair practice of requesting review in a responsive brief of issues not raised by the appellant. In such a case the appellee has not shared in the cost of record preparation, and it reduces appellant's time to respond to such issues. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[4]**

The standard of review in a proceeding for relief from actual suspension under standard 1.4(c)(ii) is abuse of discretion or error of law. (Rules Proc. of State Bar, title II, State Bar Court Proceedings, rules 300(b), 639.) The review department determines abuse of discretion by using the equivalent of the substantial evidence test. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[1]**

Whenever an appellee wishes to address issues different from those raised by the appellant, that party should file its own request for review. (Rule 301, Rules of Proc. of State Bar.) *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[1]**

Augmentation of the record on review is appropriate only if the record is incorrect or incomplete. Where respondent failed to take advantage of the ample opportunity she had at trial to seek to show that her misconduct resulted from her alcoholism, the review department denied her request to augment the record with declarations about her recovery from alcoholism as the record was neither incorrect nor incomplete. However, where respondent challenged the hearing judge's finding that respondent made a deliberate misrepresentation at a pretrial conference, the review department granted the State Bar's request to augment the record with the transcript of the conference as the record was incomplete without the transcript. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(e)(3); former Provisional Rules of Practice of State Bar, rule 1304.) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[2]**

The review department denied respondent's request for judicial notice of general facts about alcoholism and declined to consider several character references stressing respondent's recovery from alcoholism on the aggregate grounds that respondent had not shown at the disciplinary hearing that her alcoholism caused her misconduct, that she failed to show why she should be excused from not having presented the proffered evidence at the disciplinary hearing, and that she failed to show that the specific matters which she wanted to be judicially noticed were proper subjects of judicial notice. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (h).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[3]**

Where respondent stated at oral argument that she did not object to judicial notice of her conviction for the unlicensed practice of law and admitted that she had improperly practiced law, the review department augmented the record on review to note the record of her conviction and considered the unlicensed practice as an aggravating circumstance. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (d)(1).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[4]**

Where the State Bar raised the question of the amount of respondent's actual suspension in a summary review proceeding, but did so only as a function of respondent's time to make restitution, where prior to oral argument, the review department notified the State Bar (the only party entitled to participate) that it considered the issue of appropriate discipline to be before it and the State Bar agreed, the review department held that the amount of discipline was the larger issue for review. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. **[1]**

Summary review was designed to streamline and reduce the costs of review. Among the matters eligible for summary review are those raising issues concerning the appropriate degree of discipline and those without dispute over the hearing judge's material findings of fact. As these were the issues here, the case was appropriate for summary review. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. **[2]**

135.80 Specific Proceedings (Divisions 5 through 7 (2011); former Division VIII (1995))

Note: For each specific proceeding, see also the Digest section(s) regarding that proceeding.

135.81 Involuntary Inactive Enrollment (former rules 400-538 (1995))

Note: For 2011 rules (Division 4), see topic numbers 135.90-135.99.

In determining whether an attorney should be enrolled inactive under Business and Professions Code section 6007, subdivision (d), the record as a whole must be considered. However, when the State Bar Court seeks to estimate the time between its ruling and recommendation and when the Supreme Court can consider them, it may ordinarily rely on the expedited nature of probation revocation proceedings. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[8]**

An attorney involuntarily enrolled inactive because of a mental infirmity or illness may file an application for transfer to active status whenever the attorney is able to show that there is no longer a statutory basis for the inactive enrollment. *In the Matter of Wolfgram* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355. **[6]**

135.82 Probation (Division 5, rules 5.300-5.317 (2011); former rules 550-566 (1995))

In order to make a showing under standard 1.4(c)(ii), Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, and be relieved from suspension, an attorney can petition as early as six months before the earliest date that the actual suspension may terminate. Also, since these proceedings are expedited, an attorney could demonstrate rehabilitation, fitness to practice law and present learning and ability in the general law without necessarily extending his or her actual suspension period. In probation revocation proceedings, the rules of procedure limit the actual suspension that can be imposed to the total amount of stayed execution originally imposed. However, a standard 1.4(c)(ii) condition does not necessarily extend the actual suspension of a respondent where a showing can be made within the period of actual suspension. Therefore, the review department concluded that the State Bar Court was not prohibited from recommending such a condition in a probation revocation proceeding even though the condition could result in an actual suspension that exceeded the length of the originally imposed stayed suspension. To do otherwise would permit respondent to violate probation and resume the practice of law after being suspended for over five years, without ever making a showing of his rehabilitation, fitness to practice law or his learning and ability in the general law, thus defeating the important level of public protection regularly recommended in lengthy suspensions. *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737. **[2 a-c]**

The hearing judge did not abuse his discretion or make an error of law in denying respondent's motion to modify his probation on the ground that respondent was dilatory in bringing the motion where respondent was aware or

should have been aware of both the factual and legal need to modify the probation long before the motion was filed. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.**[1]**

California Rules of Court, rule 951, which explicitly authorizes the State Bar Court to extend the time within which an attorney must take and pass a professional responsibility examination, applies only when the Supreme Court orders the attorney take and pass such an examination. It does not apply when the State Bar Court orders an attorney to take and pass the examination as a condition attached to a reproval. When the State Bar Court imposes such a condition, its authority to extend the time for the attorney to comply is derived from California Rules of Court, rule 956, which authorizes the State Bar Court to attach conditions to the reprovals that it imposes. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[1]**

Under the current statutes and rules governing probation proceedings, the State Bar has the exclusive jurisdiction to conduct investigations and bring disciplinary charges. The State Bar may file disciplinary charges if it finds in its discretion that there is reasonable cause to believe that an attorney has violated the State Bar Act or Rules of Professional Conduct. Upon reasonable cause to believe that an attorney has violated a condition or conditions of probation, the State Bar may file either an original disciplinary proceeding based on the violation or a motion to revoke probation. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[1]**

Under the current statutes and rules governing probation proceedings, the State Bar has exclusive jurisdiction to supervise members placed on probation and exclusive authority to initiate probation revocation proceedings. Nevertheless, the Supreme Court retains plenary authority over the regulation and discipline of attorneys. Neither the statutes nor the rules of procedure limit the Supreme Court's plenary authority. The Supreme Court may, in the exercise of its plenary authority, impose a hearing judge supervised probation condition regardless of the statutes and rules covering disciplinary proceedings. By imposing such a probation condition, the Supreme Court would necessarily confer jurisdiction on the hearing judge to monitor compliance. Thus, the review department did not find persuasive the State Bar's argument that the hearing judge lacked jurisdiction to supervise probation conditions. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[2]**

The State Bar can prosecute a probation violation by way of a motion to revoke probation, or by way of an original disciplinary proceeding based on a violation of the Business and Professions Code section 6068, subdivision (k). It was not error to charge a violation of Business and Professions Code section 6103 in this original disciplinary proceeding. The gravamen of this case was respondent's failure to comply with the conditions of his probation. Regardless of the statute charged, the proceeding was based on a violation of section 6068, subdivision (k). *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[3]**

In determining whether an attorney should be enrolled inactive under Business and Professions Code section 6007, subdivision (d), the record as a whole must be considered. However, when the State Bar Court seeks to estimate the time between its ruling and recommendation and when the Supreme Court can consider them, it may ordinarily rely on the expedited nature of probation revocation proceedings. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[8]**

135.83 Failure to Give Required Notice of Suspension under Cal. Rules of Court, rule 9.20, formerly rule 955 (Division 6, ch. 1, rules 5.330-5.337 (2011); former rules 580-587 (1995))

135.84 Conviction (Division 6, ch. 2, rules 5.340-5.347 (2011); former rules 600-607 (1995))

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

135.85 Misconduct in Another Jurisdiction (Division 6, ch. 3, rules 5.350-5.353 (2011); former rules 620-625 (1995))

135.86 Rehabilitation after Suspension under Standard 1.2(c)(1), formerly Standard 1.4(c)(ii) (Division 7, ch. 1, rules 5.400-5.411 (2011); former rules 630-641 (1995))

A showing under standard 1.4(c)(ii), Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, is normally required when an attorney is actually suspended for two or

more years. Proof satisfactory to the State Bar Court of the member's rehabilitation, present fitness to practice and present learning and ability in the general law are required by a preponderance of the evidence before the member is to be relieved of actual suspension. The purpose of staying the execution of a suspension and ordering probation with an actual suspension and a required showing under standard 1.4(c)(ii) is for public protection and attorney rehabilitation. Although all forms of attorney discipline have the key purpose of protecting the public, the legal community and the maintenance of high professional standards, a standard 1.4(c)(ii) requirement offers public protection in a formal, although expedited proceeding which ensures moral fitness and legal learning before an attorney, suspended for over two years, is permitted to return to the practice of law. *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737. **[1 a-b]**

In order to make a showing under standard 1.4(c)(ii), Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, and be relieved from suspension, an attorney can petition as early as six months before the earliest date that the actual suspension may terminate. Also, since these proceedings are expedited, an attorney could demonstrate rehabilitation, fitness to practice law and present learning and ability in the general law without necessarily extending his or her actual suspension period. In probation revocation proceedings, the rules of procedure limit the actual suspension that can be imposed to the total amount of stayed execution originally imposed. However, a standard 1.4(c)(ii) condition does not necessarily extend the actual suspension of a respondent where a showing can be made within the period of actual suspension. Therefore, the review department concluded that the State Bar Court was not prohibited from recommending such a condition in a probation revocation proceeding even though the condition could result in an actual suspension that exceeded the length of the originally imposed stayed suspension. To do otherwise would permit respondent to violate probation and resume the practice of law after being suspended for over five years, without ever making a showing of his rehabilitation, fitness to practice law or his learning and ability in the general law, thus defeating the important level of public protection regularly recommended in lengthy suspensions.*In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737. **[2 a-c]**

The standard of proof in standard 1.4(c)(ii) proceedings for relief from actual suspension is preponderance of the evidence. (Rules Proc. of State Bar, rule 634.) Thus, to be entitled to relief from actual suspension, petitioners must prove, by a preponderance of the evidence, their rehabilitation, present fitness to practice, and present learning and ability in the general law. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[1]**

In reviewing a hearing judge's decision on a standard 1.4(c)(ii) petition for relief from actual suspension, the standards of review are abuse of discretion and error of law. (Rules Proc. of State Bar, rules 300(k), 639.) Under abuse of discretion standard, review department does not review hearing judge's decision with the intention of substituting its view for that of hearing judge, but rather with the intention of employing the equivalent of the substantial evidence test by accepting hearing judge's resolution of credibility and conflicting evidence and hearing judge's choice of possible reasonable inferences. Review department reviews the record to determine if hearing judge's findings are supported by substantial evidence and whether any errors of law were committed. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[2]**

Procedures for ruling on standard 1.4(c)(ii) petitions for relief from actual suspension (Rules Proc. of State Bar, rules 630-641) are expedited to avoid procedural delays that might effectively create a far longer period of actual suspension than that originally ordered by the Supreme Court. Proceedings on standard 1.4(c)(ii) petitions are summary in nature, not full-fledged reinstatement proceedings in which disbarred attorneys seek to be reinstated to the practice of law. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[3]**

State Bar Court does not have authority to conditionally grant standard 1.4(c)(ii) petitions for relief from actual suspension or to impose probation type conditions on attorneys when granting such petitions. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[5]**

The standard of review in a proceeding for relief from actual suspension under standard 1.4(c)(ii) is abuse of discretion or error of law. (Rules Proc. of State Bar, title II, State Bar Court Proceedings, rules 300(b), 639.) The review department determines abuse of discretion by using the equivalent of the substantial evidence test. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[1]**

A petitioner seeking relief from actual suspension is not ordinarily required to complete probation before he or she may present meaningful evidence of rehabilitation in a proceeding under standard 1.4(c)(ii). Rehabilitative sanctions in the form of continuing probation conditions may remain in place after a petitioner's relief from actual suspension. A disciplined attorney may show rehabilitation before his or her actual suspension expires in a proper proceeding under standard 1.4(c)(ii). (Rules Proc. of State Bar, title II, State Bar Court Proceedings, rules 632, 640.) *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[8]**

Given the summary nature and expedited schedule of a proceeding under standard 1.4(c)(ii), the petitioner remains on actual suspension until the finality of the decision in the State Bar Court, including review. (See Rules Proc. of State Bar, title II, State Bar Court Proceedings, rules 632, 633, 635, 638, 639, 640.) *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[13]**

135.87 Reinstatement after Disbarment (Division 7, ch. 3, rules 5.440-5.447 (2011); former rules 660-666 (1995))

The review department concluded that the hearing judge erred as a matter of law in denying the motion to set aside the dismissal for lack of jurisdiction and found that the procedural requirement of Rules of Procedure of the State Bar, rule 662(c) did not divest the court of jurisdiction to extend the time for, or to grant relief from, payment of costs. Relying on well–settled rules of statutory construction, the review department construed the rule to be directory rather than mandatory or jurisdictional and thus found that the court retained jurisdiction to determine whether petitioner's failure to provide proof of payment of costs prior to filing the reinstatement petition should have resulted in a dismissal under the facts and circumstances of the case. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[1a, b]**

Despite its seemingly mandatory wording, Rules of Procedure of the State Bar, rule 662(c) is merely procedural, advancing a time requirement for the payment of costs, while the relevant Business and Professions Code sections confer jurisdiction to decide the substantive issues of costs and relief therefrom. There is no evidence that the Board of Governors of the State Bar attempted to supplant the statutory authority set forth in Business and Professions Code section 6140.7 and 6086.10, or to divest the State Bar Court of jurisdiction, by implementing a rule of procedure, and indeed, the Board of Governors is proscribed from doing so by Business and Professions Code section 6086. That section is consistent with the more general rule that, where a statute empowers an administrative agency to adopt regulations, those regulations must be consistent and not conflict with the governing statute. Because there is no express language or clear intent to render the rule jurisdictional, the review department looks to the cost provisions as a whole, the nature and character of these provisions, and the consequences that would follow from potential constructions. If the rule were interpreted to be mandatory or jurisdictional, the rule would conflict with and/or constrict relevant statutes and other rules, inadvertently alter the reinstatement requirements, and at times produce unreasonable results. Construing the rule as directory, however, in no way interferes with or compromises the ability of the State Bar or the State Bar Court to effectuate the intent of obtaining costs as money judgments. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[2a, b]**

A strict and unyielding interpretation of rule 662(c) of the Rules of Procedure of the State Bar mandating that costs be paid prior to filing a reinstatement petition is more restrictive than the requirement of Business and Professions Code section 6140.7 that costs be paid as a condition of reinstatement of active membership. A strict interpretation is also inconsistent with the State Bar Court's delegated authority to give relief from costs in whole or in part or to extend the time to pay costs. If a resigned or disbarred attorney were completely relieved of the obligation to pay costs or were provided an extension of time to pay, it would be impossible to provide proof that all discipline costs have been paid prior to filing a reinstatement petition. If the rule were interpreted to be mandatory, it would render relevant costs provisions irrelevant; but the finding that the rule is directory harmonizes all provisions and avoids an unnecessary and impermissible conflict with state statutes and other rules of procedure of the State Bar. Also, such a construction is consistent with the rehabilitative goals of the discipline system by maintaining the court's discretion to consider the timely payment of costs as a factor in determining a petitioner's rehabilitation. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[3a-e]**

The statutory intent that discipline costs are penalties payable to and for the benefit of the State Bar of California to promote rehabilitation and to protect the public supports the position that nonpayment of these costs should not be construed as an absolute roadblock to a reinstatement proceeding in every case, but a factor in

determining overall rehabilitation during the proceeding. Rule 9.10(f) of the California Rules of Court does not require or address payment of costs, and the long–standing procedure for dealing with outstanding discipline costs has been to order reinstatement upon payment of all fees and costs. If Rules of Procedure of the State Bar, rule 662(c) is construed as directory, it allows timely payment of costs to be a relevant factor in determining whether a petitioner has been rehabilitated, which is the very essence of a reinstatement proceeding and consistent with rehabilitative goals. Conversely, if the rule were interpreted to be mandatory, the court would be precluded from considering all relevant factors regarding efforts toward rehabilitation, including the timing and efforts at paying costs. Such an interpretation would effectively change the reinstatement requirements, inadvertently rendering the timing of the payment of costs to be a conclusive determination of rehabilitation. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[4a-d]**

In construing statutes, a practical construction is preferred. A construction of Rules of Procedure of the State Bar, rule 662(c) which permits the State Bar Court to retain jurisdiction is manifestly more practical than one which cuts off the court's jurisdiction regardless of the time and resources the parties have already expended in the court proceedings. Where a reinstatement proceeding had been pending for almost a year at the time a motion to dismiss was filed, the State Bar's investigation period and the discovery period for both parties had expired, and the trial was set to commence in approximately one month, dismissal was a severe remedy for noncompliance with payment of costs, and denial of a motion to set aside the dismissal was draconian. If a petitioner fails to pay the disciplinary costs prior to filing his reinstatement petition, the hearing judge has discretion to dismiss the reinstatement proceeding rather than to undertake a lengthy trial. But the hearing judge may also consider the failure to timely pay costs as a negative factor in petitioner's showing of rehabilitation or condition a petitioner's return to active status on the payment of some or all of the costs. Finally, if a disbarred or resigned attorney has failed to pay costs, the State Bar may enforce an order imposing costs as a money judgment. Construing Rules of Procedure of the State Bar, rule 662(c) as directory will continue to promote timely payment of costs, while not mandating unreasonable consequences in pending proceedings. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[5a b, c]**

Reinstatement petitioner established requisite learning in law by passing California Bar Examination, Attorneys' Examination. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[1 a,b]**

Issues raised in State Bar's petition for interlocutory review as to (1) whether Rules of Procedure required petitioner for reinstatement to provide proof, at time he presented his petition for filing, that he had passed a professional responsibility examination within last year (i.e., one before filing of petition) and (2) whether hearing judge erred in finding that petitioner had not previously resigned from State Bar with disciplinary charges pending were proper for interlocutory review because they could determine outcome of proceeding and determine whether petitioner's rehabilitation was an issue in proceeding. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[1 a-e]**

Hearing judge erred as a matter of law in finding that petitioner for reinstatement had not previously resigned from State Bar with disciplinary charges pending where petitioner's resignation was entitled "resignation with charges pending;" stated that charges were pending against him; was in form prescribed by California Rule of Court 960; was accepted by Supreme Court without prejudice to further proceedings; and where petitioner stated in his petition for reinstatement that, at time he resigned from State Bar, no formal charges were filed against him by State Bar, but only a number of minor client complaints that he had responded to, taken adequate measures to deal with, and answered State Bar in writing denying any misconduct. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[3]**

State Bar Court must interpret State Bar Rule of Procedure 665(a) that requires all petitioners for reinstatement to take and pass professional responsibility examination within frame work of California Rule of Court 951(f) dealing with reinstatement because State Bar's rule making authority is subject to Supreme Court's inherent authority over attorney regulatory matters. And State Bar Court should endeavor to construe State Bar rule as consistent Rules of Court. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[5]**

Applying rules of statutory interpretation to language of State Bar Rule of Procedure 665(a) requiring all petitioners for reinstatement to take and pass professional responsibility examination, review department held (1) that rule sets the earliest time to pass examination at one year before filing of petition, but does not set latest time

to pass examination and (2) that rule does not require proof of passage as condition precedent to filing petition, but only as condition to precedent to State Bar Court recommendation of reinstatement. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[6 a-b]**

Reinstatement requires the passage of a professional responsibility examination and a showing of rehabilitation, present moral qualifications for readmission, and present ability and learning in the general law. (Cal. Rules of Court, rule 951(f); Rules Proc. of State Bar, rule 665(a), (b).) *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[2]**

Although rule 665(b) of the Rules of Procedure of the State Bar, title II, State Bar Court Proceedings, enumerates moral qualifications for reinstatement as an item separate from rehabilitation, rule 951(f) of the California Rules of Court combines them as a single item. The Supreme Court has often considered rehabilitation and moral qualifications for readmission together. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[6]**

Respondent was not given credit for the period of time he was ineligible to practice law against the time period he must wait before he may petition for reinstatement. The ban on respondent's practice for which he sought credit resulted from other disciplinary proceedings, not from the present case and, therefore, was not a related interim ban on his practice. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[8]**

The earliest time that respondent can petition for reinstatement if he is disbarred is five years after the effective date of his interim suspension. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 662(b).) Where the order placing respondent on interim suspension provided that he had to stop providing legal services for any paying clients by one date, but could perform legal services for preexisting pro bono clients until a later date, the earlier date was the effective date of the interim suspension because by obtaining an exception for completion of the pro bono cases, respondent acted for the benefit of his pro bono clients, the courts in which their cases were pending, and the justice system, conduct which would be discouraged if he was denied credit for the entire time he was prohibited from earning his living from the practice of law by reason of the interim suspension order resulting from his felony conviction. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[2]**

135.88 Moral Character (Division 7, ch. 4, rules 5.460-5.466 (2011); former rules 680-687 (1995))

135.89 Specific Proceedings — Other/General

Where a judge questioned the State Bar at an Order to Show Cause hearing about its reasons for seeking an attorney's termination from participating in the Alternative Discipline Program, the hearing judge did not improperly shift the burden of proof to the State Bar because an order to show cause requires parties to appear at a specified time to demonstrate why the relief sought by the applicant should not be granted. *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74 **[4]**

The State Bar was not barred from relying on Michigan proceedings to impose discipline in California under the authority of Business and Professions Code section 6049.1 notwithstanding that, at the time of a prior California disciplinary case in which the State Bar and respondent entered into a stipulation disposing of the charges, the State Bar knew of disciplinary proceedings pending in Michigan but nevertheless advised respondent in writing pursuant to Rules of Procedure of the State Bar, rule 133(a)(12) that there were no additional State Bar investigations pending against him. The clear purpose of Rules of Procedure of the State Bar, rule 133(a)(12) is to require the State Bar to give notice to respondents before the State Bar Court or to attorneys being investigated by the State Bar of the pendency of other complaints lodged with the State Bar against such attorneys, and to expand that requirement to include complaints lodged in other jurisdictions would impose a far greater burden than that contemplated. At the time of the stipulation, both respondent and the State Bar knew of the Michigan proceedings, yet the stipulation did not in any way deal with the California consequences of the Michigan matter, there was no evidence that the Michigan proceedings were included in discussions leading to the stipulation, respondent entered into the stipulation without inquiring about including the Michigan matter in the stipulation, and the State Bar had no way to evaluate the seriousness of the Michigan proceedings. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[1]**

The Rules of Procedure of the State Bar presently in effect concerning the issuance and service of investigative subpoenas are not materially different than were the rules before the Supreme Court in a prior case. Where the subpoena duces tecum was issued based on a competent declaration that was presented to the designee of the Chief Trial Counsel which demonstrated that the records sought were, in fact, trust account records, that they were reasonably required for the matter under investigation, and that the matter under investigation concerned an attorney, the subpoena was issued in accordance with those rules. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[2 a, b]**

135.90 Involuntary Inactive Enrollment Proceedings (Division 4 (2011))

Note: For specific Rules of Procedure applicable to involuntary inactive enrollment proceedings, see the Digest section for the specific type of proceeding, topic number 2000 et seq.

Note: Certain chapters of the 2011 version of the Rules of Procedure, as subsequently augmented, are indexed out of sequence, as follows:

Division 6, Chapter 4, Fee Arbitration Award Enforcement Proceedings
Rules 5.360-5.371: Topic number 3000 et seq.
Division 6, Chapter 5, Alternative Discipline Program
Rules 5.380-5.389: Topic number 3100 et seq.
Division 6, Chapter 6, Legal Specialization Proceedings
Rules 5.390-5.399: Topic number 3200 et seq.
Division 7, Chapter 2, Resignation Proceedings
Rules 5.420-5.427: Topic number 3300 et seq.

136 Application of former Provisional Rules of Practice (pre-1995)

Neither the law nor the facts supported respondent's contention that by denying two continuance requests during the six days of trial, the hearing judge deprived him of a reasonable opportunity to be represented by counsel. An attorney in a disciplinary hearing has no constitutional right to the assistance of counsel. Further, continuances of State Bar Court hearings are disfavored. (State Bar Court Rules of Practice, rule 1131.) To prevail on a procedural argument in a disciplinary matter, an attorney must show both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged procedural error. Respondent proved neither where respondent's counsel set a murder trial for the day before the scheduled start of the disciplinary hearings and failed to provide timely information about this conflict to the State Bar Court, where respondent failed to show that his counsel could not have anticipated or avoided the conflict, and where respondent failed to show that the only proper means of handling the conflict was to grant a continuance. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[1]**

Augmentation of the record on review is appropriate only if the record is incorrect or incomplete. Where respondent failed to take advantage of the ample opportunity she had at trial to seek to show that her misconduct resulted from her alcoholism, the review department denied her request to augment the record with declarations about her recovery from alcoholism as the record was neither incorrect nor incomplete. However, where respondent challenged the hearing judge's finding that respondent made a deliberate misrepresentation at a pretrial conference, the review department granted the State Bar's request to augment the record with the transcript of the conference as the record was incomplete without the transcript. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(e)(3); former Provisional Rules of Practice of State Bar, rule 1304.) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[2]**

Review department took judicial notice of stipulation and Court of Appeal opinion in civil cases involving respondent that post-dated hearing department proceedings and concerned matters discussed at hearing. (Rule 1304, Prov. Rules of Practice.) *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[1]**

Where respondent sought to place documents, some of which were not before hearing judge, in record on review by including them in appendix to brief, without filing motion with reasons why documents could not have been produced at hearing, and without indicating how documents would correct or complete record, review department declined to take judicial notice of documents. (Rule 1304, Prov. Rules of Practice.) *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[3]**

Where respondent was ordered by hearing judge to file pretrial statement as provided by rule 1222, Provisional Rules of Practice, respondent's actions in entering into joint pretrial statement with State Bar did not constitute spontaneous candor and cooperation which would warrant finding in mitigation. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[5]**

Where respondent's default had been entered in hearing department, and motion for relief from default was denied, respondent's sole remedy on review was to seek review of denial of relief from default. (Prov. Rules of Practice, rule 1400(e)(vii).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[2]**

State Bar's motion for emergency relief from hearing judge's order regarding conduct of disciplinary investigation was not properly brought before review department under either rule 350 of Transitional Rules of Procedure or rule 1400 of Provisional Rules of Practice. However, motion by State Bar to stay or vacate order issued by hearing judge based on argument that hearing judge acted without jurisdiction was properly brought under rule 113 of Transitional Rules of Procedure. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[1]**

Petitions to augment the record on review are generally granted only if it is demonstrated that the record below is incomplete or incorrect. (Prov. Rules of Practice, rule 1304.) The general rule is not to entertain evidence not heard by the hearing judge unless it is the only means of presenting limited evidence of subsequent rehabilitation. It is also unusual for petitions to augment to be granted if contested. Where respondent requested to augment the record with documents relating to one of his complaining clients, and with two newspaper articles, respondent did not show good cause for the review department to consider such evidence over the State Bar's objection. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[9]**

Where respondent's brief on review referred to facts and newspaper articles regarding victim of respondent's misconduct which were not part of the record, review department declined to strike brief or admonish respondent or his counsel, but emphasized that its review is limited to the evidence properly made a part of the record. (Prov. Rules of Practice, rules 1303-1304.) *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[1]**

Where parties jointly requested augmentation of record with exhibits which they had provided to hearing judge for consideration in rendering decision and had intended to make part of record, and which hearing judge had relied on in reaching decision, and which were vital to review, record would have been incomplete without exhibits, and request to augment was granted. (Prov. Rules of Practice, rule 1304.) *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[2]**

Duplicative allegations of misconduct serve little, if any purpose. It should be apparent by the time of the pretrial conference which charges are most apt, which other charges might show additional misconduct, and which are simply duplicative and unnecessary. Amendment or dismissal of charges, particularly at the time of filing the pretrial statement (rule 1222(k), Provisional Rules of Practice), serves the interest of litigant and judicial economy. Thus, where respondent failed to ensure payment of a medical lien when settling a personal injury case, there was no benefit to charging respondent with failing to act competently, when the charge that respondent violated the rule requiring proper payment of entrusted funds addressed the alleged misconduct far more aptly and supported identical or greater discipline. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[13]**

It is well established that an aggrieved party may properly bring to the court's attention the alleged breach of a settlement agreement arrived at before a judge and reflected in an ensuing court order. Rule 1231 of the Provisional Rules of Practice and Evidence Code sections 1152, subdivision (a) and 1154 only preclude evidence of settlement offers and negotiations that do not result in an agreement. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[7]**

Pretrial statements are an important tool in conducting an efficient multi-count trial. Unexcused failure to comply with an order requiring a pretrial statement (see rule 1222, Prov. Rules of Practice) should not be treated lightly. However, where counsel failed to make appropriate motions during trial resulting from the other party's failure to file a pretrial statement, no issue was preserved for appeal. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[1]**

Where the record of a legal specialization proceeding contained no documents explaining the basis for the denial of specialist certification and where responses by the deputy trial counsel to interrogatories clarified the basis for the denial, augmentation of the record with the interrogatory responses was appropriate. (Prov. Rules of Practice, rule 1304.) *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[2]**

Because section 1013 of the Code of Civil Procedure applies by rule in State Bar Court proceedings, service of a hearing department decision by mail to an address within California extends by five days the 30-day period for filing a request for review. (Rule 450, Trans. Rules Proc. of State Bar; rule 1111(b), Provisional Rules of Practice.) *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[3]**

Where reinstatement petitioner's employer offered favorable character testimony at trial, and petitioner requested augmentation of the record to add the employer's declaration executed over 14 months later updating and reiterating such testimony, the review department considered the record incomplete without the declaration and granted petitioner's unopposed request to augment the record with the declaration. (Prov. Rules of Practice, rule 1304.) *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[2]**

The rule permitting a party to exclude rebuttal or impeachment witnesses from a pretrial statement (Prov. Rules of Practice, rule 1222(g)) has no bearing on the broader issue of discoverable information. Discovery of identities of individuals is not limited to persons who may be called in the opposing party's case in chief. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[7]**

A hearing judge's announcement of tentative findings on culpability from the bench may be necessary due to the bifurcated nature of State Bar Court proceedings coupled with the desire to avoid an extra day of hearing. (Rules 1250, 1260, Provisional Rules of Practice.) *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[8]**

Requests to augment the record at the review department level will be granted only if the original record is incomplete or incorrect. (Rule 1304, Provisional Rules of Practice.) Out-of-court evidence offered at the appellate level is ordinarily hearsay, and impossible to evaluate because of the absence of cross-examination to test the credibility of the declarant. The rule is to rely only on evidence which was presented to the trier of fact. The only general exception is to permit documentary evidence of subsequent rehabilitation when it is the only means to meet the heavy burden of demonstrating recovery from substance abuse or mental disorder. Where proffered additional evidence was derived from the record in another proceeding involving respondent, and was not offered to correct any omission in the record, the review department declined to grant respondent's motion to augment the record. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[2]**

An attorney's prior record of discipline is a record of the Supreme Court and also of the State Bar, and as such it is the proper subject of judicial notice. (Evid. Code, §§ 451 et. seq.) Even when judicial notice is taken of such records, the documents composing them should be identified, introduced in evidence, and made part of the record in the proceeding. (Rule 571, Rules Proc. of State Bar; rules 1260-1262, Prov. Rules of Practice of State Bar Ct.) *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[5]**

Examiner's brief violated rule 1306 of the Provisional Rules of Practice of the State Bar Court by failing to include topical index and authorities table, but review department declined to strike it due to recent adoption of rule and lack of asserted prejudice to opposing party. Review department noted that rule 1312 of the Provisional Rules of Practice of the State Bar Court provides for clerk's office to return, unfiled, papers not conforming to rules, absent application to and order from Presiding Judge. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[7]**

While the review department is not required to afford the parties an opportunity to brief additional issues raised by it on review, it is the preference of the review department to have issues thoroughly briefed, and rule 1311(a) of the [Provisional] Rules of Practice expressly allows for deferral of submission of cases after oral argument to permit supplementary briefs when considered appropriate. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[8]**

136.00 Revised Rules of Practice (2009 and 1995 versions)

136.01 Effective date/scope of applicability

136.02 Comparison to former Provisional Rules of Practice (pre-1995)

136.03 Comparison of 2009 version to 1995 version

136.09 Other issues re revised Rules of Practice generally

136.10 Division I, General Provisions (rules 1100-1132)

Except for service of initial pleading in a proceedings, State Bar Rules of Procedure and State Bar Court Rules of Practice require that attorney's response to notice of disciplinary charges contain an address of service for the attorney. Thus, clerk properly served copy of hearing judge's decision on attorney by mailing it to attorney at the address listed in the attorney's response to notice of disciplinary charges even though that address was not address that attorney maintained on State Bar's official membership records, particularly since attorney never notified clerk that he wished to be served at any address other than the address listed on the response. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[9]**

Neither the law nor the facts supported respondent's contention that by denying two continuance requests during the six days of trial, the hearing judge deprived him of a reasonable opportunity to be represented by counsel. An attorney in a disciplinary hearing has no constitutional right to the assistance of counsel. Further, continuances of State Bar Court hearings are disfavored. (State Bar Court Rules of Practice, rule 1131.) To prevail on a procedural argument in a disciplinary matter, an attorney must show both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged procedural error. Respondent proved neither where respondent's counsel set a murder trial for the day before the scheduled start of the disciplinary hearings and failed to provide timely information about this conflict to the State Bar Court, where respondent failed to show that his counsel could not have anticipated or avoided the conflict, and where respondent failed to show that the only proper means of handling the conflict was to grant a continuance. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[1]**

136.20 Division II, Hearing Department (rules 1200-1270)

When respondent's refusal to provide names of any witnesses or identify any exhibits as required by Rules of Practice regarding pretrial statements and exchange of exhibits was based on respondent's dissatisfaction over hearing judge's pretrial order, hearing judge did not abuse discretion in sanctioning respondent for not complying with Rules of Practice by precluding respondent from presenting any evidence at trial. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[6 a-g]**

136.30 Division III, Review Department (rules 1300-1343)

When a party supports a statement in its brief with a reference to a finding or conclusion in the hearing judge's decision, party must also provide references to where the evidence supporting the hearing judge's finding or conclusion may be found in the record in order to comply with rules of procedure and rule of practice mandating that statements in briefs be supported with proper references to the record. (Rules Proc. of State Bar, rules 302(a), 303(a); State Bar Ct. Rules of Prac., rule 1320.) *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[1]**

Respondent waived any due process violation resulting from the State Bar's failure to notify him in the notice of hearing that the cancellation of his license to practice law would be an issue at the trial where he did not allege in his appellant's brief, with supporting references to the record, that he presented his lack of notice objection to, and obtained a ruling on it from, the hearing judge. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[8]**

139 Miscellaneous General Procedural Issues

When a member of the State Bar has committed misconduct prior to admission to practice law, the State Bar may seek the attorney's discipline or seek to recommend the cancellation or revocation of the member's law license.

Depending on the balance of facts and circumstances unique to each case, either or both alternatives could be considered in appropriate cases. It appears that the Supreme Court considers cancellation the appropriate step when an applicant has wrongfully obtained the benefits of admission such as by intentional misrepresentation which prevents the Committee of Bar Examiners from adequately considering the applicant's fitness to practice. Although respondent should have timely updated her application to disclose to the Committee of Bar Examiners misdemeanor charges against her, as she had a duty to do so under the Rules Regulating Admission to Practice Law and it bore upon her application to practice law, the nondisclosure was not intended to and did not result in wrongfully conferring on respondent the benefit of law licensure. Given the formal record of the events surrounding respondent's misdemeanor charges before the review department, the Committee of Bar Examiners was not deprived of the opportunity to adequately consider respondent's fitness to practice such that respondent wrongfully obtained the benefit of law licensure. Therefore, the review department did not recommend cancellation of respondent's law license. *In the Matter of Pasyanos* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746. **[1a–d]**

When significant procedural opportunities are denied a litigant by steps taken during investigation before the filing of disciplinary charges, which place a litigant at a substantive disadvantage in the ensuing disciplinary proceeding, it is appropriate for State Bar Court to exercise its jurisdiction to review those steps after the proceeding is filed. The deprivation of the opportunities (1) for respondent to meet with the State Bar prosecuting attorney 20 days before disciplinary charges were filed against respondent, which opportunity the State Bar routinely extends as a matter of policy, and (2) for respondent to request, in accordance with State Bar Rule of Procedure 75, an early neutral evaluation conference with a State Bar Court judge before disciplinary charges were filed are both significant procedural opportunities that the State Bar Court may review upon the filing of the formal notice of disciplinary charges. Accordingly, the State Bar Court had the authority to assess whether respondent was deprived of these pre-filing opportunities and, if so, to fashion an appropriate remedy. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721. **[1 a-f]**

Rule of Procedure of State Bar 262, which authorizes proceedings to be dismissed in the furtherance of justice, is construed in the State Bar Court in the same manner as its analog Penal Code section 1385 is construed in criminal proceedings. State Bar rule does not permit respondents to make motions. Motions may be made only by the State Bar as the prosecutor or a dismissal may be entered on State Bar Court's own motion after taking required steps. Hearing judge's dismissal of proceeding comported with those required pre-dismissal steps because she issued an order to show cause to the parties, allowed for responses from them, considered all appropriate interests, and stated in detail her reason for dismissal, and since the hearing judge acted promptly after the proceeding was filed and since the dismissal was expressly without prejudice to refiling, review department saw no prejudice to the State Bar. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721. **[2 a-c]**

In absence of specific statute or rule of procedure directing a specified mode of proceeding, it is not unreasonable or arbitrary for a hearing judge to utilize analogous civil procedures to resolve motions. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721. **[4]**

Once the hearing judge who tried this case left the State Bar Court, he became ineligible to take any further action in the case. Of necessity, that judge was unavailable to consider respondent's post-trial motions. *In the Matter of Lindmark* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668. **[1]**

Respondent's testimony and arguments regarding his customary practices (1) to limit the scope of his representation of clients referred to him by nonattorney immigration services providers to that of an "appearance attorney," which respondent asserts is an attorney who appears in his clients' immigration cases only for the limited purpose of making court appearances, and (2) to rely on or permit referring nonattorney immigration services providers to prepare and file immigration applications, pleadings, and other documents for his clients placed respondent's practices in issue so that any uncharged improprieties in them may appropriately be considered as aggravation warranting increased discipline. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[4 a-c]**

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting

nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

Because parties failed to address relevant immigration court and Board of Immigration Appeals rules and procedures that are set forth in the Code of Federal Regulation and have the force and effect of law, hearing judge and review department were required to take and did take judicial notice of those rules and procedures sua sponte. (Rules Proc. of State Bar, rule 214; Evid. Code, §§ 451, subd. (b), 459, subd. (a).)*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[8]**

Respondent's arguments and testimony that almost all hearing judge's findings of misconduct are erroneous because they are based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients placed respondent's methods of practicing law in issue so that any uncharged impropriety in them may appropriately be considered as aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[9 a, b]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

Because review department relied on respondent's repeated and reckless failure to communicate with client to establish his culpability for violating rule of professional conduct prohibiting attorneys from abandoning clients and withdrawing from employment without taking adequate steps to protect their clients' interests, review

department did not adopt hearing judge's finding that respondent violated statute requiring attorneys to adequately communicate with their clients, but dismissed charge with prejudice as being duplicative.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[22]**

Even if respondent failed to appear at an immigration court hearing because he simply forgot to record the date of the hearing in his calendar, his failure to appear must be viewed in light of the record as a whole because, even if an attorney does not act intentionally or recklessly, he violates the rule of professional conduct regarding attorneys' duty to competently perform legal services if he repeatedly fails to competently perform. Respondent's failure to appear at the hearing could not be excused for disciplinary purposes because, under record as a whole, his failure to appear was not isolated, but one of many such failures.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[25]**

Under State Bar Act and disciplinary case law, respondent had affirmative duty to insure that his answers to interrogatories propounded to him by the State Bar were true and correct even if he had to refresh his recollection of the facts by going to the immigration court and reviewing the court file and listening to the tapes of all relevant court hearings in each client matter that was a subject of the interrogatories.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[27]**

Under Civil Discovery Act, respondent had affirmative duty to answer each of the State Bar's interrogatories as complete and straightforward as the information reasonably available to him permitted.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[28]**

An offer of proof is a summary of proffered evidence excluded by a trial judge, which is presented (1) to the trial judge to insure that he knows what evidence he has excluded and to provide him with an opportunity to reconsider his denial and permit the introduction of the evidence before the end of trial and (2) to an appellate court so that it may effectively review the trial judge's exclusion of the evidence. Thus, where respondent subpoenaed three immigration court judges to testify on his behalf in State Bar Court disciplinary proceeding, but U.S. Department of Justice greatly restricted the scope of the testimony one immigration court judge could give and refused to permit the other two judges to testify at all, the declaration regarding the immigration judges' testimonies that was executed by respondent's counsel and filed in hearing department was not an offer of proof because hearing judge did not restrict or excluded immigration court judges' testimonies, Department of Justice did, and State Bar Court lacked jurisdiction to review Department's actions. Accordingly, review department struck all statements in respondent's brief based on the declaration of respondent's attorney.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[29 a-c]**

In view of the review department's duty to independently review the record and make findings of fact and conclusions of law, any alleged denial of due process by the hearing judge's failure to clearly identify respondent's misconduct in the hearing judge's decision was remedied by the review department's issuance of an opinion that superseded the hearing judge's decision. Therefore, respondent's due process contention was rendered moot and was not addressed on the merits.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[2]**

Where neither the State Bar nor respondent addressed certain culpability issues on review, and further determinations regarding these culpability issues would not affect in any way the discipline recommendation, the review department determined that this was one of the rare instances in which it need not independently determine these culpability issues.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[3 a-c]**

Even though the parties entered into a stipulation as to facts and conclusions of law (Rules Proc. of State Bar, rule 132) in which they agreed to be bound by stipulated facts regardless of the degree of discipline recommended or imposed and in which respondent pleaded nolo contendere to the disciplinary charges in the stipulation (Bus. & Prof. Code, § 6085.5, subd. (c)) and acknowledged that her "the plea of nolo contendere shall be considered the same as an admission of culpability" for disciplinary purposes, the State Bar Court still had an affirmative duty to independently determine whether the parties' stipulated conclusions of law were supported by the record before accepting them.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[1a-c]**

Regardless of whether respondent had the right on review to challenge the conclusions of culpability to which she stipulated to in the hearing department, the review department still had an affirmative duty to determine if the culpability findings were supported by the record.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[2]**

The State Bar was not barred from relying on Michigan proceedings to impose discipline in California under the authority of Business and Professions Code section 6049.1 notwithstanding that, at the time of a prior California disciplinary case in which the State Bar and respondent entered into a stipulation disposing of the charges, the State Bar knew of disciplinary proceedings pending in Michigan but nevertheless advised respondent in writing pursuant to Rules of Procedure of the State Bar, rule 133(a)(12) that there were no additional State Bar investigations pending against him. The clear purpose of Rules of Procedure of the State Bar, rule 133(a)(12) is to require the State Bar to give notice to respondents before the State Bar Court or to attorneys being investigated by the State Bar of the pendency of other complaints lodged with the State Bar against such attorneys, and to expand that requirement to include complaints lodged in other jurisdictions would impose a far greater burden than that contemplated. At the time of the stipulation, both respondent and the State Bar knew of the Michigan proceedings, yet the stipulation did not in any way deal with the California consequences of the Michigan matter, there was no evidence that the Michigan proceedings were included in discussions leading to the stipulation, respondent entered into the stipulation without inquiring about including the Michigan matter in the stipulation, and the State Bar had no way to evaluate the seriousness of the Michigan proceedings. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[1]**

Where respondent asserted for the first time at oral argument that Business and Professions Code section 6049.1 was being unconstitutionally applied because a Michigan disciplinary action required only a preponderance of the evidence for a finding of culpability and that California reliance on that lower standard deprived him of due process and equal protection of the law, respondent's failure to have raised the issue before the hearing department or in his briefs on review constituted a waiver of the issue. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[2]**

A certified copy of a final disciplinary order of the State of Michigan finding respondent culpable of misconduct conclusively established that respondent was culpable of professional misconduct in California. Such misconduct, which included misappropriation of client funds, failure to account, failure to respond to a client's reasonable inquiries, failure to pay to a client funds to which she was entitled, moral turpitude, failure to take necessary legal action to protect a client's interest, failure to respond to a client's inquiries concerning the status of her funds, and failure to respond to investigations, warranted discipline in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[3]**

In a proceeding under Business and Professions Code section 6049.1, once it had been conclusively established that respondent was culpable of professional misconduct in California, the remaining issue for consideration in California was the degree of discipline. Where the only evidence in the record consisted of the final record of discipline in Michigan, no portion of the underlying evidentiary record from the Michigan proceedings was placed in evidence, and the Michigan final record of discipline indicated that each of the findings of fact in Michigan was made under a preponderance of the evidence standard of proof, a purported showing of the facts and circumstances found in Michigan to surround the misconduct could not be weighed under the required California standard of clear and convincing evidence. Instead, the misconduct found in Michigan was weighed with only the aggravation and mitigation separately shown in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[4]**

Where findings made by the hearing judge cast respondent in a negative light but did not result in an additional ground of discipline or aggravation, respondent failed to demonstrate any specific or actual prejudice that would entitle him to any relief on review. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[5]**

Because Rules of Professional Conduct 3-700(A)(2) (prohibiting prejudicial withdrawal from employment) and 3-700(D)(1) (mandating return of client property) have not been amended or modified since they were first adopted and became effective on May 27, 1989, there are no "former" versions of those rules. Thus, the review department deemed the charged and found violations that State Bar and the hearing judge incorrectly described as violations of "former" rules 3-700(A)(2) and 3-700(D)(1) to be charged and found violations of rules 3-700(A)(2) and 3-700(D)(1), which became effective on May 27, 1989. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[1]**

Because respondent failed to competently perform legal services both before and after the September 14, 1992, effective date of the revised version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110), he violated both the "former" and the "current" versions of that rule. Thus, State Bar

erred when it amended the charges to "conform to proof" by deleting the charge that respondent violated the "current" rule and replacing it with a charge that he violated the "former" rule. State Bar should not have deleted the charge that respondent violated the "current" rule, but should have added to it a charge that respondent also violated the "former" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[2]**

Even though State Bar erroneously amended the charges to "conform to proof" by deleting the charge that respondent violated the revised (i.e., "current") version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110 as amended eff. Sept. 14, 1992) and replacing it with a charge that respondent violated the "former" version of that rule instead of correctly amending the charges by adding, to the charged violation of the "current" rule, a charge that respondent also violated the "former" rule, no due process violation occurred when review department held that respondent was culpable of violating both the "former" rule and the "current" rule because (1) the text of both rules was virtually identical, (2) respondent did not argue lack of notice, and (3) the trial in hearing department covered respondent's conduct during the time period in which the "former" rule was in effect and after the effective date of the "current" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[3]**

In the hearing judge's discipline recommendation that respondent "be suspended from the practice of law for three years and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) [of the Standard for Attorney Sanctions for Professional Misconduct], that said suspension be stayed; and that he be placed on probation for four years subject to the following conditions: . . ," the provision that respondent's three-year suspension continue until he proves his rehabilitation, fitness, learning, and ability in accordance with standard 1.4(c)(ii) is stayed along with the recommended three-year suspension so that, if the State Bar files a probation revocation proceeding against respondent seeking to have all, or a part, of the three-year stayed suspension imposed on him, a standard 1.4(c)(ii) would be an available condition. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[13]**

Statutory provision granting attorneys the right to recover costs from State Bar provides that attorneys who have been exonerated of all disciplinary charges following a trial are entitled to reimbursement from the State Bar "in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparing for [trial]" without defining "reasonable expenses" (other than expressly excluding fees for attorneys and experts) and without prescribing the method by which State Bar is to determine what they are. Accordingly, State Bar Board of Governors properly exercised its statutory rule making authority and adopted State Bar Rule of Procedure 283 to define what expenses (or costs) are allowable as "reasonable expenses" for which exonerated attorneys may obtain reimbursement under statute and to provide the procedure by which exonerated attorneys are to seek reimbursement from the State Bar for those expenses. In absence of Supreme Court authority to the contrary, the State Bar Court may award exonerated attorneys reimbursement from the State Bar for reasonable expenses only if they are specified as allowable expenses in Rule of Procedure 283. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[2]**

Under clear language of State Bar Rule of Procedure 283(b)(5), State Bar Court may award attorneys exonerated of all disciplinary charges after trial reimbursement for expenses incurred in obtaining transcripts of court proceedings only if the court ordered that the transcripts be prepared. Fact that exonerated attorney could not obtain plenary review of hearing judge's decision finding him culpable of professional misconduct without first obtaining and paying for trial transcript is not synonymous with the court ordering the preparation of a transcript. In fact, requirement of obtaining trial transcript for plenary review is not imposed by court, but by State Bar Rule of Procedure 301(a)(2), which makes clear that it is the party seeking review that orders the trial transcript. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[3]**

Because bankruptcy court's findings that attorney engaged in actual fraud when attorney incurred credit card debts were made under preponderance of the evidence standard and not clear and convincing standard applicable in disciplinary proceedings, hearing judge correctly (1) declined to apply principles of collateral estoppel to bind attorney with bankruptcy court's findings that attorney engaged in actual fraud; (2) reweighed evidence from bankruptcy court proceedings under clear and convincing standard after giving attorney fair opportunity to contradict, temper, and explain that evidence; and (3) permitted State Bar to present additional evidence regarding attorney's culpability. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[3]**

Rule of Procedure requiring hearing judges to file decisions within 90 days after taking cases under submission is neither mandatory nor jurisdictional. Thus, respondent's contention that the hearing judge's decision was void because it was filed four days after the expiration of the ninety-day time limit was rejected. Furthermore, because respondent failed to establish that he suffered any actual harm or prejudice, he was not entitled to any relief for the hearing judge's failure to file his decision timely. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[8]**

Except for service of initial pleading in a proceedings, State Bar Rules of Procedure and State Bar Court Rules of Practice require that attorney's response to notice of disciplinary charges contain an address of service for the attorney. Thus, clerk properly served copy of hearing judge's decision on attorney by mailing it to attorney at the address listed in the attorney's response to notice of disciplinary charges even though that address was not address that attorney maintained on State Bar's official membership records, particularly since attorney never notified clerk that he wished to be served at any address other than the address listed on the response. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[9]**

The application of collateral estoppel with respect to prior civil findings does not modify the fundamental requirement that the State Bar must establish each element of a disciplinary violation and aggravating circumstance by clear and convincing evidence. The State Bar may rely upon collateral estoppel to establish an element of a disciplinary violation or aggravating circumstance only if that same element was found against the attorney in the civil proceeding by clear and convincing evidence. If the same element was not found against the attorney in the civil proceeding by clear and convincing evidence, the State Bar must established that element in the State Bar Court with clear and convincing evidence. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[1 a-c]**

Collateral estoppel may be applied in the State Bar Court to deny an attorney the right to relitigate an issue that was litigated and resolved against him or her in a prior civil proceeding only if (1) the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, (2) the civil finding was made under the same burden of proof applicable to the same issue in the State Bar Court, (3) the attorney was a party to civil proceeding, (4) there is final judgment on the merits in the civil proceeding, (5) the attorney fails to demonstrate any unfairness in precluding the relitigation of the issue, and (6) the civil finding was necessary to the judgment in the civil proceeding. The requirement that the civil finding be necessary to the judgment in the civil proceeding is required by procedural fairness to insure that preclusive effect is not given to nonessential prior findings. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[2 a, b]**

Whenever the State Bar relies upon all or part of the record in prior civil proceeding to prove an element of a disciplinary violation or aggravating circumstance independent of the application of collateral estoppel, neither the evidence nor any factual findings in the civil proceeding may be judicially noticed as conclusive or otherwise given preclusive effect in the State Bar Court, but must be independently assessed under the clear and convincing standard of proof. In addition, the attorney must be given a fair opportunity to contradict, temper, or explain the evidence and findings in the civil proceeding with other evidence, including the live testimony of the same witnesses who testified in the civil proceeding. The attorney need not be given free reign to completely retry the civil suit in the State Bar Court. The hearing judge retains the sound discretion to restrict or excluded cumulative evidence and otherwise control the introduction of evidence as in any other case. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[4 a, b]**

Independent of the application collateral estoppel, admissions made by an attorney in a prior civil proceeding are not conclusive and cannot be given preclusive effect in the State Bar Court even if they are admissible in the State Bar Court as party admissions. Such admissions must be independently assessed under the clear and convincing standard of proof. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[5]**

Even though the hearing judge properly admitted and judicially noticed the record in a prior civil proceeding in which respondent was a party, the hearing judge erred in making factual findings regarding the nature and extent of respondent's violations of the moral turpitude statute based upon the evidence in the civil record independent of the application of collateral estoppel because he did not first give respondent a fair opportunity to attempt to contradict, temper, or explain the evidence in it with other evidence. That error required the reversal of the hearing judge's findings as to the nature and extent of respondent's statutory violations and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings

regarding the nature and extent of respondent's violations. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[7]**

In making his factual findings with respect to charged violations of the former rule of professional conduct governing business transactions with clients, the hearing judge erred in reweighing and relying upon the evidence in a prior civil proceeding in which respondent was a party without first giving respondent a fair opportunity to attempt to contradict, temper, or explain that evidence. That error required the reversal of the hearing judge's findings that respondent committed multiple violations of the former rule governing business transactions with clients and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the charged violations of that former rule. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[9 a, b]**

Principles of collateral estoppel may be applied to preclude a respondent from relitigating an issue that was actually litigated and resolved against him in a prior civil proceeding. In State Bar Court proceedings, principles of collateral estoppel may be applied with respect to an adverse prior civil finding if (1) the issue resulting in the civil finding is substantially identical to that in the State Bar Court proceeding, (2) the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, (3) the respondent was a party to the civil proceeding, (4) there is a final judgment on the merits in the civil proceeding, and (5) the respondent does not establish that it would be unfair to bind him to the prior adverse civil finding. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[1]**

Where the only evidence presented in the hearing department to support the contention that it would be unfair to prohibit relitigation of harassment and emotional distress claims was respondent's own testimony without corroborating evidence, respondent's reiteration of his testimony on review does not provide a basis to disturb the hearing judge's rejection of respondent 's testimony. The review department gives great weight to hearing judges' factual findings resolving issues pertaining to credibility of witnesses. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[2 a, b, c]**

Introducing into evidence the pleadings and exhibits from a civil matter without also introducing the trial transcript from the civil proceeding provides little evidence as to the nature and extent of respondent's conduct underlying the adverse civil findings of harassment and intentional infliction of emotional distress on a client or the resulting harm to the client. Such evidence may have had a material effect on the measure of the appropriate level of discipline. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[3]**

Issues raised in State Bar's petition for interlocutory review as to (1) whether Rules of Procedure required petitioner for reinstatement to provide proof, at time he presented his petition for filing, that he had passed a professional responsibility examination within last year (i.e., one before filing of petition) and (2) whether hearing judge erred in finding that petitioner had not previously resigned from State Bar with disciplinary charges pending were proper for interlocutory review because they could determine outcome of proceeding and determine whether petitioner's rehabilitation was an issue in proceeding. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[1 a-e]**

Even though Rules of Procedure adopted by State Bar's Board of Governors are not legislative acts, it is appropriate to construe them using rules for statutory interpretation/construction. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[4]**

State Bar Court must interpret State Bar Rule of Procedure 665(a) that requires all petitioners for reinstatement to take and pass professional responsibility examination within frame work of California Rule of Court 951(f) dealing with reinstatement because State Bar's rule making authority is subject to Supreme Court's inherent authority over attorney regulatory matters. And State Bar Court should endeavor to construe State Bar rule as consistent Rules of Court. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[5]**

Applying rules of statutory interpretation to language of State Bar Rule of Procedure 665(a) requiring all petitioners for reinstatement to take and pass professional responsibility examination, review department held (1) that rule sets the earliest time to pass examination at one year before filing of petition, but does not set latest time to pass examination and (2) that rule does not require proof of passage as condition precedent to filing petition, but only as condition to precedent to State Bar Court recommendation of reinstatement. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[6 a-b]**

Even if issue had properly been before review department on summary review, respondent would not have been entitled to any mitigating credit for self reporting to State Bar his misdemeanor conviction for paying for referral of clients because respondent had a pre-existing statutory duty to report his criminal conviction. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. **[1]**

Retroactive law is one that affects rights, obligations, acts, transactions, or conditions performed or existing before adoption of law. Even though respondent's criminal convictions occurred after January 1, 1997, effective date of present version of the summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)), respondent committed criminal acts underlying those convictions before January 1, 1997, effective date. Thus, respondent's summary disbarment under present version of statute would be improper retroactive application of statute because, but for amendments to statute effective January 1, 1997, respondent would not be subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51. **[2 a-c]**

In two situations, applying statute to acts before statute's effective date are not retroactive application of statute: when statute merely clarifies, rather than substantially changes law; and when statute changes trial procedure, but does not change legal consequences of parties' past conduct. Amendments effective January 1, 1997, to summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)) are not clarifying or procedural because they significantly broadened scope of crimes for which attorneys are subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51. **[3 a-c]**

To apply amendments to Business and Professions Code section 6007, subdivision (c)(4), effective January 1, 1997, against an attorney whose disciplinary proceeding began before January 1, 1997, effective date of amendments would be impermissible retroactive application of amendments. That is because amendments had dramatic effect on attorney's legal ability to practice law and deprived attorney of right to request hearing on inactive enrollment and because amendments neither clarified prior law nor merely changed procedure of trial. *In the Matter of Phillips* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 47. **[1 a-f]**

Even though respondent received extensive trial on disciplinary charges, he was never formally notified that outcome of trial could result in his immediate and automatic inactive enrollment under amendments to Business and Professions Code section 6007, subdivision (c)(4), effective January 1, 1997. Reasonable notice is crucial to a meaningful hearing. Thus, disciplinary trial itself could not have provided respondent with minimal protection on issue of inactive enrollment because issues can differ from case to case between the appropriate level of discipline for misconduct compared to the need for immediate public protection to protect existing or future clients from additional risk of harm. And disciplinary hearing did not fulfill explicitly recognized right to request hearing on the propriety of inactive enrollment provided for under former version of section 6007, subdivision (c)(4) before its amendment effective January 1, 1997. *In the Matter of Phillips* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 47. **[2 a-b]**

Hearing judge did not abuse her discretion in issuing a pretrial order precluding respondent from attempting to impeach State Bar's witnesses with evidence of witnesses' alleged criminal activities, terrorist activities, racism, hate crimes, molestation of foster children, etc. except by evidence of proved felonies introduced into evidence in strict compliance with Evidence Code. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[5 a-c]**

When respondent's refusal to provide names of any witnesses or identify any exhibits as required by Rules of Practice regarding pretrial statements and exchange of exhibits was based on respondent's dissatisfaction over hearing judge's pretrial order, hearing judge did not abuse discretion in sanctioning respondent for not complying with Rules of Practice by precluding respondent from presenting any evidence at trial. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[6 a-g]**

Neither due process nor former Transitional Rules of Procedure, rules 508 and 509 required State Bar to give respondent exhaustive list of each complaint against her before filing notice of disciplinary charges. Former rules 508 and 509 merely gave respondent right to deny or explain her actions to State Bar and inquire of State Bar concerning the charges against her. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[7 a-h]**

The hearing judge's discussion of his concerns over petitioner's actions in terms of according her a "reasonable doubt" made review somewhat difficult. It is clear that in a disciplinary proceeding, where the State

Bar has the burden of proving charges by clear and convincing evidence, the accused is entitled to the exercise of reasonable doubts. However, in a reinstatement proceeding, where the petitioner unquestionably has the burden of presenting clear and convincing evidence of her qualifications, petitioner can not be given the benefit of reasonable doubts. However, by reading the decision in its entirety, the review department construed the hearing judge's decision finding reasonable doubts in favor of petitioner to not invoke the normal meaning of the term "reasonable doubt" as used in this area of law, but rather, such narrow doubt that would be acceptable in a satisfactory showing for reinstatement. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1. **[3 a-b]**

As the reproval imposed on respondent in the prior disciplinary proceeding is final, it and the conditions attached to it are presumed valid and enforceable. The reproval decision is subject to collateral attack only on the grounds that the judge (1) lacked jurisdiction of the subject matter, (2) lacked personal jurisdiction over respondent, or (3) acted in excess of jurisdiction. The burden of proof is on the party who attacks the judgment to show lack of jurisdiction. Furthermore, to succeed on collateral attack, the jurisdictional defect must be proven from the face of the record in the prior proceeding. Respondent's contention that the conditions attached to his prior private reproval are subject to collateral attack because the hearing judge failed to explicitly recite in her decision two findings required by rule 956 of the California Rules of Court, that the reproval conditions would serve to protect the public and to serve respondent's interests, is an allegation that the hearing judge acted in excess of her jurisdiction. Respondent failed to prove from the face of the record in the prior reproval that the conditions attached to it would not serve to protect the public or serve respondent's interest. In any event, the unchallenged factual findings in the hearing judge's decision in the prior case establish that the hearing judge acted within her jurisdiction in attaching the conditions. Without question, the reproval conditions that he take and pass a professional responsibility examination and attend the State Bar's Ethics School will serve to protect the public and serve respondent's interests. The hearing judge's error is not a jurisdictional error that can subject the hearing judge's decision to collateral attack. At most, the error was a procedural defect that respondent waived by failing to appear in the prior proceeding and object to the hearing judge's decision on that ground. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929. **[1]**

In the absence of any direct precedent construing rule 956 of the California Rules of Court, the review department held that the purpose of the rule's findings is to aid in ensuring that any duties attached to a reproval are reasonably related to its purposes. Although rule 956 prescribes a salutary requirement, it cannot be said that it is jurisdictional. The findings themselves do not go to the essential fairness of the underlying disciplinary proceeding or even a subsequent enforcement proceeding. If findings are omitted from a reproval decision to which rule 956 applies, the error can be called to the State Bar Court's attention in a timely manner. If not done timely, the objection is waived, absent a showing that respondent was clearly prejudiced by the omitted findings. No showing of prejudice was made in this proceeding and such a claim would be hard to envision regarding the two duties that respondent was charged with violating in this proceeding: passage of a professional responsibility examination and attendance at the State Bar's Ethics School. These are requirements imposed in almost every disciplinary probation. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929. **[4]**

A petitioner for reinstatement must show by clear and convincing evidence that he or she has met the requirements for readmission. OCTC need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence. Instead, OCTC need only proffer sufficient adverse evidence to lower the persuasiveness of a petitioner's evidence so that he or she does not meet the burden to prove his or her case by clear and convincing evidence. Nor is a petitioner entitled to the benefit of the doubt if equally reasonable inferences may be drawn from a proven fact. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[3]**

The hearing judge's appropriate role is to decide the issues on the evidence presented. If that process leads the hearing judge to conclude that the party bearing the burden of proof had not prevailed, then the judge's duty is to find against the particular party on that issue or to recommend that only that degree of discipline, if any, which is warranted by the evidence presented. The party failing in its burden runs the very risk that the judge will so act. Absent extraordinary circumstances, a hearing judge is not authorized to require the production of added evidence beyond which the parties have chosen to present. If parties or witnesses testify, the hearing judge is at liberty to ask questions of a type consistent with the judicial function of supervising or regulating the trial. Moreover, allegations against other attorneys can be referred to the State Bar for new investigation. *In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888. **[2]**

California Rules of Court, rule 951, which explicitly authorizes the State Bar Court to extend the time within which an attorney must take and pass a professional responsibility examination, applies only when the Supreme Court orders the attorney take and pass such an examination. It does not apply when the State Bar Court orders an attorney to take and pass the examination as a condition attached to a reproval. When the State Bar Court imposes such a condition, its authority to extend the time for the attorney to comply is derived from California Rules of Court, rule 956, which authorizes the State Bar Court to attach conditions to the reprovals that it imposes. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[1]**

Even after respondent's private reproval became final, the State Bar Court retained jurisdiction over the conditions attached to it under the Former Transitional Rules of Procedure of the State Bar (now the Rules of Procedure of the State Bar, title II, State Bar Court Proceedings). Thus, when the hearing judge extended the time for respondent to comply with the conditions attached to the reproval after the time to comply had expired, the hearing judge did not act without jurisdiction; but in excess of jurisdiction. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[2]**

When a party seeks or consents to a court's action that is in excess of the court's jurisdiction, the party may be estopped to complain of the court's action as long as the court had subject matter jurisdiction. Respondent was estopped from collaterally attacking a final order extending the time in which he was required to comply with conditions attached to a reproval where he consented to the order and where the court had jurisdiction of the subject. The review department concluded that the application of estoppel was in harmony with the primary goals of attorney discipline. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[3]**

An attorney's criminal conviction based on a plea of nolo contendere is deemed a conviction for attorney disciplinary purposes and is conclusive proof of the attorney's guilt on each of the essential elements of the offense of which the attorney was convicted. Thus, respondent cannot collaterally attack his conviction in the State Bar Court even though the victim of respondent's crime lost her civil lawsuit against respondent for damages. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[4]**

An essential element to establishing an attorney's violation of his statutory duty to maintain the respect due the courts and judicial officers by making a statement that impugns the honesty or integrity of a court or judicial officer is the falsity of the disparaging statement. Even though the State Bar has the burden of proving the essential element of falsity, it did not proffer any evidence to establish the falsity of the respondent's disparaging statements regarding various judicial officers because the hearing judge made a erroneous pre-trial ruling relieving the State Bar of its burden to prove falsity. Therefore, the review department remanded the matter to the hearing department to allow the State Bar an opportunity to prove that respondent's statements were false. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[3]**

Because none of the hearing judge's material findings of fact were challenged on review, State Bar's contention that the hearing judge's disciplinary recommendation was incomplete in that it did not contain a probation condition requiring respondent to file quarterly probation reports fell explicitly within the purview of the rule of procedure permitting summary review. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[1]**

Even though the review department retains its authority to independently review the full record in summary review proceedings, it gives deference to the litigants' identification of the issues and ordinarily limits the scope of review to those issues. The review department followed this practice in the present proceeding except that it modified the costs provision because of recent statutory changes. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[2]**

Quarterly probation reporting is important because it requires attorney probationers, four times a year, to reflect upon their prior misconduct and to review their current conduct to ensure that it complies with all of the conditions of their probation. However, quarterly probation reporting is not mandated in all cases in which probation is recommended. When the circumstances in a case establish that quarterly probation reporting is not necessary, the circumstances should be set forth in the court's decision. In this case involving attorney-client misconduct with a recent priorreproval, however, the appropriateness of a quarterly-reporting condition of probation was clear. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[4]**

Under the current statutes and rules governing probation proceedings, the State Bar has the exclusive jurisdiction to conduct investigations and bring disciplinary charges. The State Bar may file disciplinary charges if it finds in its discretion that there is reasonable cause to believe that an attorney has violated the State Bar Act or Rules of Professional Conduct. Upon reasonable cause to believe that an attorney has violated a condition or conditions of probation, the State Bar may file either an original disciplinary proceeding based on the violation or a motion to revoke probation. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[1]**

Under the current statutes and rules governing probation proceedings, the State Bar has exclusive jurisdiction to supervise members placed on probation and exclusive authority to initiate probation revocation proceedings. Nevertheless, the Supreme Court retains plenary authority over the regulation and discipline of attorneys. Neither the statutes nor the rules of procedure limit the Supreme Court's plenary authority. The Supreme Court may, in the exercise of its plenary authority, impose a hearing judge supervised probation condition regardless of the statutes and rules covering disciplinary proceedings. By imposing such a probation condition, the Supreme Court would necessarily confer jurisdiction on the hearing judge to monitor compliance. Thus, the review department did not find persuasive the State Bar's argument that the hearing judge lacked jurisdiction to supervise probation conditions. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[2]**

In determining whether an attorney's convictions meet the statutory criteria for summary disbarment, the review department is limited to the record of conviction and any undisputed facts that may exist. Where the record of conviction did not establish that the offenses were committed in the course of the practice of law or in any way such that a client of respondent's was a victim, the offenses did not meet the criteria for summary disbarment under the version of Business and Professions Code section 6102, subdivision (c), in effect prior to January 1, 1997. Summary disbarment was warranted, if at all, only under the present version of the statute. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[1]**

A retroactive law is one that affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute. Respondent's crimes were committed and her conviction occurred when the prior version of Business and Professions Code section 6102, subdivision (c) was in effect and her offenses were not within the scope of the former version of the statute. In addition, as respondent would not have been subject to summary disbarment, she had a right under the former version of the statute to a hearing and to present evidence prior to the imposition of discipline. The application of the present version of section 6102, subdivision (c) under these circumstances would be retrospective. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[2]**

It is presumed an amendment to a statute operates prospectively unless the Legislature has expressly stated the contrary or, after considering all pertinent factors, there is clear indication of a legislative intent that the statute operate retrospectively. Business and Professions Code section 6102, subdivision (c) does not contain an express retroactivity provision and after considering extrinsic factors, including public protection and due process, the review department concluded that section 6102, subdivision (c) should not be applied retroactively. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[3]**

The important public interest served by the summary disbarment statute does not show that the legislature intended the statute to operate retroactively. A summary disbarment proceeding, by definition, excludes an evidentiary hearing in the State Bar Court prior to disbarment. However, pursuant to Business and Professions Code section 6101, subdivision (a), upon receipt of a certified copy of the record conviction, attorneys convicted of a felony or a crime involving moral turpitude are interimly suspended from the practice of law pending final disposition of the proceeding. Thus, even if an evidentiary hearing is held, the attorney convicted of an offense that would warrant disbarment is immediately suspended from the practice of law and can remain suspended until disbarred. Accordingly, the public is promptly protected from attorneys convicted of crimes of dishonesty regardless of whether summary disbarment occurs. Moreover, the opportunity for a referral hearing is not designed to lower professional standards. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[4]**

An attorney's reliance on the former law is a factor to consider in determining the constitutional question of whether the retroactive application of the statute would deny due process. However, if, as a matter of statutory construction, the provision is prospective, no constitutional question is presented. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[5]**

A hearing judge properly applied collateral estoppel and denied respondent the right to relitigate the issue of dishonest billing in a disciplinary proceeding where respondent had fully litigated the issue in a superior court action; where the jury in the prior action had determined by clear and convincing evidence that respondent had acted with oppression, fraud, and malice; and where no unfairness resulted from precluding the relitigation of the issue. *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. **[1]**

The complaining clients' settlement of their civil matter against respondent and the clients' release of all claims against him does not preclude the State Bar from proceeding with the disciplinary matter. A disciplinary proceeding is not a controversy between two individuals, the complainant and the accused attorney, but is an adverse proceeding against the accused attorney and may be instituted and prosecuted upon the complaint of any person knowing the facts upon which the proceeding is based. The complaining person or client is not a party to the disciplinary proceeding, and need not appear and testify at trial. Thus, the disciplinary case was not a right, claim, or cause of action that accrued to the complaining clients; and therefore it was not a claim that they could release or otherwise compromise. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[1]**

A hearing judge's determination to dismiss specified charges in the furtherance of justice with prejudice over the State Bar's objection that the dismissals should be without prejudice is reviewed under an abuse of discretion standard. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[1]**

Even though equitable estoppel does not control a hearing judge's determination whether to dismiss specified charges in the furtherance of justice with or without prejudice, the considerations in making such a determination are not dissimilar. Thus, in determining that the dismissals should be with prejudice in the present case, the hearing judge properly considered the positions of the parties and its effect on each side. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[2]**

The fact that respondent may be placed in "indefinite limbo" if specified charges are dismissed in the furtherance of justice without prejudice is not sufficient cause to require that the charges be dismissed with prejudice. His remedy in any subsequent proceeding would be a due process argument for relief caused by unreasonable delay based upon a sufficient showing of specific prejudice resulting therefrom. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[3]**

Generally, it is in the public interest to dispose of disciplinary charges on the merits. However, the public interest and the interests of justice would not be served by permitting the State Bar to maintain specified charges for possible later prosecution by dismissing the charges without prejudice when respondent relied on the charges to his detriment in preparation for and during trial and in doing so exposed his defense case. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[4]**

In its opinion remanding a petition for reinstatement for further proceeding not inconsistent with the opinion, the review department held, on the record then before it, that the petitioner had demonstrated his moral reform from the acts which lead him to resign from the Bar with disciplinary charges pending. Accordingly, under law of the case, it would be improper for hearing department to reconsider petitioner's moral reform on remand in the absence of additional evidence. As to events that predated the petition, and were disclosed on the petition, it is clear that reopening would be impermissible. The same would be true of events about which the State Bar had a reasonable opportunity to investigate and present at a hearing. However, one of the underlying purpose of reinstatement proceedings is to insure that only persons of present good moral character are reinstated to the practice of law in this state. Accordingly, with the exceptions noted, the State Bar Court may consider any act or conduct that is relevant to a petitioner's moral character regardless of when or where the act or conduct occurred. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[1]**

A petitioner establishes that he possesses the requisite present moral qualifications for reinstatement by presenting clear and convincing evidence that he possesses good moral character and has been rehabilitated. Any act or conduct bearing on the petitioner's qualities of honest, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and nation, and respect for the rights of others and the judicial process is relevant in a reinstatement proceeding. Unlike a petitioner's rehabilitation from prior bad acts, a petitioner's present moral qualifications for reinstatement is not capable of being conclusively determined for all time and is subject to re-evaluation on the State Bar's motion at least until the effective date of the Supreme Court's reinstatement order. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[2]**

Because jurisdiction vests in only one court at a time, once a review department opinion remanding the proceeding to hearing department for further proceedings becomes final, only the hearing department had jurisdiction to rule on State Bar's motion to expand the issues to be addressed at the trial on remand. Because the review department did not adjudicate the issue of petitioner's present moral fitness in its opinion remanding the proceeding to hearing department, the hearing judge's consideration of that issue on remand was not inconsistent with the review department's remanding opinion, and the hearing judge therefore did not error in admitting additional relevant evidence on the issue. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[3]**

Because the State Bar does not have the burden of proof in reinstatement proceedings, it need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence to prevail. Instead, the State Bar need only proffer sufficient adverse evidence to lower the persuasiveness of the petitioner's evidence so that he does not meet his burden to prove his case by clear and convincing evidence. Of course, the State Bar may elect not to present any adverse evidence if it concludes that petitioner's showing is insufficient to establish his case by clear and convincing evidence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[5]**

Review department is very reluctant to consider State Bar's request for a holding that respondent's failure to comply with the terms of a civil settlement agreement was an aggravating circumstance because the State Bar did not request such a holding from the hearing judge, but requested it for the first time on review. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[3]**

In a prior case, the Supreme Court expressed concern for the privacy of the targeted attorney's clients, and further noted that the proceedings of the State Bar were conducted in strict confidence. While such formal proceedings are now public, the investigative process is conducted in the same strict confidence that the Supreme Court noted in the prior case. In addition, in the event the records are sought to be used in a subsequent public proceeding following a confidential investigation, the attorney's duty of informing the client or clients whose trust account information may become public of that fact would come into play. The client or clients would then have the opportunity to seek relief from the State Bar Court under the rules of procedure that create a method for sealing portions of the record. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[3]**

One to whose conduct a statute clearly applies may not successfully challenge it for vagueness. Accordingly, respondent could not successfully challenge section 6106 of the Business and Professions Code as unconstitutionally vague where he had deliberately misinformed a client about the receipt of a settlement check, misappropriated funds from four clients, and practiced law and held himself out as entitled to practice law when he knew he was suspended. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[3]**

Respondent's suggestion that alleged ineffective assistance of his counsel necessitates a new trial was rejected. A disciplinary proceeding is administrative in nature, not governed by the rules of criminal procedure. Although an attorney in a disciplinary hearing must have a fair hearing, the attorney has no constitutional right to counsel or effective assistance from counsel. Any mistakes of respondent's counsel thus did not warrant retrial. Nor did the record establish that respondent received an unfair hearing. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[5]**

Where respondent contended that California's disciplinary process violates the commerce clause of the United States Constitution, respondent failed to recognize that the judiciary of each state has the right to regulate the practice of law in that state. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[2]**

No merit was found to respondent's claim that California's disciplinary process violates due process because of the alleged financial interest of State Bar Court judges and State Bar staff in the outcome of disciplinary proceedings and in the collection of disciplinary costs. California provides attorneys subject to discipline with more than constitutionally sufficient procedural due process. The Supreme Court has inherent and plenary authority to regulate and discipline attorneys, and the State Bar serves as its administrative arm to assist with these matters. The Supreme Court appoints the judges of the State Bar Court, and the Legislature sets their salaries comparable to judges of courts of record. The State Bar Court judges are subject to discipline on the same grounds as a judge of any other state court. The annual membership fees of attorneys who belong to the State Bar, not the costs assessed upon the imposition of discipline, pay the salaries of the State Bar Court judges and State Bar

staff. Thus, personal financial interest does not dictate the outcome of disciplinary proceedings or the imposition of disciplinary costs. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[3]**

Respondent was not entitled to present evidence for the first time on review that a State Bar official had engaged in improper conduct in a separate civil proceeding against respondent, where respondent had the opportunity to make this allegation and present evidence in support of it at the hearing level. Also, respondent failed to show how such evidence had any bearing on either his culpability of the charges against him or the appropriate discipline for his misconduct. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[4]**

The State Bar Court must address all charges unless they are dismissed on motion of the prosecutor. *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390. **[1]**

Delay in prosecution bars a disciplinary proceeding only if the delay caused specific actual prejudice resulting in the denial of a fair trial. *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390. **[2]**

Review department is very reluctant to consider a legal theory raised by an appellant for the first time on review. *In the Matter of Wolfgram* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355. **[4]**

Prior civil court findings made under a preponderance of the evidence standard of proof merely constitute evidence in a State Bar Court proceeding, not the exclusive record upon which an issue must be adjudicated. While the State Bar may choose to proffer prior civil court findings as its entire case against an attorney or applicant on the underlying issue, the attorney or applicant then has the right to controvert, temper, or explain the civil findings with other evidence, including live testimony from the same witnesses who testified in the civil trial. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[6]**

Neither the Supreme Court nor the State Bar Court will bind an applicant or a respondent to an adverse civil finding made upon the usual civil standard of proof of a preponderance of the evidence when the standard of proof in the State Bar proceeding is clear and convincing evidence. When civil findings are made under a preponderance of the evidence standard, they must be independently assessed under the more stringent standard of proof applicable to disciplinary proceedings of clear and convincing evidence. It is only in this context that civil findings have no disciplinary significance apart from the underlying facts. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[11]**

The State Bar Court may apply collateral estoppel principles to preclude an applicant from relitigating an issue that was actually litigated and resolved adversely to him or her in a prior civil proceeding, provided that the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, that the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, that the applicant was a party to the civil proceeding, that there is a final judgment on the merits in the civil proceeding, and that no unfairness in precluding relitigation of the issue is demonstrated by the applicant. An applicant may demonstrate that it would be unfair to bind him or her to an adverse civil finding by showing, among other things, that he or she had less incentive or motive to litigate the issue in the civil proceeding, that the civil finding or judgment is itself inconsistent with some other finding or judgment, or that he or she was required to litigate under different and less advantageous procedures in the civil proceeding. Where applicant's fraud judgment met the above criteria and no unfairness was demonstrated, the hearing judge appropriately applied the doctrine of collateral estoppel to the underlying fraud issue in this moral character proceeding. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[12]**

Statute requiring attorneys to uphold law is not always proper vehicle for charging violation of State Bar Act when statute is already covered as a disciplinable offense in another part of the Act. Because statutes requiring written attorney fee agreements containing certain information specify non-disciplinary remedies for attorneys' failure to comply with them, and because failure to comply with such statutes may be charged as violations of Rules of Professional Conduct regarding illegal fees, competence, and communication with clients, violation of such statutes is not disciplinable under statute requiring attorneys to uphold law. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[11]**

An attorney's disobedience of a court order involves moral turpitude for disciplinary purposes only if the attorney acted in either objective or subjective bad faith. Review department declined to find respondent culpable

of moral turpitude for failure to appear as ordered at settlement conference, where such culpability was argued for first time on review, notice to show cause did not allege that failure to appear was in bad faith, and hearing judge made no findings regarding respondent's objective or subjective bad faith in failing to obey order to appear. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[6]**

Attorney's out-of-state discipline was not entitled to preclusive effect under California statute providing for expedited disciplinary proceeding based on discipline in other jurisdictions where State Bar did not proceed pursuant to procedures set forth in such statute. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[9]**

Possible collateral estoppel effect of attorney's out-of-state discipline could not be addressed where record did not reveal factual underpinnings of such discipline and did not permit determination as to what issues were actually litigated in out-of-state disciplinary matter. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[10]**

The Supreme Court order in a probation revocation matter can become effective earlier than the Supreme Court order in an original discipline matter. (Cal. Rules of Court, rule 952(a), (b).) Accordingly, where a probation revocation matter and an original discipline matter were consolidated, the review department made a separate disciplinary recommendation for each matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[1]**

Because time to seek Supreme Court review is shorter for probation revocation matters than for original disciplinary matters, it is necessary to make separate discipline recommendations when such cases are consolidated. (Cal. Rules of Court, rule 952(a), (b).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[1]**

Former disciplinary structure under which local administrative committees had both investigative and fact-finding powers raised due process concerns. Under volunteer State Bar Court system which superseded it, investigative and prosecutorial functions were separated from fact-finding and adjudicative functions. This separation was strengthened and institutionalized by reforms which created independently appointed State Bar Court. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[5]**

Where review department imposed public reproval, it was statutorily required to order that respondent pay costs of disciplinary proceeding. Respondent's request to be relieved of such order to pay costs, on ground that State Bar abused its discretion in filing one of the charges, was rejected as premature in light of statute and rules permitting respondent to seek relief from order assessing costs after its effective date. (Trans. Rules Proc. of State Bar, rules 460-464.) *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[10]**

In reinstatement proceeding, where petitioner moved to augment record on review with medical evidence regarding recovery from alcoholism which hearing judge had declined to consider on motion for reconsideration, and review department concluded that petitioner made favorable showing on all other aspects of rehabilitation, review department considered petitioner's evidence in accordance with case law holding that extrinsic evidence will not be ignored where it is the only means of proving rehabilitation from serious physical or emotional problems. Where such evidence added support to conclusion that petitioner had not demonstrated that recovery program was adequate, and State Bar expressed concern that evidence had been offered without opportunity for cross-examination, review department remanded for further hearing and expert testimony regarding petitioner's recovery. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[5]**

Where parties to a disciplinary proceeding reached a stipulation but agreed to preserve right to seek review as to one contested culpability issue, review department construed order approving stipulation and hearing judge's partial decision as together constituting a decision for the purpose of review. However, review department was obligated to review entire record independently and had authority to make findings, conclusions, and a disciplinary recommendation at variance with those of hearing department. (Trans. Rules Proc. of State Bar, rule 453(a).) Agreement between parties could not restrict review department's obligation of independent review. Accordingly, review department declined to limit its review to contested culpability decision, and was not bound by stipulated discipline recommendation. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[1]**

When judges are asked to approve stipulations, they cannot rely solely on State Bar's acquiescence in proposed discipline, but must exercise their independent judgment in carrying out their obligation to examine stipulation, admitted facts, and proposed discipline for fairness to parties and for extent to which public will be adequately protected thereby. (Trans. Rules Proc. of State Bar, rule 407(a).) *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[9]**

Where parties agreed to highly unusual stipulation expressly preserving right to seek review, but did not contemplate that review department would recommend discipline more severe than that set forth in order approving stipulation, parties' expectation that review department would be bound by stipulated discipline was unjustified. However, it was appropriate to relieve parties from stipulation due to their mutual mistake. Accordingly, review department vacated order approving stipulation and remanded proceeding for new stipulation or trial. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[11]**

Review department's general practice is not to publish opinions in matters where oral argument has not been heard. However, where the only party which had appeared in a proceeding requested publication of an order issued without oral argument, and the order dealt with a situation which had not been addressed in review department's prior published opinions, the request for publication was granted. The effective date of the order was not affected by its modification due to the request for publication. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[1]**

Where, due to the dismissal of all charges, a disciplinary hearing had included a culpability phase but not a sanction phase, and where the review department found respondent culpable of misconduct, it would be inappropriate for the review department to recommend or impose any sanction even if the State Bar wished to waive its opportunity to introduce evidence regarding aggravation, because respondent wanted and was entitled to the opportunity to offer evidence in mitigation. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[14]**

Finality of an attorney's criminal conviction is not essential for an order referring the conviction to the State Bar Court Hearing Department for a determination whether there is probable cause to conclude that the circumstances of the conviction involved moral turpitude for purposes of interim suspension of the attorney. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[1]**

An attorney's unauthorized practice of law while on suspension is an appropriate matter to be considered in aggravation. Where, during the trial in a disciplinary matter, the respondent made a court appearance in a client's case while suspended for nonpayment of dues, the deputy trial counsel was not obligated to wait to file another disciplinary action to address the issue. Where respondent's counsel agreed that the deputy trial counsel could introduce evidence regarding respondent's court appearance during a later phase of the hearing, respondent received proper notice of the charge in aggravation. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[15]**

Where respondent had been given notice that if his disciplinary probation were revoked he could be placed on inactive enrollment, and where the Office of Trials expressed grave concerns as to the threat posed by respondent to clients and the public, the Office of Trials could have sought to have respondent placed on inactive enrollment at the time the hearing judge revoked probation. Where it did not do so, respondent was allowed to continue to practice pending review of the hearing judge's order. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[18]**

Negotiations regarding an agreement ordinarily result in a binding contract when all of the essential terms are definitely understood, even if a formal writing is to be executed later and even if there is uncertainty in a minor, nonessential detail. Where all elements of a stipulation settling a disciplinary proceeding were resolved at a settlement conference, and the settlement judge's ensuing order indicated that a final compromise had been reached, the settlement agreement was binding even though no formal written stipulation had yet been signed. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[4]**

Where a settlement judge's order following a settlement conference indicated that a final compromise had been reached, the order was binding and an attorney's failure to abide by it, without moving for relief therefrom, constituted a violation of the statutes requiring obedience to court orders and respect for courts and judicial officers. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[5]**

No method of enforcement of settlement agreements in disciplinary proceedings is set forth in the Transitional Rules of Procedure, but an express provision governing this subject is not essential to the court's inherent jurisdiction to exercise reasonable control over proceedings before it in order to avoid unnecessary delay. Where one party refused to abide by a settlement agreement, the other party could have made a motion to compel enforcement of the agreement, by analogy with the statutory motion permitted by Code of Civil Procedure section 664.6, or could have asserted the agreement as an affirmative defense in the pending proceeding. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[6]**

It is well established that an aggrieved party may properly bring to the court's attention the alleged breach of a settlement agreement arrived at before a judge and reflected in an ensuing court order. Rule 1231 of the Provisional Rules of Practice and Evidence Code sections 1152, subdivision (a) and 1154 only preclude evidence of settlement offers and negotiations that do not result in an agreement. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[7]**

A letter sent by counsel for one party in a disciplinary proceeding to the opposing counsel, with copies to the settlement judge and assigned trial judge, did not constitute a prohibited ex parte communication with the court. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[8]**

Pretrial statements are an important tool in conducting an efficient multi-count trial. Unexcused failure to comply with an order requiring a pretrial statement (see rule 1222, Prov. Rules of Practice) should not be treated lightly. However, where counsel failed to make appropriate motions during trial resulting from the other party's failure to file a pretrial statement, no issue was preserved for appeal. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[1]**

The law of the case doctrine is one of policy and does not preclude the relitigation of issues already determined in a prior appeal. However, strong reasons should be put forward for seeking to relitigate an issue already fully litigated and decided on a prior appeal. Where a party sought reconsideration, on a second appeal, of the review department's determination of an issue on an earlier appeal in the same proceeding, without offering any justification for its failure to seek reconsideration earlier, and relying on no new case law or statute, the review department had no cognizable reason to reconsider its prior conclusion. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[2]**

Because of due process concerns, time spent on involuntary inactive enrollment pending disciplinary proceedings is limited to one year absent proof of delay by respondent or respondent's counsel or other circumstances justifying lack of compliance. (See rules 799, 799.8, Trans. Rules Proc. of State Bar.) Where review department had ruled on earlier appeal that respondent would receive credit against final discipline for time spent on involuntary inactive enrollment, and respondent had not sought to terminate inactive enrollment during pendency of proceedings on remand and second appeal, respondent would be prejudiced if period of over five years spent on inactive enrollment were not credited against waiting period to apply for reinstatement. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[7]**

Although Business and Professions Code section 6026.5(f) permits appeals from decisions of the Board of Legal Specialization to the Board of Governors of the State Bar to be treated as confidential, the Board of Governors, in delegating its authority to hear such appeals to the State Bar Court, did not expressly indicate whether it intended to preserve the confidentiality of such appeals. (Trans. Rules Proc. of State Bar, rule 225(a)(1).) Where a legal specialization proceeding was treated as public by the hearing judge, the parties were deemed to have waived any argument that the review department should treat the proceeding as confidential by their failure to raise a timely objection to such treatment. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[1]**

Where respondent challenged the use of a prior disciplinary matter as evidence in aggravation because he contended the matter had been time-barred, but respondent had defaulted in the earlier proceeding and the prior discipline had been ordered by the Supreme Court over three years earlier, only the Supreme Court could grant the requested relief. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[19]**

Summary disbarment excludes the opportunity for an evidentiary hearing. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[1]**

In considering whether to recommend summary disbarment, the State Bar Court is generally limited to determining whether the statutory and case law criteria have been met on the face of the conviction papers, although undisputed additional facts may also be taken into account. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[3]**

A stipulated disciplinary order does not constitute precedent, but does represent a determination by the Office of the Chief Trial Counsel and the hearing judge that the degree of discipline ordered satisfies the need to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[11]**

Because hearings and records regarding inactive enrollment under Business and Professions Code section 6007(b) are confidential, respondent was not identified in review department's opinion regarding issues raised by such inactive enrollment. However, where such issues arose during a disciplinary proceeding, the record in that proceeding remained public, subject to the hearing judge's discretion to seal specific portions of the record where proper grounds appeared. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[1]**

Medical evidence regarding an attorney's competency to assist in the defense of a disciplinary proceeding should be submitted to the State Bar Court at the hearing level. The reliability of evidence concerning a person's mental state is virtually impossible to test in the absence of cross-examination. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[10]**

It is not improper for the Office of Trials to pursue on review a challenge to the exclusion of evidence of uncharged misconduct in one proceeding while simultaneously prosecuting a second proceeding based on the same misconduct, so long as both courts are made aware of the pendency of the other proceeding. The second proceeding could be abated until resolution of the first case. Where this did not occur, it was proper for the hearing judge to adjudicate the second case promptly and then request that the review department take judicial notice of the decision in the second case, thus permitting the review department to consolidate the cases on review. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[5]**

Where a hearing judge's decision in one matter indicated that if the respondent filed a post-decision declaration in that matter, this would be taken into account in assessing discipline in a second pending matter, the examiner's objections on review to this aspect of the decision were rendered moot by the respondent's failure to file any such declaration, by the State Bar's apparent satisfaction with the result in the second matter, and by the review department's recommendation of disbarment in the first matter based on other grounds. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[6]**

A showing of specific prejudice is required to invalidate a hearing judge's decision based on procedural errors. Where respondent did not allege and/or demonstrate that he suffered any specific prejudice as a result of numerous alleged procedural errors, he was not entitled to relief. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[3]**

Where discovery period was extended, giving respondent ample time to conduct discovery, and where respondent engaged in discovery, did not seek additional time for further discovery, and did not move to compel further responses or to compel attendance of witnesses at depositions, respondent's contentions that errors occurred during discovery lacked merit. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[5]**

Hearing judge's refusal to permit respondent to present evidence that value of one estate asset increased during respondent's delay in completing probate did not entitle respondent to relief, where such increase in value did not justify respondent's misconduct in delaying distribution of other estate assets. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[7]**

Hearing judge's request that respondent discuss mitigation evidence with examiner and try to "work something out," in order to promote stipulations for the introduction of character letters, did not constitute an improper requirement that respondent obtain the State Bar's prior approval to present mitigation evidence. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[9]**

The law of the case doctrine does not preclude the current review department from reviewing the former review department's decision de novo. If review is sought in a proceeding which had been previously decided by the former review department, the entire matter is before the review department for independent de novo review, and it may act on an issue regardless of whether the parties have raised it. (Rule 453(a), Trans. Rules Proc. of State Bar.) Accordingly, review department could reopen a charge dismissed by the former review department. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[1]**

Former review department's alleged lack of quorum was moot where all issues in proceeding were before current review department for independent de novo review. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[3]**

Issue of alleged misconduct of examiner during pretrial discovery was moot, where issue had been addressed by order of hearing judge which respondent did not challenge on review, and where only prejudice alleged was unnecessary prolongation of interim suspension for which review department gave respondent credit against recommended actual suspension. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[12]**

Generally, when a lower court ruling favors disclosure of materials requested in discovery, in camera inspection cannot be requested for the first time on review. There is an exception for questions of first impression, but this exception did not apply where the authority relied on in requesting the inspection had been decided over 30 years earlier. Where the party requesting in camera inspection did so for the first time on a motion for reconsideration before the review department in bank, and gave no explanation of its failure to request such inspection earlier, the review department declined to conduct an in camera inspection. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[8]**

Private personal information about a non-party to a proceeding may be privileged from discovery under some circumstances pursuant to the California constitutional right to privacy. The privacy right to be protected is that of the non-party, and the custodian of the private information may not waive it. The right to privacy is not absolute, but must be balanced against the need for disclosure. In a moral character proceeding, it was unreasonable for material witnesses against the applicant to claim a right of privacy preventing the disclosure of their identities to the applicant during discovery, while consenting to testify against the applicant at trial. However, as to the identities of persons whose testimony would not be used under any circumstances, the applicant had not made a sufficient showing of need to overcome these persons' privacy rights, and their names could be withheld from disclosure. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[10]**

Declaration regarding facts relating to discovery motion was stricken as untimely, where it related to facts which should have been presented to hearing judge, not offered for the first time on review. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[12]**

Judges in State Bar proceedings have inherent authority to exercise reasonable control over the proceedings in front of them. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[15]**

Where an attorney is convicted of a crime which does not inherently involve moral turpitude, the attorney's conviction is referred to the State Bar Court Hearing Department for a determination whether the facts and circumstances surrounding the crime involved moral turpitude or other misconduct warranting discipline, and to determine the appropriate disposition. Upon a referral of that type, the appropriate disposition can include dismissal of the proceedings if the hearing judge finds that the particular misconduct did not warrant professional discipline. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[4]**

Where disciplinary proceeding was dismissed due to State Bar's failure to bring forth clear and convincing evidence to support any of the charges, respondent was entitled by statute to reimbursement for the reasonable expenses of preparation for hearing, but State Bar Court was not authorized to award respondent any amount for attorney fees. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[9]**

Where respondent sought no relief from hearing judge on account of respondent's inability to attend pre-trial conference, which respondent contended was excusable due to medical emergency, respondent could not be heard to complain for the first time on review. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[3]**

Under Supreme Court precedent and the State Bar Rules of Procedure, before entering into a stipulation resolving a disciplinary matter, the State Bar should notify the respondent of any other pending investigations or complaints. However, where respondent had been notified of a second complaint before respondent entered into a stipulation to a public reproval in an earlier, separate matter, respondent demonstrated no prejudice from the failure of the earlier stipulation to refer to the pendency of the second complaint. (Rules Proc. of State Bar, rule 406.) *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[2]**

In order to establish a denial of a fair trial because of delay between the making of a complaint to the State Bar and the filing of a formal notice to show cause, an attorney must show specific instances of actual prejudice from the delay. Where information in support of respondent's claim of prejudice was available and known to respondent at the time of respondent's motion to dismiss before the hearing judge, but was not set forth in support of the motion, respondent could not improve on review the record he had the opportunity to make in the hearing department. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[2]**

A hearing judge's denial of respondent's request to remove and copy exhibits already admitted into evidence, due to concern for the integrity of the record, was not improper, and did not show bias. Moreover, by failing to seek relief before the hearing judge after being denied access to the exhibits by the State Bar Court clerk's office, respondent waived his right to raise the issue before the review department. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[5]**

Where the Supreme Court's order referring a conviction matter to the State Bar required the State Bar Court to determine whether the conviction involved misconduct warranting discipline, the order demonstrated that the attorney's conviction alone did not establish that the attorney was culpable of professional misconduct. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[2]**

Where Supreme Court directed State Bar Court only to hear evidence on appropriate level of discipline, hearing referee correctly ruled that Supreme Court had already established nature of respondent's criminal offense as one inherently involving moral turpitude, and Supreme Court's classification of offense of harboring a fugitive as one involving moral turpitude per se was final and binding on the State Bar Court. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[5]**

Where record established that respondent had had opportunity to be heard by Supreme Court, prior to referral to State Bar Court, on question whether respondent's criminal offense involved moral turpitude per se, respondent was not denied due process by the Supreme Court's determination of that issue. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[6]**

It is generally presumed that the arbitrators heard and decided all disputed issues in an arbitration. Where issue regarding costs was raised in an attorney's fees arbitration, and the arbitration award showed on its face that it covered costs as well as fees, and neither party contested the arbitrators' jurisdiction to consider issues of costs, issue of whether costs had been reimbursed should not have had to be relitigated in subsequent State Bar disciplinary proceeding. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[12]**

The doctrine of res judicata seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration. Mistakes of fact or law do not affect the conclusive nature of an arbitration award against collateral attack. If the contending parties had a full and fair opportunity to litigate, there must be compelling reasons to sustain a plea for a second chance. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[13]**

Where the review department rejected the hearing judge's recommended discipline of three months actual suspension and imposed a private reproval, this rendered moot respondent's arguments against the hearing judge's recommended imposition of notification requirements pursuant to rule 955 of the California Rules of Court and the imposition of costs. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[23]**

Respondent was not entitled to a three-member hearing panel as a matter of due process. Where it was evident from the pre-trial filings that the case would require more than one day of hearing, the State Bar Court did not have discretion to assign the matter to a three-member panel, under the then-applicable statue. (Bus. & Prof. Code, § 6079 (b).) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[9]**

In State Bar Court proceedings, the court acts as an administrative arm of the Supreme Court, and State Bar Court judges and referees function as "judicial officers." Therefore, under Code of Civil Procedure section 1990, any person present at a State Bar Court hearing may be compelled to take the witness stand by the judge or referee. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[31]**

Where respondent did not agree in writing that statutory attorney-client fee arbitration would be binding, arbitration award was not binding even though it recited that it was. However, the award became binding when respondent failed to seek a post-arbitration trial within the statutory time limit. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[3]**

There is no statute of limitations in attorney disciplinary proceedings. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[17]**

Even if the procedure for a motion for judgment at the close of the moving party's case, as set forth in Code of Civil Procedure section 631.8, does apply in State Bar proceedings, it was not error for the hearing referee to take respondent's motion under submission and rule on it after respondent had presented the defense case, and the motion was impliedly ruled on when the referee made initial rulings as to culpability. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[20]**

In general, State Bar disciplinary proceedings are governed exclusively by the State Bar's rules of procedure, and the provisions of the Code of Civil Procedure do not apply unless expressly incorporated by reference. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[21]**

One distinction between an interim suspension order and a final order of discipline is the type of record before the court. At the interim suspension stage, the court has the criminal conviction and a statutory mandate to order interim suspension absent a showing of good cause. The petitioner has the burden of showing good cause to set aside an order of interim suspension, and no evidentiary hearing has occurred to test alleged mitigating factors. Thus, contested facts cannot be relied upon as a basis for vacating the order of interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[4]**

The respondent in a disciplinary proceeding must accept facts to which the respondent has stipulated. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[4]**

In reinstatement cases, where the record on its face indicates a pending disciplinary matter dismissed without prejudice should the petitioner seek reinstatement, or indicates matters as serious as criminal convictions arising after disbarment or resignation, the parties should make clear on the record their respective positions on these factors, which could raise a serious question as to whether a person petitioning for reinstatement had been rehabilitated or was presently fit to practice law. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[9]**

Where parties stipulated to waive any variance between facts set forth in stipulation and allegations of notice to show cause, stipulated facts which were not charged in original notice could be considered even though notice had not been amended. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[1]**

Where lapse of time between sessions of hearing in disciplinary matter resulted from respondent's own actions, and respondent never complained about delay, respondent waived right to speedy determination of charges underlying involuntary inactive enrollment. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[1]**

Rule 232 of the California Rules of Court contemplates preparation of a tentative decision after the completion of the trial, not in midstream, as a preliminary stage in the procedure for requesting a statement of decision. Therefore, rule 232 does not support the legitimacy of issuing a tentative decision when only one side has presented evidence. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[3]**

Where respondent had been placed on involuntary inactive enrollment pursuant to section 6007(c) prior to hearing on underlying charges, and after review, proceeding on underlying charges was remanded for partial rehearing and new discipline recommendation, review department directed that on remand, whether suspension or disbarment was recommended, respondent should receive credit for time spent on inactive enrollment. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[25]**

Upon respondent's application for retransfer to active status from involuntary inactive enrollment under section 6007(c), based on delay in processing of disciplinary proceeding on underlying charges, hearing judge must determine to what extent respondent or respondent's counsel was responsible for such delays, and whether circumstances otherwise justified any delays. (Trans. Rules Proc. of State Bar, rules 799, 799.7, 799.8.) *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[26]**

State Bar proceedings are sui generis, and are not governed by the principles of administrative mandamus applicable to ordinary administrative proceedings. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[2]**

The doctrine of law of the case did not preclude the full-time review department from reconsidering a decision of the former, volunteer review department. Due to the non-finality of recommendations of the former State Bar Court review department, law of the case did not apply to them. Upon its independent de novo review, review department was not bound to follow earlier factual determinations made prior to remand. Review department was also free to reconsider prior review department's legal interpretation of rule of professional conduct, given flexibility of law of the case doctrine in California appellate courts. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[3]**

Evidence provided by State Bar demonstrated that closure and reopening of investigation of disciplinary matter was in compliance with applicable rules and did not bar disciplinary proceedings; respondent had not been prejudiced by delay. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[12]**

To justify relief based on claimed procedural irregularity, specific prejudice must be shown; relief was denied to reinstatement petitioner who made conclusory claim of prejudice from prolongation of pre-hearing investigation, but did not demonstrate actual prejudice. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[5]**

Time to file answer to notice to show cause is extended twenty days by service of notice of application to enter default, and is extended an additional five days when the application is served by mail. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[2]**

Where respondent who filed motion for relief from default had previously submitted proposed answer to notice to show cause to State Bar Court and served it on examiner, and declaration accompanying motion to set aside default verified essential allegations of proposed answer, this constituted substantial compliance with rule requiring motion to set aside default to be accompanied by verified proposed answer. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[3]**

There is a strong public policy in favor of hearing cases on the merits and against depriving a party of the right of appeal because of technical noncompliance in matters of form. The policy against deprivation of a hearing due to noncompliance with filing requirements appears just as strong in the situation of noncompliance resulting in default prior to trial. In both cases parties are deprived of a significant legal remedy if the noncomplying pleading is ultimately disregarded despite its reasonably timely correction. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[5]**

Review department declined to decide whether clerk's entry of default prior to expiration of reasonable time to respond to clerk's notice, which rejected answer due to technical defects, was void, or erroneous and voidable. Instead, review department determined that the denial of respondent's motion to set aside default was an abuse of discretion. An attorney's neglect in untimely filing papers must be evaluated in light of the reasonableness of the attorney's conduct; respondent acted reasonably in timely submitting answer to notice to show cause, and promptly resubmitting corrected answer after receiving clerk's rejection notice. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[7]**

Where record showed that respondent cured defects in otherwise timely answer within six days of mailing of notice to do so by clerk's office, review department's duty of independent record review precluded it from ignoring those facts in determining just disposition of motion for relief from default, despite weakness of respondent's moving papers. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[12]**

An attorney is ordinarily justified in relying on communications from the clerk as a basis for relief under section 473 of the Code of Civil Procedure. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[13]**

Examiner's argument against setting aside default on review, based on resulting delay, necessity for new trial, and resulting prejudice and inconvenience, was unpersuasive. Reversal of denial of motion to set aside default will always require new hearing. Moreover, record revealed that examiner had notice prior to hearing of respondent's intention to move to set aside default. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[16]**

Where respondent, represented by experienced counsel, stipulated to facts which respondent conceded supported uncharged violation of failing to notify clients of receipt of client funds, and respondent did not object to referee's amendment of notice to show cause to reflect such charge, review department held that any such objection was waived, and found culpability despite omission of charge from notice to show cause. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[6]**

A motion to dismiss a notice to show cause for failure to provide the respondent with sufficient notice of the alleged misconduct is available where appropriate to assure adequate notice of charges in compliance with statutory mandate and due process. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[1]**

Even if it were established that examiner had sent complaining witness's letter to hearing referee, respondent had waived any claim of prejudicial misconduct by his counsel's failure to preserve the objection at trial, and in any event no identifiable prejudice resulted from the referee's exposure to the letter's hearsay statements where the referee heard five days of testimony, including testimony on the same subject by the letter's author and by persons with personal knowledge. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[7]**

Where respondent's two convictions were interconnected in their surrounding facts and circumstances, and where the record in the earlier matter lacked information regarding respondent's compliance with his criminal probation and his subsequent rehabilitation, a remand of the first matter and consolidation with the subsequent, related matter would be appropriate, in order to give the Supreme Court a single, more complete record and a single recommendation of discipline, if any. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[6]**

140 Evidentiary Issues

140.10 Comparison of Rule 5.104 (2011) to former Rule 214 (1995)

140.20 Rights of Parties (rule 5.104(B) (2011))

Rule 5.124 of the Rules of Procedure of the State Bar provides specific and limited grounds for dismissal. Where respondent's pretrial motion to dismiss did not argue that notice of disciplinary charges failed to state a legally disciplinable offense or to give sufficient notice of the charges, but rather sought dismissal on merits, relying on declarations and supporting documents, motion was equivalent to summary judgment motion, which is not provided for under rule 5.124. Hearing judge erred in granting motion to dismiss based on pretrial factual findings, thereby deriving State Bar of its right to present evidence of respondent's culpability at trial. *In the Matter of Eldridge* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 413 **[1 a,b]**

141 Relevance

Because parties failed to address relevant immigration court and Board of Immigration Appeals rules and procedures that are set forth in the Code of Federal Regulation and have the force and effect of law, hearing judge and review department were required to take and did take judicial notice of those rules and procedures sua sponte. (Rules Proc. of State Bar, rule 214; Evid. Code, §§ 451, subd. (b), 459, subd. (a).) *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[8]**

Although earlier admissions cases do not consider the time a petitioner is in custody or under court or State Bar supervision to be particularly weighty in assessing rehabilitation, the petitioner in each of those cases had engaged in extremely serious misconduct for an extensive time and had not adequately shown rehabilitation in light of the seriousness of the offenses. In contrast, in this case, petitioner's misconduct, though clearly serious,

spanned four years, but there was no evidence that petitioner acted in less than an exemplary fashion while on probation. Further, some of petitioner's positive conduct, notably his cooperation with the State Bar, occurred despite his understanding that he would get no benefit from it. The review department therefore concluded that it was appropriate in this case to accord some weight to petitioner's activities while on probation, but it gave far greater weight to the last four years of petitioner's showing, which were after he completed his criminal probation. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[2 a,b]**

Negative testimony regarding petitioner's rehabilitation did not rebut petitioner's favorable testimony for a very important reason: the negative testimony was based solely on the severity of petitioner's earlier misconduct and not on his rehabilitative steps since resignation. The witnesses had no personal observation of petitioner for most, if not all, of the 10 years that elapsed between the time petitioner resigned and the State Bar Court hearings. Thus, while the negative testimony of each of these witnesses was relevant on the issues of the seriousness and the nature and extent of petitioner's prior misconduct, it was of little relevance on the issues of petitioner's present character and of whether petitioner has maintained a sustained period of unblemished and exemplary conduct. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[7 a-c]**

The relevant testimony of a witness given in civil proceeding is admissible in disciplinary proceedings without regard to the witness's availability and is considered and weighed as though the witness was present and testifying in the disciplinary proceeding. Moreover, the State Bar Court may take judicial notice of non-testimonial matters (i.e., pleadings, exhibits, findings) in a civil action that involved the same conduct underlying the disciplinary charges against an attorney.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[3]**

The hearing judge did not err in prohibiting respondent from presenting evidence of his willingness to settle the case by stipulating to the misconduct and a reasonable level of discipline and of the State Bar's unwillingness to present a settlement offer that contained what he considered to be a reasonable level of discipline. Respondent is afforded substantial mitigation for cooperation because, in addition to other instances of cooperation throughout the investigation of the matter, he stipulated to the facts underlying the misconduct and because the stipulated facts were not easily provable. Substantial mitigation is given without regard to the fact that the parties were unable to stipulate to an appropriate level of discipline. Not doing so would "punish" respondent merely for seeking his day in court as to the level of discipline. Not being able to reach a stipulated discipline does not have any effect on the court's analysis of the degree of mitigation awarded for respondent's overall cooperation in helping resolve the charged misconduct. *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902.**[1]**

A petitioner establishes that he possesses the requisite present moral qualifications for reinstatement by presenting clear and convincing evidence that he possesses good moral character and has been rehabilitated. Any act or conduct bearing on the petitioner's qualities of honest, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and nation, and respect for the rights of others and the judicial process is relevant in a reinstatement proceeding. Unlike a petitioner's rehabilitation from prior bad acts, a petitioner's present moral qualifications for reinstatement is not capable of being conclusively determined for all time and is subject to re-evaluation on the State Bar's motion at least until the effective date of the Supreme Court's reinstatement order. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[2]**

Respondent was not entitled to present evidence for the first time on review that a State Bar official had engaged in improper conduct in a separate civil proceeding against respondent, where respondent had the opportunity to make this allegation and present evidence in support of it at the hearing level. Also, respondent failed to show how such evidence had any bearing on either his culpability of the charges against him or the appropriate discipline for his misconduct. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[4]**

Hearing judges are accorded wide latitude to receive all relevant evidence, and relief from their decisions will not be granted on the basis of alleged error in admitting evidence unless actual prejudice is established. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[5]**

Where State Bar witness had not been excused from giving further testimony, hearing judge erred in not permitting respondent to recall such witness for questioning about document respondent did not possess at time witness first testified. However, where such additional testimony was relevant only to refute factual contention

later abandoned by State Bar, hearing judge's error did not result in prejudice to respondent. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[7]**

Where referral order arising out of attorney's criminal conviction calls for hearing and decision on degree of discipline to recommend if hearing judge finds that facts and circumstances surrounding conviction involve moral turpitude or other misconduct warranting discipline, hearing judge may consider wide variety of evidence surrounding conviction as part of relevant facts and circumstances. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[4]**

Regardless of an attorney's belief that a court order was issued in error, the attorney is obligated to obey the order unless the attorney takes steps to have it modified or vacated. The attorney's belief as to the validity of the order is irrelevant to a charge of violating the statute requiring attorneys to obey court orders. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[5]**

List of representative cases respondent had handled, including pro bono matters, which was attached to respondent's brief on review, and expanded from similar list introduced at trial, was of minimal value in terms of mitigation, especially without explanation. Review department therefore declined to augment record to include list and did not consider it. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[11]**

Where bankruptcy court order which was not already part of record showed that restitution payments had been made to victim of respondent's misconduct, review department granted request to take judicial notice of such order. Undisputed evidence bearing on issue of restitution is important, if for no other purpose than to create an accurate record on the status of restitution. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[2]**

The question of the proper degree of discipline in a conviction referral matter may rest on a wide scope of evidence not directly connected with the crimes themselves. Evidence that respondent's real estate license had been revoked over a year before his crimes was improperly excluded from rebuttal evidence. Such evidence was not an essential element of the State Bar's case in chief, and could properly be reserved to rebut respondent's contention that his crimes were aberrational. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[9]**

Respondent's record of prior discipline did not warrant great weight in involuntary inactive enrollment proceeding, where respondent's first prior disciplinary matter was unrelated to present conduct, and State Bar had stipulated in second prior matter that respondent's misconduct was only worthy of a short suspension not requiring client notification. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[6]**

In involuntary inactive enrollment proceeding, evidence showing very substantial likelihood that respondent had substance abuse problem could be considered as risk to the public of future professional misconduct even absent evidence of current client harm. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[7]**

A petitioner for reinstatement does not have to establish that the changes that have occurred in his or her post-misconduct life are attributable to psychotherapy before that therapy is entitled to weight on the issue of the petitioner's showing of rehabilitation. Rather, the therapy, as well as the other evidence of rehabilitation, must be viewed and weighed collectively. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[10]**

The passage of an appreciable period of time constitutes an appropriate consideration in determining whether a petitioner for reinstatement has made sufficient progress towards rehabilitation. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[14]**

An attorney's record of prior discipline is a factor to be considered by the Board of Legal Specialization in determining whether the attorney initially meets the standards for specialist certification, and, in appropriate circumstances, may justify a decision to deny initial certification. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[7]**

Within due process limits, the Board of Legal Specialization has broad discretion in certifying specialists. It may consider any competent evidence rebutting an applicant's showing and may weigh and balance evidence in an appropriate manner. An applicant's prior discipline for very serious misconduct is clearly evidence that should be considered in this process. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[12]**

Restitution payments made under pressure of disciplinary proceedings are entitled to little or no weight in mitigation of discipline. However, whether restitution has been completed is important to deciding whether it should be required as a condition of probation, or, if disbarment is recommended, to whether respondent must make restitution as an issue bearing on rehabilitation for reinstatement. Thus, evidence of restitution payments made by respondent's father was relevant and properly admissible, even though not constituting mitigation, and review department granted motion to admit such evidence on review where hearing judge had declined to accept it. However, other evidence offered by respondent on review regarding Client Security Fund claim filed by respondent's client was not admitted by review department where it was not relevant to issues in proceeding. (See rule 570, Trans. Rules Proc. of State Bar.) *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[12]**

In determining whether evidence of additional uncharged ethical misconduct should be admitted as aggravating evidence in the discipline phase of the hearing, the hearing judge must balance the desire for additional relevant evidence against the due process requirement of fair notice of all discipline charges. Where there was sufficient evidence in the record to warrant a recommendation of disbarment, it was unnecessary for the review department to resolve a claim that the hearing judge erred in failing to admit aggravating evidence of uncharged misconduct. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[18]**

Underlying evidence of uncharged misconduct was not made inadmissible by rule prohibiting admission in evidence, except in rebuttal, of records of complaints or charges, where such evidence was offered in aggravation and impeachment in a contested proceeding after respondent testified regarding rehabilitation. (Rule 573, Trans. Rules Proc. of State Bar.) *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[9]**

Where hearing judge determined that proffered evidence of additional uncharged misconduct was of marginal relevance; that it could be fully examined and made the basis of separate discipline, if appropriate, in a separate proceeding, and that its admission would involve a delay to permit respondent time to address the issues it raised, the exclusion of the evidence was not an abuse of discretion. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[11]**

Transcript of superior court trial regarding probate matter which was subject of disciplinary proceeding was admissible pursuant to Bus. & Prof. Code, § 6049.2, and hearing judge did not err in admitting entire transcript, even though much of testimony was not relevant to disciplinary proceeding, where transcript was admitted subject to respondent's motion to strike parts that were not material or relevant, and respondent failed to make such motion. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[10]**

Where civil malpractice action against respondent involved essentially identical factual issues to those in discipline proceeding, nontestimonial exhibits consisting of documents relating to judgment in such civil proceeding, including unpublished appellate opinion explaining reasons for decision of civil courts, were admissible evidence in disciplinary proceeding. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[4]**

Where evidence about the manner in which a reinstatement petitioner has handled positions of trust is available, such evidence is of probative value. But evidence that the petitioner has occupied positions of trust is not a requirement of reinstatement, and favorable testimony about the petitioner's trustworthiness should not be discounted because the witnesses have failed to observe how the petitioner would handle a fiduciary relationship. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[17]**

In recommending discipline in a matter arising from a criminal conviction, the State Bar Court is not limited to examining only the elements of the offense in question, but is obligated to look at all facts and circumstances surrounding the offense to assess the respondent's fitness as an attorney. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[9]**

In camera inspection was not appropriate before ordering a party to disclose names of potential witnesses in response to an interrogatory, because the court was ill-equipped to evaluate the potential relevance of the undisclosed names without argument from the counsel of the party requesting them, which could only be made after the names were disclosed. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[9]**

Even if it was error for hearing judge to allow examiner to ask leading questions of complaining witness on direct examination, and to admit testimony as to witness's state of mind when such state of mind was not relevant, such errors were not prejudicial where complaining witness's testimony was clearly insufficient to establish State Bar's case and was not relied on in hearing judge's findings. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[8]**

Hearing department findings that were based on evidence admitted in discipline phase of trial were considered by review department solely with respect to discipline and not culpability. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[3]**

When an attorney withdraws from employment or the client terminates the attorney's employment, the attorney must promptly refund any unearned part of an advance fee. However, where respondent faced competing demands regarding the funds used to pay an advance fee, from a client and from a third party to whom respondent owed a fiduciary duty, respondent had a duty to retain the funds in trust until the client's entitlement to the funds was established, and therefore did not commit misconduct by declining to refund the advance fee. Respondent's motives for retaining the funds in trust were irrelevant because the issue turned on a question of law, not motivation. The State Bar had the burden of proving that the client was entitled to receive the funds. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[9]**

In criminal conviction matters, the State Bar Court is not limited to examining only the elements of the criminal offense, but is obligated to look at all facts and circumstances surrounding the offense to assess the respondent's fitness as an attorney. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[3]**

Testimony concerning a psychological disorder related to respondent's misconduct constitutes at most mitigating evidence, and is not admissible during the culpability phase of the hearing unless the respondent asserts a defense of insanity or claims to be unable to assist in his or her own defense. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[14]**

In proceeding to determine whether criminal convictions involved moral turpitude, declarations submitted by respondent in which clients attested to respondent's character and legal abilities were properly disregarded as irrelevant, because neither declarant was present during the incident underlying the convictions nor did the declarations contain any information which could shed light on the incident. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[1]**

In conviction referral proceedings, discipline is imposed according to the gravity of the crime and the circumstances of the case. In examining such circumstances, the court may look beyond the specific elements of a crime to the whole course of an attorney's conduct as it reflects upon the attorney's fitness to practice law. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[2]**

Passage of the Professional Responsibility Examination would be relevant evidence in a hearing pursuant to standard 1.4(c)(ii), but is not a condition precedent. Accordingly, respondent ordered to take PRE was given the standard period of one year to do so even though respondent's standard 1.4(c)(ii) hearing might occur sooner. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[15]**

Where facts deemed conclusively established by court order, following respondent's failure to respond to examiner's requests for admissions, showed that respondent had wilfully misled judge, but respondent was permitted to testify that representations made to judge, though false, were true to the best of respondent's knowledge at the time they were made, respondent's testimony on this point was properly received, but only in mitigation, and not to contradict deemed admissions on which culpability findings were based. Deemed admissions, while conclusive as to literal truth of facts clearly set forth in request for admissions, did not preclude referee from admitting and considering other evidence that tended to explain or helped to interpret admitted facts. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[2]**

Respondent's testimony that he unsuccessfully tried to telephone a State Bar investigator in response to a letter the investigator sent him regarding his possible misconduct was admissible only in mitigation, not in defense to his culpability of failing to cooperate in the investigation, which was conclusively established by his deemed

admissions resulting from his failure to respond to discovery. Such testimony was not a sufficient basis for a finding in mitigation. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[8]**

The hearing department has broad discretion in determining the admissibility and relevance of evidence. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[14]**

Form petitions signed by lawyers and judicial officers in support of petitioner's reinstatement, which contained sketchy text and were undated, were properly excluded from evidence for lack of adequate foundation, as they fell far short of offering any probative value of the assessment of petitioner's character for meeting the rigorous burden of a reinstatement petition. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[5]**

142 Hearsay

Police reports offered by the State Bar did not clearly and convincingly establish respondent's dishonesty because the reports contained significant inconsistencies and multi-layered hearsay making the statements not the sort of evidence on which responsible persons are accustomed to rely. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[2]**

Where respondent did not object to the admission of evidence, it is well settled that any objection on that point has been waived. Therefore, respondent's assertion that the hearing judge erroneously admitted hearsay evidence was not well taken because respondent failed to object to the admission of all but one of the objectionable items of evidence. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[8]**

Because hearing judge admitted a paralegal's business card, which also had name of respondent's law offices and insignia of a nonattorney immigration services provider partnership printed on it, into evidence without limitation and without any hearsay objection from respondent, review department properly considered business card for the truth of the matter stated by relying on it as evidence that respondent employed the paralegal.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[16]**

Because transcript of immigration court hearing was admitted into evidence for all purposes and without any hearsay objection, review department properly considered it for the truth of the matter stated by relying on immigration judge's statements in it to support one of State Bar's witness's testimony and to contradict respondent's testimony in State Bar Court.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[18]**

Because transcript of immigration court hearing was admitted into evidence for all purposes and without any hearsay objection, review department properly considered it for the truth of the matter stated by relying on the unsworn statements of two attorneys contained in it to establish multiple relevant facts. Review department considered attorneys' unsworn statements to be highly credible because they, like all attorneys, have a duty under State Bar Act and Rules of Professional Conduct to employ means only as are consistent with truth.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[21]**

A client was allowed to testify regarding statements made to the client by a secretary working on respondent's behalf where such statements relayed information and instructions from respondent to the client. Such statements were admissible as authorized statements under Evidence Code section 1222 to prove that the client had retained respondent. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[8]**

The hearing judge did not err by admitting evidence under Evidence Code section 1223, the so-called coconspirator's exception to the hearsay rule. The law supporting use of the coconspirator exception to the hearsay rule does not require absolute proof of a conspiracy, but only that there be independent evidence to establish prima facie the existence of a conspiracy and other preliminary facts. Those requirements were adequately met here. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.**[3]**

Where statements could have been offered not to prove the truth of the matter stated, but for the purpose of showing that they were made in respondent's presence to disprove respondent's claim of lack of knowledge, the statements were not hearsay. In the absence of an objection and a request, made in accordance with Evidence Code section 355, that the use of the statements be admitted into evidence for the limited purpose, any error in their admission was waived. In any case, the statements were admissible under the adoptive admissions exception to the hearsay rule. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.**[4]**

A client's complaint letter offered into evidence to prove the truth of the matter asserted was hearsay. Because events were not fresh in the client's mind when he wrote the letter, it did not qualify for admission under the exception for a past recollection recorded that corroborated the client's testimony. Even if the letter did qualify for this exception, it should not have been received into evidence because it was offered by the State Bar rather than by an adverse party. Nor did the letter qualify for admission under the corroborative evidence exception to the hearsay rule because it lacked sufficient indicia of trustworthiness. Accordingly, the letter was struck from the record. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[2]**

The testimony of an investigator is not the best evidence on the contents of court records. Testimony or sworn evidence from the court clerk responsible for the records is more germane and reliable. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[4]**

Taking judicial notice of court records does not mean noticing the existence of facts asserted in the documents in the court file; a court cannot take judicial notice of the truth of hearsay just because it is part of a court record. Accordingly, where respondent requested review department to take judicial notice of court documents, this would only result in taking notice that various allegations had been made in various legal matters, and would not alter review department's conclusion regarding hearing judge's credibility determination. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[3]**

Where administrative proceeding in which respondent had not appeared had resulted in revocation of respondent's real estate license, and record of such administrative proceeding was relevant in State Bar disciplinary proceeding, hearing judge and parties should have addressed issues regarding whether administrative decision had preclusive weight; if not, whether it was admissible under any hearsay exception, and whether respondent should be permitted to introduce evidence concerning culpability or mitigation with respect to the license revocation. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[10]**

Declarations offered in support of application for involuntary inactive enrollment did not provide an evidentiary basis to find clear and convincing evidence of respondent's likelihood of causing substantial harm, where declarants simply identified themselves as authors of unverified reports without vouching for the truth of the reports or establishing a business records exception to the hearsay rule. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[4]**

In State Bar disciplinary proceedings, the formal rules of evidence apply as in civil cases, with the proviso that no error in admitting or excluding evidence invalidates a finding or decision unless the error deprived the party of a fair hearing. (Trans. Rules Proc. of State Bar, rule 556.) Accordingly, hearsay evidence is not admissible unless the opposing party agrees to its admission or otherwise waives any hearsay objections, or the evidence is subject to an exception to the hearsay rule. Where facts needed to establish past recollection recorded exception were shown, hearsay statements in witness's notebooks were properly admitted, and admission of notebooks themselves, even if error, did not prejudice opposing parties. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[8]**

Where a court file was moved into evidence without objection or limitation, any objection to the admissibility of a proof of service contained in such file was waived. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[5]**

The purpose of a proof of service is to establish notice of an order or other document, and it is the kind of document relied upon in the conduct of serious affairs. Where a proof of service of a sanctions order on respondent was in evidence, and there was no indication in the record of any misconduct by respondent's staff concerning receipt of the order, respondent was presumed to have been served with the court order. His receipt of the order and his admission that he did not satisfy it established a violation of the statute requiring attorneys to obey court orders. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[6]**

Declarations can be admitted into evidence in lieu of live testimony when no objection is raised. Where a declaration by the respondent was introduced into evidence by the State Bar without limiting the purpose for which the declaration was admitted, the declaration was admissible for all purposes, including the truth of the respondent's hearsay statements contained therein. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[7]**

Taking judicial notice of court records does not mean noticing the existence of facts asserted in the documents in the court file; a court cannot take judicial notice of the truth of hearsay just because it is part of a court record. Notice may be taken of another court's findings of fact and conclusions of law in support of a judgment, but not of hearsay allegations, even those of a judge-declarant. Accordingly, hearing judge erred in taking judicial notice of truth of testimony by respondent's criminal probation officer in criminal probation revocation proceeding. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[9]**

Where aggravating factor of bad faith found by hearing judge rested entirely on inadmissible hearsay evidence, review department declined to adopt such finding. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[10]**

Documentary evidence of communications to respondent from probation department regarding interpretation of probation conditions was judicially noticeable. It was not admissible to show truth of statements contained in such documents; for that purpose, it was hearsay. However, it was admissible to show that respondent had notice of probation department's interpretation, which was relevant to issue of respondent's good faith. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[13]**

Written report from respondent's probation monitor was inadmissible as hearsay where it did not establish that respondent had notice of anything unless probation monitor's recitals of what he told respondent were accepted as true. However, where such evidence was merely cumulative on question of notice, any reliance thereon by hearing judge was harmless error. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[14]**

It was error to sustain the examiner's objection to respondent's testimony about statements made by the complaining witness at a meeting, where the complaining witness had been asked about the meeting on cross-examination and given an opportunity to explain or deny respondent's testimony. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[7]**

Where respondent's testimony regarding statements made to respondent by complaining witness was offered to impeach complaining witness on a crucial issue, at a time when complaining witness was still subject to recall for further testimony, such testimony should not have been excluded except in the interests of justice. Exclusion of the testimony might have been justified by the length of the proceedings and respondent's lack of an explanation for failing to cross-examine complaining witness regarding statements at issue. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[9]**

Record of respondent's criminal conviction, which had been judicially noticed by hearing department, was admitted into evidence by review department in order to make it part of record in disciplinary proceeding for Supreme Court review, but was considered solely for purpose of establishing criminal complaint, charges, plea, and conviction. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[2]**

Requests to augment the record at the review department level will be granted only if the original record is incomplete or incorrect. (Rule 1304, Provisional Rules of Practice.) Out-of-court evidence offered at the appellate level is ordinarily hearsay, and impossible to evaluate because of the absence of cross-examination to test the credibility of the declarant. The rule is to rely only on evidence which was presented to the trier of fact. The only general exception is to permit documentary evidence of subsequent rehabilitation when it is the only means to meet the heavy burden of demonstrating recovery from substance abuse or mental disorder. Where proffered additional evidence was derived from the record in another proceeding involving respondent, and was not offered to correct any omission in the record, the review department declined to grant respondent's motion to augment the record. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[2]**

The handwritten complaint and accompanying documents of a complaining client, since deceased, were inadmissible as hearsay. The documents did not fit within any of the exceptions to the hearsay rule regarding deceased declarants. The deceased client's letter to respondent could not be admitted as an adoptive admission because there was no admissible evidence of words or other conduct by respondent demonstrating adoption of the statements in the letter. The corroborative evidence exception was also inapplicable because there was no admissible evidence in record which the documents would serve to substantiate. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[34]**

Witness's testimony as to witness's knowledge of respondent's conflicts with management of respondent's office building was not hearsay and was properly admitted. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[2]**

In proceeding to determine whether criminal convictions involved moral turpitude, arresting officer's testimony regarding observations of witnesses at the scene was not hearsay and was properly admitted. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[3]**

In proceeding to determine whether criminal convictions involved moral turpitude, the arresting officer's testimony describing a victim's retelling of the incident was hearsay, but was properly admitted because respondent waived hearsay objection by failing to appear at the hearing. The review department independently reviewed the hearsay evidence, found sufficient trustworthiness, and concluded it was properly relied on by the referee. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[5]**

Form petitions in support of petitioner's reinstatement, and other letters and testimonials, were excludable from evidence as hearsay, absent stipulation of the State Bar examiner. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[6]**

Respondent's answers to State Bar's interrogatories could be relied on as party admissions even though not verified, and were adequately authenticated when examiner identified them while introducing them at trial, and respondent did not object. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[8]**

Where complaining witness was in prison and deposition could not be arranged, hearing referee properly excluded witness's declaration on hearsay grounds. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[10]**

Where there was no evidence in the record that respondent had knowledge of the contents of a letter from his client, respondent's failure to answer the letter did not constitute an adoptive admission. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[4]**

In a reinstatement proceeding, the hearing judge acted within his discretion in excluding a second affidavit from a character witness. Like a character reference letter in a disciplinary proceeding, the character reference, even though in affidavit rather than letter form, was excludable as hearsay absent a stipulation to the contrary. Further, the second affidavit was cumulative, and the hearing judge carefully considered the more detailed first affidavit, which he admitted into evidence as part of the reinstatement application. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[6]**

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

142.10 Admissibility (rule 5.104(D) (2011))

142.20 Insufficiency to Support Finding (rule 5.104(D) (2011))

Police reports offered by the State Bar did not clearly and convincingly establish respondent's dishonesty, for purposes of finding that crime involved moral turpitude, because the reports contained significant inconsistencies and multi-layered hearsay making the statements not the sort of evidence on which responsible persons are accustomed to rely. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283. **[3 a,b]**

Police reports offered by the State Bar did not clearly and convincingly establish respondent's dishonesty, for purposes of finding that crime involved moral turpitude, because the reports contained significant inconsistencies and multi-layered hearsay making the statements not the sort of evidence on which responsible persons are accustomed to rely. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283. **[3 a,b]**

Where State Bar's evidence that respondent lied to law enforcement included inconsistencies and hearsay statements, evidence did not clearly and convincingly establish aggravating factor of dishonesty. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283. **[6]**

143 Attorney-Client/Work Product Privileges (rule 5.104(E) (2011))

While respondent's improper assertion of various constitutional and statutory privileges showed a lack of cooperation with the State Bar during the disciplinary proceedings and constituted an aggravating factor, such factor was given little weight because (1) there was no evidence of resulting excessive delay in the disciplinary proceedings, (2) respondent willingly responded to most of the questions presented to him and only asserted the privileges as to matters which he believed involved the possibility of criminal prosecution, (3) the delay which did occur was not caused solely by respondent, (4) respondent's assertion of the privileges did not interfere with the State Bar's ability to prove its case, and (5) there was no clear and convincing evidence that respondent asserted the privileges in bad faith. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[17]**

Business and Professions Code section 6068 subdivision (e) is the most strongly worded duty binding on a California attorney. It requires the attorney to maintain inviolate the confidence and at every peril to himself or herself to preserve his client's secrets. The ethical duty of confidentiality is much broader in scope and covers communications that would not be privileged under the evidentiary attorney-client privilege. It prohibits an attorney from disclosing facts and even allegations that might cause a client or former client public embarrassment. The duty of confidentiality complements the evidentiary presumption that communications from client to attorney during their professional relationship are confidential. Respondent breached his client's confidence in violation of section 6068 subdivision (e) by disclosing to another, without good cause, that the client was a convicted felon, although the conviction was a public record, but not easily discovered. The client had communicated his status to respondent to aid respondent in effectively representing him. Even if respondent had not been charged with such a violation, the hearing judge could have concluded in aggravation of discipline that respondent's divulgence was of a fact prejudicial to his client in violation of Business and Professions Code section 6068, subdivision (f).*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. **[3 a-c]**

The identities of persons who have knowledge of relevant facts and who may be potential witnesses are outside the scope of both the attorney-client and work product privileges. The added fact that such a person is a member of the State Bar is a matter of public record and cannot appropriately be claimed to be privileged. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[4]**

The whereabouts of a fugitive client known to an attorney constituted privileged communications which the attorney cannot disclose. (Bus. & Prof. Code, § 6068 (e); ABA Model Rules, rule 1.6.) The attorney must advise the client to surrender and must not assist or facilitate the fugitive in avoiding capture or committing a crime. Thus, respondent's knowledge that his fugitive client was in California and his meetings with the client to discuss the progress of negotiations with the authorities regarding the outstanding criminal charges were client confidences which respondent was obligated to preserve. However, an attorney's ethical duty not to disclose client confidences does not extend to affirmative acts which further a client's unlawful conduct, and respondent's guilty plea constituted conclusive proof that he committed all the acts necessary to commit the charged offense of harboring his fugitive client with the intent of preventing the client's discovery and arrest by federal authorities. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[11]**

If an attorney wishes to invoke statutory or constitutional privileges which the attorney contends make a substantive response to a State Bar investigator's letter unnecessary, the attorney must nevertheless respond to the investigator's letter, if only to state that the attorney is claiming a privilege; otherwise, the attorney not only violates the statutory duty to cooperate, but also risks waiving the claimed privilege. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[14]**

144 Self-Incrimination (rule 5.104(E) (2011))

While respondent's improper assertion of various constitutional and statutory privileges showed a lack of cooperation with the State Bar during the disciplinary proceedings and constituted an aggravating factor, such factor was given little weight because (1) there was no evidence of resulting excessive delay in the disciplinary proceedings, (2) respondent willingly responded to most of the questions presented to him and only asserted the privileges as to matters which he believed involved the possibility of criminal prosecution, (3) the delay which did occur was not caused solely by respondent, (4) respondent's assertion of the privileges did not interfere with the State Bar's ability to prove its case, and (5) there was no clear and convincing evidence that respondent asserted the privileges in bad faith. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[17]**

Party invoking Fifth Amendment bears burden of showing that proffered evidence might tend to incriminate. Thus, while respondents may not be disciplined solely for invoking Fifth Amendment, the improper invocation of that amendment and resulting refusal to testify may be considered as aggravation if culpability has otherwise been found. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[9 a-e]**

Whether hearings to determine witness's right to Fifth Amendment privilege should be held in camera rather than open court is left to trial court's discretion. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[10]**

Hearing judge did not error in drawing inferences against respondent with respect to authenticity of documents written by respondent when respondent refused to answer proper questions after respondent's claim against self incrimination under Fifth Amendment was denied and she had been ordered to answer. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[11]**

No question on respondent's application for admission to practice law called upon respondent, as an applicant, to reveal criminal conduct for which respondent had not yet been convicted or arrested and for which respondent was not awaiting trial. If any such question had been asked, respondent would have had a good argument for withholding information that would lead to criminal liability. Nothing in respondent's manner of completing the application, or in respondent's subsequent two-month delay in reporting to the State Bar a criminal indictment handed down after the application was completed, undermined respondent's showing of rehabilitation from pre-admission criminal conduct. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[1]**

Since attorney discipline matters are not criminal cases for purposes of the Fifth Amendment of the U.S. Constitution, an attorney may be called to the witness stand at the attorney's own hearing, and immunized testimony may be introduced against the attorney. However, the attorney may assert the Fifth Amendment privilege against self-incrimination in response to specific questions, and no adverse inference may be drawn from such invocation. An attorney may not be disciplined solely based on invoking the privilege against self-incrimination. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[32]**

Where respondent refused to take the witness stand when ordered to do so by the referee at the disciplinary hearing, and invoked the protection of the Fifth Amendment through counsel and not in response to specific questions, respondent's actions were improper. If appearing under subpoena, respondent's actions could have been certified for contempt before the Superior Court. If culpability had been found on the underlying misconduct charges, respondent's actions could have been considered evidence in aggravation. However, the referee did not have contempt power and lacked the authority to sanction respondent by striking respondent's answer to the notice to show cause and deeming the allegations admitted by default as a matter of law. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[33]**

In a disciplinary action, an attorney does not have a privilege not to be called to testify, but may refuse to answer specific questions on the grounds that answering the question may subject the attorney to criminal prosecution. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[13]**

If an attorney wishes to invoke statutory or constitutional privileges which the attorney contends make a substantive response to a State Bar investigator's letter unnecessary, the attorney must nevertheless respond to the investigator's letter, if only to state that the attorney is claiming a privilege; otherwise, the attorney not only violates the statutory duty to cooperate, but also risks waiving the claimed privilege. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[14]**

145 Authentication of Documents

Where State Bar failed to prove by clear and convincing evidence that respondent's client's signatures on loan agreement and release were forgeries, and evidence submitted did not undermine authenticity of loan agreement, State Bar Court resolved doubt in respondent's favor and found that loan was made. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[1]**

Documents must be authenticated before they can be introduced into evidence. Authentication means establishing by evidence or other means that the document is the writing which its proponent claims it is. By admitting a document into evidence, hearing judge initially concluded that there was sufficient evidence that it

was what it was claimed to be. By allowing the document to be admitted as an authenticated exhibit and not offering affirmative evidence of fabrication, examiner provided court with no basis to find that document was in fact fabricated. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[15]**

In an attorney discipline proceeding, all reasonable doubts must be weighed in favor of the attorney. Where the evidence presented by documents raised an inference of irregularity concerning the genuineness of a bankruptcy court order, but there was no evidence from the bankruptcy court concerning its practices nor any evaluation of the genuineness of the purported order itself, there was not clear and convincing evidence that the respondent had fabricated the order. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[23]**

Form petitions signed by lawyers and judicial officers in support of petitioner's reinstatement, which contained sketchy text and were undated, were properly excluded from evidence for lack of adequate foundation, as they fell far short of offering any probative value of the assessment of petitioner's character for meeting the rigorous burden of a reinstatement petition. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[5]**

Respondent's answers to State Bar's interrogatories could be relied on as party admissions even though not verified, and were adequately authenticated when examiner identified them while introducing them at trial, and respondent did not object. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[8]**

146 Judicial Notice

Because parties failed to address relevant immigration court and Board of Immigration Appeals rules and procedures that are set forth in the Code of Federal Regulation and have the force and effect of law, hearing judge and review department were required to take and did take judicial notice of those rules and procedures sua sponte. (Rules Proc. of State Bar, rule 214; Evid. Code, §§ 451, subd. (b), 459, subd. (a).)*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[8]**

Even though the hearing judge properly admitted and judicially noticed the record in a prior civil proceeding in which respondent was a party, the hearing judge erred in making factual findings regarding the nature and extent of respondent's violations of the moral turpitude statute based upon the evidence in the civil record independent of the application of collateral estoppel because he did not first give respondent a fair opportunity to attempt to contradict, temper, or explain the evidence in it with other evidence. That error required the reversal of the hearing judge's findings as to the nature and extent of respondent's statutory violations and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the nature and extent of respondent's violations.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[7]**

In making his factual findings with respect to charged violations of the former rule of professional conduct governing business transactions with clients, the hearing judge erred in reweighing and relying upon the evidence in a prior civil proceeding in which respondent was a party without first giving respondent a fair opportunity to attempt to contradict, temper, or explain that evidence. That error required the reversal of the hearing judge's findings that respondent committed multiple violations of the former rule governing business transactions with clients and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the charged violations of that former rule.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[9 a, b]**

A hearing judge erroneously relied on an unpublished hearing department decision and a Supreme Court order in another case. The unpublished decision of the hearing department in another proceeding, involving another respondent, may not be relied on either as precedent or as evidence. While the hearing department could take judicial notice of the Supreme Court order, that order provided no information that would make it relevant as either evidence or precedent in the matter before the court. It merely recited the discipline ordered, without discussion of the relevant facts or law and therefore should not have been relied on in this proceeding. *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639. **[3]**

Civil court records are proper subjects of judicial notice in moral character proceedings. Therefore, where applicant was a party to the civil proceeding and that proceeding involved many issues substantially identical to issues in the moral character proceeding, the hearing judge properly considered the civil court's jury verdicts, trial

minutes and judgment, and a Court of Appeal's unpublished opinion. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[3]**

Prior civil court findings made under a preponderance of the evidence standard of proof merely constitute evidence in a State Bar Court proceeding, not the exclusive record upon which an issue must be adjudicated. While the State Bar may choose to proffer prior civil court findings as its entire case against an attorney or applicant on the underlying issue, the attorney or applicant then has the right to controvert, temper, or explain the civil findings with other evidence, including live testimony from the same witnesses who testified in the civil trial. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[6]**

The review department denied respondent's request for judicial notice of general facts about alcoholism and declined to consider several character references stressing respondent's recovery from alcoholism on the aggregate grounds that respondent had not shown at the disciplinary hearing that her alcoholism caused her misconduct, that she failed to show why she should be excused from not having presented the proffered evidence at the disciplinary hearing, and that she failed to show that the specific matters which she wanted to be judicially noticed were proper subjects of judicial notice. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (h).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[3]**

Where respondent stated at oral argument that she did not object to judicial notice of her conviction for the unlicensed practice of law and admitted that she had improperly practiced law, the review department augmented the record on review to note the record of her conviction and considered the unlicensed practice as an aggravating circumstance. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (d)(1).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[4]**

Review department took judicial notice of stipulation and Court of Appeal opinion in civil cases involving respondent that post-dated hearing department proceedings and concerned matters discussed at hearing. (Rule 1304, Prov. Rules of Practice.) *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[1]**

Where respondent sought to place documents, some of which were not before hearing judge, in record on review by including them in appendix to brief, without filing motion with reasons why documents could not have been produced at hearing, and without indicating how documents would correct or complete record, review department declined to take judicial notice of documents. (Rule 1304, Prov. Rules of Practice.) *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[3]**

The State Bar Court may take judicial notice of the records of any California court. (See Evid. Code, § 452, subd. (d)(1); Trans. Rules Proc. of State Bar, rule 556.) Such notice may include the facts stated in court orders, findings of fact, conclusions of law, and judgments. Although civil findings bear a strong presumption of validity if supported by substantial evidence, they must be assessed independently under the more stringent standard of proof applicable to disciplinary proceedings. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[4]**

In the Matter of Langfus (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

Taking judicial notice of court records does not mean noticing the existence of facts asserted in the documents in the court file; a court cannot take judicial notice of the truth of hearsay just because it is part of a court record. Accordingly, where respondent requested review department to take judicial notice of court documents, this would only result in taking notice that various allegations had been made in various legal matters, and would not alter review department's conclusion regarding hearing judge's credibility determination. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[3]**

Where bankruptcy court order which was not already part of record showed that restitution payments had been made to victim of respondent's misconduct, review department granted request to take judicial notice of such order. Undisputed evidence bearing on issue of restitution is important, if for no other purpose than to create an accurate record on the status of restitution. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[2]**

Rules of evidence in civil cases are generally applicable in State Bar proceedings (Trans. Rules Proc. of State Bar, rule 556) and include taking judicial notice of records of any federal court of record. Where neither party specifically requested augmentation of record with federal court's opinion on appeal in related matter, but respondent attached copy of such opinion to review brief, review department took judicial notice of such opinion. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[3]**

It is not improper for the Office of Trials to pursue on review a challenge to the exclusion of evidence of uncharged misconduct in one proceeding while simultaneously prosecuting a second proceeding based on the same misconduct, so long as both courts are made aware of the pendency of the other proceeding. The second proceeding could be abated until resolution of the first case. Where this did not occur, it was proper for the hearing judge to adjudicate the second case promptly and then request that the review department take judicial notice of the decision in the second case, thus permitting the review department to consolidate the cases on review. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[5]**

It was appropriate for both the hearing judge and the review department to take judicial notice of the status, at the time of their respective decisions, of a separate pending disciplinary matter involving the same respondent. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[5]**

Where civil malpractice action against respondent involved essentially identical factual issues to those in discipline proceeding, nontestimonial exhibits consisting of documents relating to judgment in such civil proceeding, including unpublished appellate opinion explaining reasons for decision of civil courts, were admissible evidence in disciplinary proceeding. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[4]**

Where decisions by the former State Bar Court concerning a petitioner's prior reinstatement petition helped illuminate the petitioner's subsequent progress toward rehabilitation, the review department took judicial notice of such decisions pursuant to Evidence Code section 452(d). *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[3]**

Where examiner failed to introduce appropriate documentary evidence of respondent's prior discipline record, review department notified parties of intent to take judicial notice of specified documents from official State Bar Court records regarding such discipline, and took such notice after neither party objected. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[7]**

Taking judicial notice of court records does not mean noticing the existence of facts asserted in the documents in the court file; a court cannot take judicial notice of the truth of hearsay just because it is part of a court record. Notice may be taken of another court's findings of fact and conclusions of law in support of a judgment, but not of hearsay allegations, even those of a judge-declarant. Accordingly, hearing judge erred in taking judicial notice of truth of testimony by respondent's criminal probation officer in criminal probation revocation proceeding. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[9]**

Documentary evidence of communications to respondent from probation department regarding interpretation of probation conditions was judicially noticeable. It was not admissible to show truth of statements contained in such documents; for that purpose, it was hearsay. However, it was admissible to show that respondent had notice of probation department's interpretation, which was relevant to issue of respondent's good faith. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[13]**

Both at hearing and on review, the court considering a motion to dismiss a notice to show cause for failure to state a disciplinable offense should disregard all factual matters outside the ambit of the notice, except for judicially noticeable facts. Accordingly, the review department considered respondent's uncontroverted statement that the alleged client referred to in the notice to show cause was respondent's spouse, and also considered respondent's date of admission to the bar and lack of any prior disciplinary record. However, respondent's other factual assertions in support of his motion to dismiss were not suited for judicial notice and were not considered on review. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[4]**

Record of respondent's criminal conviction, which had been judicially noticed by hearing department, was admitted into evidence by review department in order to make it part of record in disciplinary proceeding for Supreme Court review, but was considered solely for purpose of establishing criminal complaint, charges, plea, and conviction. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[2]**

In reviewing hearing department decision in disciplinary proceeding, review department took judicial notice that in separate involuntary inactive enrollment proceeding, respondent had been found to have rebutted the presumption, arising from hearing department's disbarment recommendation, that respondent's conduct posed a continuing threat of harm to clients and the public. However, the findings in the involuntary inactive enrollment proceeding were not binding in the disciplinary matter, nor did they have any probative value. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[4]**

Review department took judicial notice that respondent's prior discipline became final after subsequent matter was submitted on review. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[23]**

Where hearing referee failed to determine whether respondent's default was properly entered, review department was required to do so, and for that purpose it took judicial notice of respondent's membership records address under Evidence Code section 459; evidence of membership records address is essential in a default case to assess the propriety of the default procedures. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[3]**

Where, at the time of the hearing, respondent's prior discipline record consisted only of another hearing department decision, and the examiner moved to augment the record on review with the review department minutes in the prior matter, the motion was construed by the review department as a motion to take judicial notice and was granted. Thereafter, the review department took judicial notice on its own motion of the Supreme Court's order in the prior matter. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[11]**

In proceedings on petition for reinstatement, the review department, with the concurrence of the parties, could take judicial notice of State Bar Court decisions on earlier unsuccessful reinstatement petition. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[1]**

Although prior civil court actions are not binding in disciplinary matters, they are admissible when they address issues substantially identical to those raised in the disciplinary hearing. Civil court decisions that are supported by substantial evidence are accorded a strong presumption of validity, and individual facts established by such civil court decisions may serve as a conclusive legal determination as to particular facts determined by the civil courts. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[5]**

At respondent's request, in a conviction proceeding, the review department took judicial notice of the record in a disciplinary case involving another attorney who was respondent's co-defendant in the underlying criminal matter. The discipline imposed on the co-defendant was considered in determining the appropriate discipline for respondent. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[2]**

Court of appeal opinion regarding respondent's criminal appeal could be cited in related disciplinary proceeding, notwithstanding Supreme Court's depublication order, under Cal. Rules of Court, rule 977(b)(2). *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[1]**

Court of appeal opinion on direct appeal from attorney's criminal conviction is conclusive with respect to attorney's guilt of underlying crime, but for discipline purposes, State Bar Court must independently determine, through careful review of criminal record, whether clients were victims of misconduct or misconduct was committed in attorney's capacity as attorney. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[8]**

An attorney's prior record of discipline is a record of the Supreme Court and also of the State Bar, and as such it is the proper subject of judicial notice. (Evid. Code, §§ 451 et. seq.) Even when judicial notice is taken of such records, the documents composing them should be identified, introduced in evidence, and made part of the record in the proceeding. (Rule 571, Rules Proc. of State Bar; rules 1260-1262, Prov. Rules of Practice of State Bar Ct.) *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[5]**

Ambiguity in the record, created when hearing referee took judicial notice of respondent's prior record of discipline but failed to admit it into evidence, was removed when review department admitted in evidence the prior record of discipline that was previously offered at trial and judicially noticed. *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[6]**

147 Presumptions

In proceedings for relief from actual suspension, an attorney's compliance with the terms of suspension and conditions of probation does not create a presumption of the attorney's rehabilitation; instead, in addition to such compliance, the attorney must show by a preponderance of the evidence his rehabilitation, present fitness to practice, and present learning and ability in the general law to be relieved of actual suspension under Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii). *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867. **[7]**

The review department found no merit to the State Bar's argument that money in a client trust account is presumed to belong to the clients and that it was respondent's burden to prove otherwise. The State Bar alleged in the notice of disciplinary charges that client money was stolen and it had the burden to present clear and convincing evidence proving that allegation. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627. **[3]**

Keeping proper non-financial client files and records is necessary for attorneys to be able to prove their honesty and fair dealings when their actions are called into question such that justice will not permit an attorneys to escape responsibility for his misconduct by simple act of not keeping adequate non-financial client files and records from which his conduct may be reviewed and any misconduct proved. Thus, an attorney's failure to keep such adequate files and records is itself a suspicious circumstance. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[12]**

Because transcript of immigration court hearing was admitted into evidence for all purposes and without any hearsay objection, review department properly considered it for the truth of the matter stated by relying on the unsworn statements of two attorneys contained in it to establish multiple relevant facts. Review department considered attorneys' unsworn statements to be highly credible because they, like all attorneys, have a duty under State Bar Act and Rules of Professional Conduct to employ means only as are consistent with truth. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[21]**

Civil verdicts and judgments have no disciplinary significance apart from the underlying facts. Nevertheless, civil findings made under a preponderance of the evidence test are entitled to a strong presumption of validity in disciplinary proceedings if they are supported by substantial evidence. Where the trial judge in a civil proceeding found that respondent knew prior to filing a lawsuit that he had not been defamed, that his law firm had not been disparaged, and that his retainer contract with his clients had not been interfered with at all, and those findings were supported by substantial evidence in the record, the hearing judge's conclusion in the disciplinary proceeding that respondent filed the lawsuit based on his honest and reasonable belief in its validity was contrary to the civil findings and did not appear to have accorded the civil findings the strong presumption of validity to which they were entitled. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. **[1]**

There is no authority for the proposition that the strong presumption of validity accorded to civil findings in a disciplinary proceeding shifts the burden of proof in the disciplinary proceeding to the respondent attorney to rebut the presumption. As in any discipline case, the State Bar bears the burden of proving culpability by clear and convincing evidence. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. **[2]**

A certified copy of a final disciplinary order of the State of Michigan finding respondent culpable of misconduct conclusively established that respondent was culpable of professional misconduct in California. Such misconduct, which included misappropriation of client funds, failure to account, failure to respond to a client's reasonable inquiries, failure to pay to a client funds to which she was entitled, moral turpitude, failure to take necessary legal action to protect a client's interest, failure to respond to a client's inquiries concerning the status of her funds, and failure to respond to investigations, warranted discipline in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[3]**

Objective inferences drawn from consideration of the 12 factors often considered in bankruptcy proceedings to determine whether a debtor incurred credit card debts with fraudulent intent are also highly probative in determining whether attorney incurred credit card debts without intending to repay them. But 12 factors are not exclusive, none is dispositive, and attorney's conduct need not satisfy a minimum number to find that attorney lacked intent to repay debts. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[2]**

Hearing judge's findings that attorney incurred credit card debts totaling $19,327 without intending to repay them and thereby committed acts of dishonesty and moral turpitude were supported by clear and convincing circumstantial evidence where, despite his meager and unpredictable income, and monthly living expenses in excess of $2,200, respondent continued to obtain cash advances totaling $32,054 on his four credit cards in the face of staggering gambling losses and lack of adequate liquid assets to repay his debts. Respondent could not have possibly have failed to perceive the hopelessness of repaying his mounting cash advances in the face of his gambling losses and lack of assets and current income. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[7]**

Business and Professions Code section 6049.1 provides that, with exceptions not applicable here, the Illinois Supreme Court disciplinary order imposed on respondent conclusively established his culpability in California. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.**[1]**

Independent of the application collateral estoppel, admissions made by an attorney in a prior civil proceeding are not conclusive and cannot be given preclusive effect in the State Bar Court even if they are admissible in the State Bar Court as party admissions. Such admissions must be independently assessed under the clear and convincing standard of proof.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[5]**

Business and Professions Code section 6068 subdivision (e) is the most strongly worded duty binding on a California attorney. It requires the attorney to maintain inviolate the confidence and at every peril to himself or herself to preserve his client's secrets. The ethical duty of confidentiality is much broader in scope and covers communications that would not be privileged under the evidentiary attorney-client privilege. It prohibits an attorney from disclosing facts and even allegations that might cause a client or former client public embarrassment. The duty of confidentiality complements the evidentiary presumption that communications from client to attorney during their professional relationship are confidential. Respondent breached his client's confidence in violation of section 6068 subdivision (e) by disclosing to another, without good cause, that the client was a convicted felon, although the conviction was a public record, but not easily discovered. The client had communicated his status to respondent to aid respondent in effectively representing him. Even if respondent had not been charged with such a violation, the hearing judge could have concluded in aggravation of discipline that respondent's divulgence was of a fact prejudicial to his client in violation of Business and Professions Code section 6068, subdivision (f).*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. **[3 a-c]**

Respondent's argument is that a misrepresentation to a court is not material unless it successfully misleads the court is contrary to the express wording of Business and Professions Code section 6068 subdivision (d), which provides that it is the duty of an attorney to never seek to mislead a judge by a false statement of fact or law. The conduct denounced by this statute is not the act of an attorney by which he successfully misleads the court, but the presentation of a statement of fact, known by him to be false, which tends to do so. It is the endeavor to secure an advantage by means of falsity which is denounced. Whether respondent violated section 6068, subdivision (d) depends first upon whether his representation to the court was in fact untrue, and second, whether he knew that his statement was false and he intended thereby to deceive the court. With regard to whether respondent intended to deceive the court, the presentation to a court of a statement of fact known to be false presumes an intent to secure a determination based upon it and is a clear violation of section 6068, subdivision (d). Respondent's statements to the two courts were in fact untrue and he knew they were untrue. Thus, it is presumed that the statements were made with an intent to secure an advantage. No credible evidence rebutted this presumption. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166.**[4 a-d]**

Respondent objects to giving conclusive weight to the Michigan proceedings, since they were adjudicated under a lower standard of proof than that required in California. Respondent's license revocation and judicial removal were judged under standards requiring only a preponderance of evidence to find him culpable of judicial misconduct. However, the Michigan Supreme Court considered the evidence of respondent's culpability overwhelming; and, in any event, the record of this proceeding contains ample evidence that was received in the Michigan proceedings to permit us to independently determine that sufficient evidence is present to clearly and convincingly establish respondent's culpability in California. Respondent's argument lacks merit. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157.**[2]**

The hearing judge erred when he held that the record lacked clear and convincing evidence that respondent filed a frivolous appeal. The general rule is that civil findings are not, by themselves, dispositive of the issues in a disciplinary case. Often the issues in the civil case may be either broader or narrower than the operative issues in a disciplinary proceeding. However, civil findings made under a preponderance of the evidence standard are entitled to a strong presumption of validity in the State Bar Court if supported by substantial evidence. In order to hold that an appeal is frivolous, the law requires an extremely high showing, so that zealous but good faith appeals having any merit are neither deterred nor sanctioned. Accordingly, the court of appeal's decision finding that respondent's appeal of a case was frivolous and pursued in bad faith was, at the very least, a prima facie determination of such. Respondent failed to adduce evidence that overcame that determination. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[1 a-d]**

As the reproval imposed on respondent in the prior disciplinary proceeding is final, it and the conditions attached to it are presumed valid and enforceable. The reproval decision is subject to collateral attack only on the grounds that the judge (1) lacked jurisdiction of the subject matter, (2) lacked personal jurisdiction over respondent, or (3) acted in excess of jurisdiction. The burden of proof is on the party who attacks the judgment to show lack of jurisdiction. Furthermore, to succeed on collateral attack, the jurisdictional defect must be proven from the face of the record in the prior proceeding. Respondent's contention that the conditions attached to his prior private reproval are subject to collateral attack because the hearing judge failed to explicitly recite in her decision two findings required by rule 956 of the California Rules of Court, that the reproval conditions would serve to protect the public and to serve respondent's interests, is an allegation that the hearing judge acted in excess of her jurisdiction. Respondent failed to prove from the face of the record in the prior reproval that the conditions attached to it would not serve to protect the public or serve respondent's interest. In any event, the unchallenged factual findings in the hearing judge's decision in the prior case establish that the hearing judge acted within her jurisdiction in attaching the conditions. Without question, the reproval conditions that he take and pass a professional responsibility examination and attend the State Bar's Ethics School will serve to protect the public and serve respondent's interests. The hearing judge's error is not a jurisdictional error that can subject the hearing judge's decision to collateral attack. At most, the error was a procedural defect that respondent waived by failing to appear in the prior proceeding and object to the hearing judge's decision on that ground. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929. **[1]**

Compliance with the terms of actual suspension and probation presumptively satisfies the discipline required for a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) to become a productive attorney. However, the petitioner must also show rehabilitation, present fitness to practice law, and present learning and ability in the general law. That showing must be measured from the time of the last prior discipline. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[4]**

Prior civil court findings made under the preponderance of the evidence standard of proof are entitled to a strong presumption of validity in State Bar Court proceedings if they are supported by substantial evidence. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[7]**

Where respondent contended that he had only pleaded guilty in order to avoid two separate trials, and that he had not intended to commit a crime, due process did not entitle him to a hearing before the State Bar Court to prove these contentions, because he would be precluded from presenting evidence thereof by the statute providing that proof of an attorney's conviction of a felony or misdemeanor involving moral turpitude is conclusive evidence of the attorney's guilt of the elements of the crime in any proceeding to suspend or disbar the attorney. This conclusive presumption precludes collateral attack on the conviction by attorneys who seek to reassert their innocence in subsequent State Bar proceedings. In this regard, a conviction following a guilty plea is just as conclusive as a conviction following a full criminal trial. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[5]**

Respondent's conviction of assault conclusively established that he did not act in self-defense, i.e., that he did not have an honest *and* reasonable belief that he was about to suffer bodily injury. Hearing judge could not reach conclusions, even based on credible evidence, that were inconsistent with such conclusive effect. Thus, where hearing judge found that respondent honestly believed he was about to be assaulted, review department rejected any finding that such belief was reasonable as being inconsistent with the conviction. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[2]**

In attorney discipline proceedings arising from a criminal conviction, the record of the attorney's conviction is conclusive evidence of the attorney's guilt of the crime for which the attorney was convicted. This conclusive presumption of guilt applies whether the convicted attorney seeks to reassert his or her innocence or merely to relitigate a claim of procedural error. The convicted attorney is conclusively presumed to have committed all of the elements of the crime. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[3]**

A conclusive presumption is an assumption of fact that the law requires to be made from the finding of the existence of another underlying fact. A conclusive presumption is in reality a rule of substantive law, not a rule of evidence, and no evidence may be received to contradict it. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[4]**

The conclusive presumption of guilt in attorney conviction matters does not apply only for crimes involving moral turpitude. The presumption also applies where the crime for which the attorney was convicted did not involve moral turpitude per se. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[5]**

The conclusive effect of an attorney's criminal conviction merely establishes for State Bar purposes that the attorney committed the acts necessary to constitute the offense. Whether those acts amount to professional misconduct, in the context of a crime that does not necessarily involve moral turpitude, is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[6]**

An attorney's conviction for assault with a firearm is conclusive proof that the attorney committed the elements for that crime, i. e., that a person was assaulted and that the assault was committed with a firearm. An assault is defined as an unlawful attempt to apply physical force upon the person of another at a time when the accused had the present ability to apply such physical force. An attempt to apply physical force is not unlawful when done in lawful self-defense. An attorney's conviction of this crime therefore conclusively established that the attorney unlawfully attempted to apply physical force upon the victim. As the assault was by definition unlawful, the review department concluded that it was not done in self-defense. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[7]**

The purpose of a proof of service is to establish notice of an order or other document, and it is the kind of document relied upon in the conduct of serious affairs. Where a proof of service of a sanctions order on respondent was in evidence, and there was no indication in the record of any misconduct by respondent's staff concerning receipt of the order, respondent was presumed to have been served with the court order. His receipt of the order and his admission that he did not satisfy it established a violation of the statute requiring attorneys to obey court orders. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[6]**

A determination whether a disciplinary proceeding should be abated on the ground of inability of the respondent to assist in the defense resembles a competency hearing in a criminal matter. In the law of attorney discipline, the respondent is presumed competent. Inability to assist in the defense of a disciplinary proceeding suggests a more serious form or degree of mental illness than inability to practice competently without endangering clients or the public. Therefore, facts sufficient to institute inactive status proceedings under section 6007(b) may not be sufficient to support abatement of a disciplinary proceeding. The appropriate standard for abatement is proof by a preponderance of the evidence that the attorney is incompetent to assist in the defense. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[6]**

It is generally presumed that the arbitrators heard and decided all disputed issues in an arbitration. Where issue regarding costs was raised in an attorney's fees arbitration, and the arbitration award showed on its face that it covered costs as well as fees, and neither party contested the arbitrators' jurisdiction to consider issues of costs, issue of whether costs had been reimbursed should not have had to be relitigated in subsequent State Bar disciplinary proceeding. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[12]**

Although rule 644 of the Transitional Rules of Procedure purports to allow a presumption affecting the burden of proof if an attorney fails without good cause to undergo an ordered mental examination, rule 644 must be interpreted as merely allowing a permissive inference of mental infirmity, in order to ensure due process. Rule 644 would not be valid if it operated to relieve the examiner of the burden of proving mental incompetence by clear and convincing evidence. The presumption authorized by rule 644, if applied, would conflict with the appropriate presumption that an attorney remains mentally competent to practice law in the absence of proof to the contrary,

and would be tantamount to the imposition of a default judgment for failure to obey a discovery order, in violation of rule 321 of the Transitional Rules of Procedure. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[11]**

An attorney's license to practice law creates a continuing presumption, in the absence of proof to the contrary, that the attorney is not only morally fit but also mentally competent to practice law. This presumption underlies the rule in disciplinary proceedings that all reasonable doubts are to be resolved in favor of respondents and that, if equally reasonable inferences may be drawn from a fact, the inference to be accepted is the one leading to a conclusion of innocence. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[13]**

Although prior civil court actions are not binding in disciplinary matters, they are admissible when they address issues substantially identical to those raised in the disciplinary hearing. Civil court decisions that are supported by substantial evidence are accorded a strong presumption of validity, and individual facts established by such civil court decisions may serve as a conclusive legal determination as to particular facts determined by the civil courts. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[5]**

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Where respondent's therapist chose not to testify, in order to preserve confidential nature of therapeutic relationship, and respondent did not subpoena the therapist and did not identify any other evidence he was prevented from introducing, Review Department rejected respondent's argument that he was prevented from presenting evidence regarding his abstention from alcohol. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[1]**

Review Department will not grant relief on the basis of evidentiary errors without a showing of prejudice. Hearing judge properly permitted State Bar to call respondent as first witness, even though respondent had not yet decided whether to testify on his own behalf. State Bar also properly called witnesses without prior disclosure of their statements, where witnesses had made no written or recorded statements, and respondent could not show prejudice because he knew witnesses' identities, and had a summary of their testimony, in advance of trial. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[5]**

Great weight is given to a hearing judge's finding as to intent. Where hearing judge determined respondent was grossly negligent when verifying his clients' complaint and State Bar relied on same evidence already considered by the hearing judge to argue respondent was intentionally deceitful, there was no basis to conclude that respondent's decision to sign verification rose to an act of intentional dishonesty rather than mere gross neglect. *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151 **[1]**

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

Trial judge did not prejudicially err in exercising discretion to excuse witness where respondent failed to either request that the witness be recalled or to make an offer of proof as to the testimony respondent expected to elicit from the witness. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[1]**

The fact that pretrial statements and a stipulation were used to apprise petitioner's character witnesses of the acts that led to his resignation is not a basis for discounting the weight given to the testimony of such witnesses, particularly when no formal charges were ever filed against petitioner. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[1]**

The fact that petitioner's character witnesses did not know petitioner before he entered recovery from his alcoholism was not a reason to discount the weight given to their testimony because they all had recent, close contact with petitioner which qualifies them to reflect on his present moral qualifications. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[2]**

Since petitioner presented no medical or expert evidence supporting his course of recovery and the State Bar offered expert testimony in rebuttal, the credibility determinations of the hearing judge are particularly important because reformation is a state of mind which may be difficult to establish affirmatively and may not be disclosed by any certain or unmistakable outward sign. Where there is not sufficient basis to overturn the hearing judge's findings of fact with respect to the testimonial evidence offered by petitioner, the question upon independent

review is to determine if the quality and quantity of petitioner's evidence are sufficient to meet his heavy burden of proof. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[1]**

Where character witnesses, who had long–term as well as current knowledge of petitioner, uniformly attested to petitioner's good character and honesty and gave specific, convincing reasons for holding favorable opinions of petitioner's rehabilitation or present moral fitness, their testimony is heavily weighed as evidence of petitioner's rehabilitation and good moral character. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[2 a, b]**

Significant weight is given to the testimony of judges and officers of the court because these witnesses have a strong interest in maintaining the honest administration of justice. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[3]**

Because transcript of immigration court hearing was admitted into evidence for all purposes and without any hearsay objection, review department properly considered it for the truth of the matter stated by relying on the unsworn statements of two attorneys contained in it to establish multiple relevant facts. Review department considered attorneys' unsworn statements to be highly credible because they, like all attorneys, have a duty under State Bar Act and Rules of Professional Conduct to employ means only as are consistent with truth.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[21]**

In the very heavy burden a reinstatement petitioner must surmount in proving his rehabilitation, character evidence alone, no matter how positive, is not determinative. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[4]**

Testimony of members of the bar and bench of high repute is entitled to careful consideration in assessing a petitioner's rehabilitation when the petitioner has been close to their observation. This is because such witnesses are morally bound by their oaths as attorneys at law not to recommend a disbarred attorney for reinstatement unless they are satisfied of the rehabilitation of his character. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[5]**

Opinion testimony of an attorney as to the ultimate issue that petitioner was qualified for reinstatement was not precluded, although that ultimate issue was for the State Bar Court and the Supreme Court to decide. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[6 a,b]**

Negative testimony regarding petitioner's rehabilitation did not rebut petitioner's favorable testimony for a very important reason: the negative testimony was based solely on the severity of petitioner's earlier misconduct and not on his rehabilitative steps since resignation. The witnesses had no personal observation of petitioner for most, if not all, of the 10 years that elapsed between the time petitioner resigned and the State Bar Court hearings. Thus, while the negative testimony of each of these witnesses was relevant on the issues of the seriousness and the nature and extent of petitioner's prior misconduct, it was of little relevance on the issues of petitioner's present character and of whether petitioner has maintained a sustained period of unblemished and exemplary conduct. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[7 a-c]**

There is clear distinction between credibility and candor. The determination of a witness's credibility (i.e., believability) is primarily within province of the hearing judge who saw and heard the witness testify, while the determination that a witness's testimony lacked candor (i.e., that the witness lied) must be found by clear and convincing evidence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[10]**

Even though a witness's candor must ordinarily be shown by clear and convincing evidence, great weight is still give to the hearing judge's findings on candor. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[11]**

The relevant testimony of a witness given in civil proceeding is admissible in disciplinary proceedings without regard to the witness's availability and is considered and weighed as though the witness was present and testifying in the disciplinary proceeding. Moreover, the State Bar Court may take judicial notice of non-testimonial matters (i.e., pleadings, exhibits, findings) in a civil action that involved the same conduct underlying the disciplinary charges against an attorney.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[3]**

Rule 219 of the Rules of Procedure of the State Bar provides that, after the party with the burden of proof has rested, the opposing party may move for a determination that the party with the burden of proof has failed to meet that burden. In deciding the motion, the hearing judge is required to consider all the evidence introduced, weigh that evidence and make determinations of credibility. The review department held that the hearing judge's ruling on a motion made pursuant to rule 219 is reviewable on plenary review under rule 301 of the Rules of Procedure of the State Bar and that such review is de novo. The review department must determine, based upon its independent review of the evidence before the hearing judge at the time the motion was made, whether clear and convincing evidence was presented of each element of the charged offenses. In deciding these issues, the review department must give great weight to the hearing judge's credibility determinations. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. **[1 a-c]**

Where the only evidence presented in the hearing department to support the contention that it would be unfair to prohibit relitigation of harassment and emotional distress claims was respondent's own testimony without corroborating evidence, respondent's reiteration of his testimony on review does not provide a basis to disturb the hearing judge's rejection of respondent 's testimony. The review department gives great weight to hearing judges' factual findings resolving issues pertaining to credibility of witnesses. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[2 a, b, c]**

Hearing judge did not abuse her discretion in issuing a pretrial order precluding respondent from attempting to impeach State Bar's witnesses with evidence of witnesses' alleged criminal activities, terrorist activities, racism, hate crimes, molestation of foster children, etc. except by evidence of proved felonies introduced into evidence in strict compliance with Evidence Code. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[5 a-c]**

Even though hearing judge is required to give respondent the benefit of all reasonable doubts, she was not required to devalue evidence she found stronger than that of respondent. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[3]**

Character evidence is important on the issue of the degree of discipline, and the credibility of the character witnesses should be weighed the same as any other witness. Accordingly, it was improper to admit telephonic testimony and the hearsay letters over the objection of the State Bar. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[1]**

Section 6049.2 of the Business and Professions Code authorizes the admission of transcripts of testimony from civil proceedings in State Bar disciplinary proceedings without proof of the witnesses' unavailability. However, section 6049.2 is, under its express terms, applicable only in disciplinary proceedings, and there is no parallel section permitting admission of prior transcripts in moral character proceedings. Accordingly, if a proper objection is made, transcripts of testimony from civil proceedings are admissible in moral character proceedings only upon a showing that the witnesses whose testimony is recorded in such transcripts are unavailable to testify. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[4]**

Prior civil court findings made under a preponderance of the evidence standard of proof merely constitute evidence in a State Bar Court proceeding, not the exclusive record upon which an issue must be adjudicated. While the State Bar may choose to proffer prior civil court findings as its entire case against an attorney or applicant on the underlying issue, the attorney or applicant then has the right to controvert, temper, or explain the civil findings with other evidence, including live testimony from the same witnesses who testified in the civil trial. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[6]**

Even though Evidence Code permits legal experts to testify regarding ultimate legal issues, such issues are ultimately for independent decision-making of State Bar Court and Supreme Court. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[6]**

Hearing judge's credibility findings based on respondent's demeanor while testifying are entitled to great weight. Where hearing judge found that respondent did not mislead court about applicability of statutory fee limitation because respondent had honest but unreasonable belief that statute did not apply, but review department concluded that respondent's failure to disclose fee limitation was unreasonable under circumstances, review department found that respondent violated duty not to mislead courts and committed act of dishonesty, but that such misconduct occurred through gross negligence rather than intentional dishonesty. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[14]**

Disbelief of a respondent's testimony does not create evidence to the contrary. Where respondent allegedly misrepresented to insurer that respondent's personal bank account was a client trust account, but only evidence to rebut respondent's testimony to contrary was notation in insurer's records, presence of such notation was not sufficient to establish that it resulted from misrepresentation by respondent, even where hearing judge found respondent not credible. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[2]**

The testimony of an investigator is not the best evidence on the contents of court records. Testimony or sworn evidence from the court clerk responsible for the records is more germane and reliable. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[4]**

A party may not recall a witness who has been excused from giving further testimony without leave of court, which may be granted or withheld in the court's discretion. Hearing judge did not deny due process to respondent by denying respondent's motion to recall State Bar witness who had been excused from giving further testimony. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[6]**

Where State Bar witness had not been excused from giving further testimony, hearing judge erred in not permitting respondent to recall such witness for questioning about document respondent did not possess at time witness first testified. However, where such additional testimony was relevant only to refute factual contention later abandoned by State Bar, hearing judge's error did not result in prejudice to respondent. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[7]**

Respondent's cooperation with State Bar in agreeing to allow complaining former client to testify by telephone at disciplinary hearing constituted mitigating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[23]**

Respondent's failure to comply with proper pretrial procedures and to provide list of witnesses prior to day of trial was properly considered as aggravating circumstance. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[7]**

Although review department's review of record is independent, it must give great weight to hearing judge's credibility determinations and it is reluctant to deviate from hearing judge's credibility-based factual findings in absence of specific showing of error. Where respondent argued that his version of events was more credible because State Bar's witnesses had reason to be less than truthful, this argument ignored respondent's own obvious similar motive, and was not grounds to depart from hearing judge's credibility determinations. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[2]**

The testimony of a single witness who is entitled to full credit is sufficient for proof of any fact. Where hearing judge found complaining witness's version of events to be more credible, and such testimony, though at odds with respondent's, was consistent on material issues, review department found no basis to disturb hearing judge's factual findings. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[4]**

State Bar prosecutors have statutory authority to apply to superior court to grant immunity from criminal prosecution to a witness in an attorney disciplinary proceeding. Where such procedures were properly invoked, and respondents showed no prejudice to themselves on account of the procedures followed in seeking such immunity, respondents were not entitled to relief based on asserted error in such procedures. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[6]**

Testimony of expert witness who did not know facts of specific case but could only give opinion as to respondents' practices was proper expert testimony. Where hearing judge limited expert's testimony to proper opinion testimony on subjects of his qualifications, fair hearing was ensured. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[9]**

There are numerous factors to consider in assessing witness credibility beyond observing the witness while testifying. The hearing judge, as the trier of fact in State Bar proceedings, is to determine the credibility of witnesses and hearsay declarants. The fact that some witnesses testified at the State Bar hearing by way of a transcript of the witnesses' criminal court testimony, which is expressly authorized by statute in State Bar proceedings, is not reason to discount their testimony or find it less credible than live witness testimony. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[1]**

The fact that no live witness appeared for the prosecution in a proceeding did not preclude the hearing judge from making a credibility determination based on prior recorded trial testimony which was subject to cross-examination. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[4]**

Judges are required under canon 2B of the California Code of Judicial Conduct not to testify voluntarily as character witnesses, but where subpoenas were issued to compel judges to testify, their declarations regarding good character of disciplinary respondent could be considered by State Bar Court. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[3]**

Character testimony and reference letters, especially from employers and attorneys, are significant in reinstatement proceedings. Great consideration is due to the testimony of members of the bar and public of high repute who have closely observed a petitioner for reinstatement. Not every witness or letter writer must have recent close contact with the petitioner; a variety of persons with different relationships to the petitioner can reflect present moral qualifications. Where a petitioner presented favorable testimony by five character witnesses, one of whom had observed him closely since his misconduct, and favorable reference letters from four persons, three of whom had had recent contact with him, such testimony and reference letters were entitled to consideration as factors supporting his reinstatement. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[9]**

Where a municipal court judge and a state appellate justice were subpoenaed as witnesses, it was proper for them to testify in a reinstatement proceeding. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[10]**

Judges should not testify voluntarily as character witnesses. Judges should respond to requests from the State Bar, but absent such a request, should not write a letter of reference for an attorney facing discipline or a petitioner seeking reinstatement. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[14]**

Testimony by psychologist who had tested reinstatement petitioner and interviewed him 10 times, and who opined that risk of petitioner's recidivism was very low, was entitled to significant weight. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[15]**

Favorable character testimony in reinstatement proceeding should not have been devalued based on lack of frequent current contact with petitioner by witnesses who knew him at time of original misconduct, or based on failure to call family members to testify, where misconduct was unrelated to home or family. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[16]**

The identities of persons who have knowledge of relevant facts and who may be potential witnesses are outside the scope of both the attorney-client and work product privileges. The added fact that such a person is a member of the State Bar is a matter of public record and cannot appropriately be claimed to be privileged. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[4]**

The State Bar is a public entity within the scope of the statutory official information privilege (Evid. Code, § 1040). The procedure to be followed in State Bar Court proceedings where the official information privilege is asserted is the same as in civil cases. In a moral character proceeding, where the information sought was the identities of persons whom the State Bar had reserved the right to call as impeachment or rebuttal witnesses at trial, the official information privilege did not apply to such information, either because the consent exception was applicable, or because the reservation of the right to call such persons reduced the Committee of Bar Examiners' need for secrecy to the interest of a party in the outcome of the proceeding, which is not protected under section 1040 and which was outweighed by the interests of the public and the applicant in a fair trial. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[6]**

The rule permitting a party to exclude rebuttal or impeachment witnesses from a pretrial statement (Prov. Rules of Practice, rule 1222(g)) has no bearing on the broader issue of discoverable information. Discovery of identities of individuals is not limited to persons who may be called in the opposing party's case in chief. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[7]**

In camera inspection was not appropriate before ordering a party to disclose names of potential witnesses in response to an interrogatory, because the court was ill-equipped to evaluate the potential relevance of the undisclosed names without argument from the counsel of the party requesting them, which could only be made after the names were disclosed. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[9]**

Private personal information about a non-party to a proceeding may be privileged from discovery under some circumstances pursuant to the California constitutional right to privacy. The privacy right to be protected is that of the non-party, and the custodian of the private information may not waive it. The right to privacy is not absolute, but must be balanced against the need for disclosure. In a moral character proceeding, it was unreasonable for material witnesses against the applicant to claim a right of privacy preventing the disclosure of their identities to the applicant during discovery, while consenting to testify against the applicant at trial. However, as to the identities of persons whose testimony would not be used under any circumstances, the applicant had not made a sufficient showing of need to overcome these persons' privacy rights, and their names could be withheld from disclosure. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[10]**

Where examiner's conduct in connection with obtaining depositions of State Bar's non-party witnesses, while not in bad faith, clearly fell short of her duty under the circumstances, review department upheld hearing judge's order permitting such witnesses to testify only if first deposed, and modified such order to require examiner to subpoena the witnesses and to pay transportation costs as a condition of permitting witnesses' testimony. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[13]**

Even if it was error for hearing judge to allow examiner to ask leading questions of complaining witness on direct examination, and to admit testimony as to witness's state of mind when such state of mind was not relevant, such errors were not prejudicial where complaining witness's testimony was clearly insufficient to establish State Bar's case and was not relied on in hearing judge's findings. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[8]**

Where respondent's testimony regarding statements made to respondent by complaining witness was offered to impeach complaining witness on a crucial issue, at a time when complaining witness was still subject to recall for further testimony, such testimony should not have been excluded except in the interests of justice. Exclusion of the testimony might have been justified by the length of the proceedings and respondent's lack of an explanation for failing to cross-examine complaining witness regarding statements at issue. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[9]**

Where State Bar's chief witness exhibited poor memory, repeatedly testified inconsistently on key issues, admittedly had misrepresented facts to insurance company and State Bar, and admittedly was motivated by anger and economic stress at time of complaint to State Bar, hearing judge's findings based solely on selected portions of such witness's inconsistent testimony were not supported by clear and convincing evidence in light of the record as a whole. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[11]**

Proof by clear and convincing evidence to a reasonable certainty means that irreconcilable conflicts in the testimony of the chief State Bar witness by their very nature severely undermine the State Bar's case. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[23]**

Where the hearing judge found the complaining witness worthy of belief on the crucial factual issues, and that witness's testimony was bolstered by other evidence in the record, and respondent's contrary contention that he had been discharged by his clients was not corroborated by documents that ordinarily would have been prepared by an attorney upon discharge, the hearing judge's conclusion that respondent abandoned his clients without notifying them was supported by the record, even though the complaining witness's testimony was not uniformly reliable regarding exact details. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[9]**

Credibility findings by the finder of fact are to be accorded great weight by the review department and it should be reluctant to deviate from them. Nonetheless, the findings must be supported by the record. Where the review department found insufficient evidence to support challenged findings, it declined to adopt them. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[9]**

Rejection of a witness's testimony by the hearing judge does not in and of itself create affirmative evidence to the contrary. Where respondent's testimony on a factual issue was plausible and uncontradicted, it was appropriate to resolve all reasonable doubts in favor of respondent and reject a finding contrary to respondent's testimony as unsupported by clear and convincing evidence. Where respondent's version of events was plausible, even though controverted, it supported a reasonable inference of lack of misconduct, and where there was only

circumstantial evidence to the contrary, misconduct was not established by clear and convincing evidence. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[10]**

Where respondent's testimony was plausible and uncontradicted, it should have been regarded as proof of the fact testified to, especially where contrary evidence, if it existed, would be readily available, but was not offered. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[4]**

Where respondent's client's testimony contradicted respondent's testimony, and the hearing judge found the client's testimony to be more credible on the disputed point, but other circumstances revealed by the record nonetheless limited the effect of the client's testimony, the review department held that the record did not establish by clear and convincing evidence that respondent's testimony was a lie. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[5]**

Where respondent was not a California resident, and thus not subject to subpoena, respondent's attendance as a witness at the disciplinary hearing could have been required by notice to respondent's counsel. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[28]**

The respondent in a disciplinary proceeding has an obligation to be present at the hearing even if not subpoenaed or noticed to appear as a witness. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[30]**

In State Bar Court proceedings, the court acts as an administrative arm of the Supreme Court, and State Bar Court judges and referees function as "judicial officers." Therefore, under Code of Civil Procedure section 1990, any person present at a State Bar Court hearing may be compelled to take the witness stand by the judge or referee. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[31]**

Where there is a conflict in the evidence, the hearing judge is in a particularly appropriate position to resolve it, and the Rules of Procedure require the review department to afford great weight to the hearing judge's findings in such matters, absent a good reason for reaching a different result. Where the hearing judge accepted respondent's client's testimony regarding the timing of a request for a refund of advanced costs, and explained why the client's testimony was given greater weight than respondent's contrary testimony, the review department adopted the hearing judge's findings and conclusions on that issue. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[7]**

The review department is obligated to afford great weight to the assessments of credibility made by the hearing referee, for the referee is in the best position to see witnesses and judge, by their demeanor and address, the truthfulness of each. Respondent's repeating his version of the events does not demonstrate that the referee's findings were unfounded. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[6]**

Confidentiality for marital communications does not apply to testimony concerning matters prior to the marriage or after the couple's estrangement. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[5]**

The hearing department has wide latitude to receive all admissible evidence, especially since it sits without a jury. Where respondent's ex-spouse's testimony was properly admitted, but because there was little corroboration and due to the marital dissolution the chance of bias was great, the hearing department properly disregarded such testimony, respondent could not successfully claim prejudicial error. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[6]**

A determination of mental incompetency does not require a psychiatric examination. Witness testimony regarding a respondent's behavior and documents allegedly reflecting the respondent's mental infirmity may be introduced as evidence of incompetency, and a qualified psychiatrist may be appointed to render an opinion about the respondent's mental condition on the basis of such testimonial and documentary evidence. Then, if the judge remains unable to make the necessary determination without a mental examination of the respondent and the respondent refuses to consent to such an examination, an order for a compulsory mental examination may be justified as the least intrusive means of accomplishing the government's compelling interest in protecting the public, courts, and profession from mentally incompetent attorneys. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[10]**

Where witnesses' abilities to observe petitioner's character in light of any changes since disbarment were limited, or witnesses were not fully aware of nature of offenses leading to disbarment, such character evidence failed to show a clear case for reinstatement, or to overcome effect of State Bar's negative evidence. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[13]**

Favorable character evidence is neither conclusive or necessarily determinative on reinstatement. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[14]**

Where hearing referee found respondent's testimony credible and candid, and client's testimony confusing and inconsistent, argument that review department should disbelieve attorney and believe client was unavailing in light of deference review department must give to referee's findings based on credibility of witnesses. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[7]**

The Rules of Procedure of the State Bar require that the review department give great weight to the hearing department's findings of fact resolving issues pertaining to testimony. This rule rests on the sound policy that when evidence turns on the assessment of credibility, the evaluation of such evidence should be made by a judicial officer who sees and hears the witnesses and can translate the credibility accorded witnesses into the weight to be given their testimony as it relates to other evidence in the case. Before disregarding any such credibility assessments, the review department must have a very good reason for doing so. (Trans. Rules Proc. of State Bar, rule 453.) *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[6]**

Where the record includes extensive documentary as well as testimonial evidence, it is incumbent on the hearing department to weigh all of the evidence and identify for the litigants and further reviewing bodies the way in which credibility assessments led to the court's ultimate conclusions regarding respondent's culpability or innocence. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[8]**

Because the hearing department is in the best position to view witnesses and evaluate their truthfulness, the review department is reluctant to deviate from the hearing department's credibility findings. Reevaluation of witness credibility is limited by the nature of the review process, due to the effect of witness demeanor on credibility findings. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[2]**

The hearing department may properly give greater credence to a witness's testimony on some issues than on others. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[3]**

In evaluating the record on review, the review department is bound to give great deference to the referee's evaluation of the credibility of the witnesses. There is a strong presumption in favor of the referee's findings of fact regarding such credibility. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[4]**

Petitioner for reinstatement could have presented additional character testimony from out-of-state witnesses without undue expense by taking their depositions. (Rules 318, 666, Trans. Rules Proc. of State Bar.) *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[13]**

Where examiner stipulated to admissibility of character reference letters at hearing, and thus chose not to require the declarants to be cross-examined, examiner's attempt to discount letters before review department was without foundation. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[21]**

In reinstatement proceeding, impressive testimonials of witnesses were neither conclusive nor necessarily determinative; witnesses could not be given conclusive weight in light of petitioner's failure to file complete and sufficient application for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[15]**

148.10 Oath or Affirmation Requied (rule 5.104(A) (2011))

151 Evidentiary Effect of Stipulations (see rules 5.54-5.58) (2011))

Where respondent and State Bar stipulated to facts, legal conclusions on culpability, and discipline, but Supreme Court remanded matter for reconsideration of discipline in light of Standards, parties remained bound by stipulation with regard to facts and culpability. State Bar Court permitted parties to present additional evidence on aggravation and mitigation, and reconsidered degree of discipline. However, State Bar was bound by original

stipulation that respondent's misconduct was not serious. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr.320. **[1a-d]**

Because a stipulation remains binding on a party in a subsequent proceeding unless the court relieves the party from the stipulation, respondent's stipulation with Sacramento county counsel as part of a settlement of a civil contempt proceeding which stipulated to the findings in a sanctions order constituted stipulated findings, which, standing alone, were sufficient to meet the clear and convincing standard. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[3]**

Even though the parties entered into a stipulation as to facts and conclusions of law (Rules Proc. of State Bar, rule 132) in which they agreed to be bound by stipulated facts regardless of the degree of discipline recommended or imposed and in which respondent pleaded nolo contendere to the disciplinary charges in the stipulation (Bus. & Prof. Code, § 6085.5, subd. (c)) and acknowledged that her "the plea of nolo contendere shall be considered the same as an admission of culpability" for disciplinary purposes, the State Bar Court still had an affirmative duty to independently determine whether the parties' stipulated conclusions of law were supported by the record before accepting them.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[1a-c]**

Regardless of whether respondent had the right on review to challenge the conclusions of culpability to which she stipulated to in the hearing department, the review department still had an affirmative duty to determine if the culpability findings were supported by the record.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[2]**

Because respondent allowed herself to be disconnected from management of her law office over extended period of time and did not undertake any effort to fulfill her personal and nondelegable duty to monitor client funds and her trust account, hearing judge properly accepted parties' stipulation and correctly found, on respondent's plea of nolo contendere, that respondent was culpable of violating trust account rules even though respondent relied on her husband and law partner to manage the trust account.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[6]**

The hearing judge did not err in prohibiting respondent from presenting evidence of his willingness to settle the case by stipulating to the misconduct and a reasonable level of discipline and of the State Bar's unwillingness to present a settlement offer that contained what he considered to be a reasonable level of discipline. Respondent is afforded substantial mitigation for cooperation because, in addition to other instances of cooperation throughout the investigation of the matter, he stipulated to the facts underlying the misconduct and because the stipulated facts were not easily provable. Substantial mitigation is given without regard to the fact that the parties were unable to stipulate to an appropriate level of discipline. Not doing so would "punish" respondent merely for seeking his day in court as to the level of discipline. Not being able to reach a stipulated discipline does not have any effect on the court's analysis of the degree of mitigation awarded for respondent's overall cooperation in helping resolve the charged misconduct. *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902.**[1]**

Absent the court granting a set aside, a partial stipulation to facts remains binding on the parties, and the facts recited in the stipulation are deemed established. *In the Matter of Rodriguez* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 884.**[1]**

Stipulations about culpability, aggravation, and mitigation provide a starting point to determine whether a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) has shown rehabilitation and is unlikely to repeat misconduct. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[7]**

In the Matter of Respondent R (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227.

Where respondent's declaration attached to stipulation suggested mitigating circumstances, but stipulation did not specify whether State Bar accepted statements in declaration as true and hearing judge did not indicate whether statements were found to be persuasive, review department declined to reach conclusion regarding possible mitigating factors suggested by declaration. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[8]**

A stipulated disciplinary order does not constitute precedent, but does represent a determination by the Office of the Chief Trial Counsel and the hearing judge that the degree of discipline ordered satisfies the need to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[11]**

The review department will not consider disputed, extrinsic evidence on review. Where respondent's counsel referred at oral argument to respondent's current activity, the review department permitted the parties an opportunity to file a stipulation regarding this subject, but when no stipulation was reached, the review department declined to consider the parties' separate declarations setting forth their individual views of the facts. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[2**

In reviewing the record of an attorney's criminal conviction resulting from a guilty plea, for the purpose of determining the propriety of summary disbarment, the court does not take into account language in the information unnecessary to the crime to which the attorney pled guilty, but may consider additional undisputed facts based on the record. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[2]**

Even where the record at the hearing level consists of stipulated facts and conclusions, the review department's review is nevertheless independent, and it may adopt findings, conclusions, and a disciplinary recommendation different from those of the hearing judge. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[2]**

Review department adopted parties' stipulated facts, noting that the Supreme Court ordinarily will hold an accused attorney to stipulated facts even in a matter arising from a stipulation as to facts and disposition. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[3]**

Where the stipulation of the parties did not preclude a conclusion that respondent's misappropriations were acts of moral turpitude, and given the number and similarity of the matters in which respondent admitted to misappropriating trust funds, the burden shifted to respondent to rebut the conclusion that moral turpitude was involved. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[4]**

Whether or not review department adopted parties' stipulated legal conclusions, the Supreme Court would not be bound by them in its independent review. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[5]**

On review, a respondent cannot challenge culpability of misconduct to which the respondent stipulated at the hearing level. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[3]**

The respondent in a disciplinary proceeding must accept facts to which the respondent has stipulated. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[4]**

Where parties stipulated to waive any variance between facts set forth in stipulation and allegations of notice to show cause, stipulated facts which were not charged in original notice could be considered even though notice had not been amended. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[1]**

Where respondent, represented by experienced counsel, stipulated to facts which respondent conceded supported uncharged violation of failing to notify clients of receipt of client funds, and respondent did not object to referee's amendment of notice to show cause to reflect such charge, review department held that any such objection was waived, and found culpability despite omission of charge from notice to show cause. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[6]**

152 Discretion to Exclude Evidence (rule 5.104(F) (2011))

159 Miscellaneous Evidentiary Issues

Members of the State Bar may be disciplined on the basis of their pre-admission misconduct. State Bar Moral Character Committee's consideration for moral character purposes of respondent's pre-admission misdemeanor conviction did not bar State Bar Court from considering it for discipline purposes. Records relating to respondent's admission to the State Bar were admissible in his post-admission disciplinary proceeding, especially where

respondent failed to object at trial to being questioned about such records. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402 **[2]**

Great weight is given to a hearing judge's finding as to intent. Where hearing judge determined respondent was grossly negligent when verifying his clients' complaint and State Bar relied on same evidence already considered by the hearing judge to argue respondent was intentionally deceitful, there was no basis to conclude that respondent's decision to sign verification rose to an act of intentional dishonesty rather than mere gross neglect. *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151 **[1]**

Where respondent neither identified an exhibit for the record nor made an offer of proof demonstrating what the exhibit would have established, respondent failed to perfect his right to claim on appeal the that hearing judge improperly excluded the exhibit from evidence. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[2]**

Where respondent failed to corroborate or substantiate his testimony with evidence that one would have expectedly produced, respondent's unexplained failure to produce such evidence is a strong indication that respondent's testimony is not credible. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[7]**

Where respondent did not object to the admission of evidence, it is well settled that any objection on that point has been waived. Therefore, respondent's assertion that the hearing judge erroneously admitted hearsay evidence was not well taken because respondent failed to object to the admission of all but one of the objectionable items of evidence. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[8]**

Although the discussion accompanying a rule of professional conduct can be considered as an interpretive aid, it cannot add an independent basis for imposing discipline. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[2]**

Under the rules of statutory construction, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose if possible. Statutes are to be given effect according to the usual, ordinary import of the language employed in framing them. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[3]**

Regardless of what inferences that may be drawn from an attorney's failure to keep proper books of account or records in an appropriate case, the review department must ultimately recognize that the State Bar's burden requires it to present proof in the form of stipulated facts or admissible evidence to support each of the elements of its disciplinary case. Considering that the State Bar alleged that $1.7 million of trust funds was lost, the State Bar failed to present expected probative testimonial or documentary evidence, choosing to rest solely on respondent's testimony and then criticizing respondent for not having presented records listing her clients and detailing payments to them. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627. **[4]**

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

The primary consequence of an order determining the grade of a crime for State Bar disciplinary purposes would be as to the evidence presented on the question of degree of discipline to recommend or impose should moral turpitude or misconduct warranting discipline be found. On the issue of degree of discipline, the ultimate grade of a crime, together with other mitigating evidence, could bear on the ultimate result. *In the Matter of Jackson* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610. **[3]**

A disciplinary proceeding arising from conviction of a crime is fundamentally different from and a complete alternative to an original proceeding brought under Business and Professions Code section 6075 et seq. The streamlined procedures following an attorney's conviction of a crime rest on proceedings in the criminal courts in which the burden is proof beyond a reasonable doubt. These procedures recognize that the basis for attorney discipline is not the provable violation of a rule of professional conduct but the mere existence of a certified copy of an attorney's record of conviction. Only convictions which do not inherently involve moral turpitude are referred for an evidentiary hearing to determine whether there is a legal basis for imposing discipline, but even in these cases guilt is conclusively established by the record of conviction and is not subject to collateral attack. Thus, where a conviction proceeding was commenced in the State Bar Court, which proceeding arose from the same underlying facts as an earlier original proceeding in the State Bar Court, neither res judicata nor collateral estoppel acted as

a bar to the conviction proceeding, since neither the issues nor the causes of action in the two types of proceedings are the same.*In the Matter of Curtis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.**[2 a-g]**

In attorney discipline, ethical standards for attorneys are primarily established by State Bar Rules of Professional Conduct and State Bar Act. But, when an attorney practices in a specific area or jurisdiction, those standards may be measured by reference to other relevant state and federal statutes, rules of court, regulations, and administrative rules.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[3]**

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

Keeping proper non-financial client files and records is necessary for attorneys to be able to prove their honesty and fair dealings when their actions are called into question such that justice will not permit an attorneys to escape responsibility for his misconduct by simple act of not keeping adequate non-financial client files and records from which his conduct may be reviewed and any misconduct proved. Thus, an attorney's failure to keep such adequate files and records is itself a suspicious circumstance.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[12]**

Because hearing judge admitted a paralegal's business card, which also had name of respondent's law offices and insignia of a nonattorney immigration services provider partnership printed on it, into evidence without limitation and without any hearsay objection from respondent, review department properly considered business card for the truth of the matter stated by relying on it as evidence that respondent employed the paralegal.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[16]**

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule

of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

Because transcript of immigration court hearing was admitted into evidence for all purposes and without any hearsay objection, review department properly considered it for the truth of the matter stated by relying on immigration judge's statements in it to support one of State Bar's witness's testimony and to contradict respondent's testimony in State Bar Court.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[18]**

Because transcript of immigration court hearing was admitted into evidence for all purposes and without any hearsay objection, review department properly considered it for the truth of the matter stated by relying on the unsworn statements of two attorneys contained in it to establish multiple relevant facts. Review department considered attorneys' unsworn statements to be highly credible because they, like all attorneys, have a duty under State Bar Act and Rules of Professional Conduct to employ means only as are consistent with truth.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[21]**

Because review department relied on respondent's repeated and reckless failure to communicate with client to establish his culpability for violating rule of professional conduct prohibiting attorneys from abandoning clients and withdrawing from employment without taking adequate steps to protect their clients' interests, review department did not adopt hearing judge's finding that respondent violated statute requiring attorneys to adequately communicate with their clients, but dismissed charge with prejudice as being duplicative.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[22]**

An offer of proof is a summary of proffered evidence excluded by a trial judge, which is presented (1) to the trial judge to insure that he knows what evidence he has excluded and to provide him with an opportunity to reconsider his denial and permit the introduction of the evidence before the end of trial and (2) to an appellate court so that it may effectively review the trial judge's exclusion of the evidence. Thus, where respondent subpoenaed three immigration court judges to testify on his behalf in State Bar Court disciplinary proceeding, but U.S. Department of Justice greatly restricted the scope of the testimony one immigration court judge could give and refused to permit the other two judges to testify at all, the declaration regarding the immigration judges' testimonies that was executed by respondent's counsel and filed in hearing department was not an offer of proof because hearing judge did not restrict or excluded immigration court judges' testimonies, Department of Justice did, and State Bar Court lacked jurisdiction to review Department's actions. Accordingly, review department struck all statements in respondent's brief based on the declaration of respondent's attorney.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[29 a-c]**

Absent an appropriate objection to the introduction of evidence of misconduct other than that charged in the notice of disciplinary charges, such evidence may, when appropriate, be used as an aggravating factor in disciplinary matters.*In the Matter of Peavey* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483. **[3 a-c]**

Reinstatement petitioner established requisite learning in law by passing California Bar Examination, Attorneys' Examination. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[1 a,b]**

Although earlier admissions cases do not consider the time a petitioner is in custody or under court or State Bar supervision to be particularly weighty in assessing rehabilitation, the petitioner in each of those cases had engaged in extremely serious misconduct for an extensive time and had not adequately shown rehabilitation in light of the seriousness of the offenses. In contrast, in this case, petitioner's misconduct, though clearly serious, spanned four years, but there was no evidence that petitioner acted in less than an exemplary fashion while on probation. Further, some of petitioner's positive conduct, notably his cooperation with the State Bar, occurred despite his understanding that he would get no benefit from it. The review department therefore concluded that it was appropriate in this case to accord some weight to petitioner's activities while on probation, but it gave far greater weight to the last four years of petitioner's showing, which were after he completed his criminal probation. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[2 a,b]**

Concern in reinstatement proceeding is not just in counting correct number of years for measuring petitioner's rehabilitation, but is to assess quality of petitioner's rehabilitation showing in light of prior very serious misconduct. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[3]**

Testimony of members of the bar and bench of high repute is entitled to careful consideration in assessing a petitioner's rehabilitation when the petitioner has been close to their observation. This is because such witnesses are morally bound by their oaths as attorneys at law not to recommend a disbarred attorney for reinstatement unless they are satisfied of the rehabilitation of his character. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[5]**

Opinion testimony of an attorney as to the ultimate issue that petitioner was qualified for reinstatement was not precluded, although that ultimate issue was for the State Bar Court and the Supreme Court to decide. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[6 a,b]**

Negative testimony regarding petitioner's rehabilitation did not rebut petitioner's favorable testimony for a very important reason: the negative testimony was based solely on the severity of petitioner's earlier misconduct and not on his rehabilitative steps since resignation. The witnesses had no personal observation of petitioner for most, if not all, of the 10 years that elapsed between the time petitioner resigned and the State Bar Court hearings. Thus, while the negative testimony of each of these witnesses was relevant on the issues of the seriousness and the nature and extent of petitioner's prior misconduct, it was of little relevance on the issues of petitioner's present character and of whether petitioner has maintained a sustained period of unblemished and exemplary conduct. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[7 a-c]**

Civil verdicts and judgments have no disciplinary significance apart from the underlying facts. Nevertheless, civil findings made under a preponderance of the evidence test are entitled to a strong presumption of validity in disciplinary proceedings if they are supported by substantial evidence. Where the trial judge in a civil proceeding found that respondent knew prior to filing a lawsuit that he had not been defamed, that his law firm had not been disparaged, and that his retainer contract with his clients had not been interfered with at all, and those findings were supported by substantial evidence in the record, the hearing judge's conclusion in the disciplinary proceeding that respondent filed the lawsuit based on his honest and reasonable belief in its validity was contrary to the civil findings and did not appear to have accorded the civil findings the strong presumption of validity to which they were entitled. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. **[1]**

A cause of action in a civil proceeding based on factual allegations that respondent knew he could not prove was patently frivolous and unjust, and respondent's continued pursuit of the meritless factual allegations was strong circumstantial evidence that he was motivated by vindictiveness. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. **[4]**

Where the record did not establish that respondent made an offer of proof in order to give the hearing judge notice of the substance, purpose and relevance of proposed testimony (Evid. Code, § 354), respondent waived any error in the exclusion of the proposed testimony. *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[6]**

In a proceeding under Business and Professions Code section 6049.1, once it had been conclusively established that respondent was culpable of professional misconduct in California, the remaining issue for consideration in California was the degree of discipline. Where the only evidence in the record consisted of the final record of discipline in Michigan, no portion of the underlying evidentiary record from the Michigan proceedings was placed in evidence, and the Michigan final record of discipline indicated that each of the findings of fact in Michigan was made under a preponderance of the evidence standard of proof, a purported showing of the facts and circumstances found in Michigan to surround the misconduct could not be weighed under the required California standard of clear and convincing evidence. Instead, the misconduct found in Michigan was weighed with only the aggravation and mitigation separately shown in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[4]**

Where respondent's evidentiary objection at trial was neither timely nor specific, the review department refused to disregard the challenged evidence. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[6]**

Although neither the reporter's transcript of the hearing department proceedings nor the clerk's notations on the exhibits indicated that certain exhibits were formally admitted into evidence, the review department treated the exhibits as part of the record for purposes of review where the hearing judge considered the exhibits and the judge and counsel treated the exhibits as having been admitted into evidence. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[14]**

Absent a motion by the State Bar to amend the notice of disciplinary charges in a way that would have given respondent a sufficient opportunity to defend, the hearing judge should have sustained respondent's objection to evidence of uncharged misconduct on the ground that it was beyond the scope of the charge set forth in the notice of disciplinary charges. In view of respondent's timely and specific objection, the review department declined to adopt the finding of uncharged misconduct as an aggravating circumstance. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[16]**

In standard 1.4(c)(ii) proceeding for relief from actual suspension, hearing judge did not abuse his discretion in determining that State Bar's evidence establishing that Client Security Fund had previously paid one of petitioner's former clients more than $3,400 based on the client's claim that petitioner improperly failed to pay that sum to the client's medical care providers did not prevent petitioner from showing his rehabilitation because hearing judge based that determination on his findings that petitioner did not know (1) of the client's claim or (2) of Client Security Fund's actions until petitioner's deposition was taken in standard 1.4(c)(ii) proceeding and because those two findings are supported by substantial evidence consisting of petitioner's own testimony, which was supported with a number of letters from the client's file demonstrating that medical providers had been paid. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[4]**

There is clear distinction between credibility and candor. The determination of a witness's credibility (i.e., believability) is primarily within province of the hearing judge who saw and heard the witness testify, while the determination that a witness's testimony lacked candor (i.e., that the witness lied) must be found by clear and convincing evidence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[10]**

Even though a witness's candor must ordinarily be shown by clear and convincing evidence, great weight is still give to the hearing judge's findings on candor. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[11]**

The application of collateral estoppel with respect to prior civil findings does not modify the fundamental requirement that the State Bar must establish each element of a disciplinary violation and aggravating circumstance by clear and convincing evidence. The State Bar may rely upon collateral estoppel to establish an element of a disciplinary violation or aggravating circumstance only if that same element was found against the attorney in the civil proceeding by clear and convincing evidence. If the same element was not found against the attorney in the civil proceeding by clear and convincing evidence, the State Bar must established that element in the State Bar Court with clear and convincing evidence. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[1 a-c]**

Collateral estoppel may be applied in the State Bar Court to deny an attorney the right to relitigate an issue that was litigated and resolved against him or her in a prior civil proceeding only if (1) the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, (2) the civil finding was made under the same burden of proof applicable to the same issue in the State Bar Court, (3) the attorney was a party to civil proceeding, (4) there is final judgment on the merits in the civil proceeding, (5) the attorney fails to demonstrate any unfairness in precluding the relitigation of the issue, and (6) the civil finding was necessary to the judgment in the civil proceeding. The requirement that the civil finding be necessary to the judgment in the civil proceeding is required by procedural fairness to insure that preclusive effect is not given to nonessential prior findings. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[2 a, b]**

The relevant testimony of a witness given in civil proceeding is admissible in disciplinary proceedings without regard to the witness's availability and is considered and weighed as though the witness was present and testifying in the disciplinary proceeding. Moreover, the State Bar Court may take judicial notice of non-testimonial matters (i.e., pleadings, exhibits, findings) in a civil action that involved the same conduct underlying the disciplinary charges against an attorney. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[3]**

Whenever the State Bar relies upon all or part of the record in prior civil proceeding to prove an element of a disciplinary violation or aggravating circumstance independent of the application of collateral estoppel, neither the evidence nor any factual findings in the civil proceeding may be judicially noticed as conclusive or otherwise given preclusive effect in the State Bar Court, but must be independently assessed under the clear and convincing standard of proof. In addition, the attorney must be given a fair opportunity to contradict, temper, or explain the evidence and findings in the civil proceeding with other evidence, including the live testimony of the same witnesses who testified in the civil proceeding. The attorney need not be given free reign to completely retry the civil suit in the State Bar Court. The hearing judge retains the sound discretion to restrict or excluded cumulative evidence and otherwise control the introduction of evidence as in any other case.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[4 a, b]**

Independent of the application collateral estoppel, admissions made by an attorney in a prior civil proceeding are not conclusive and cannot be given preclusive effect in the State Bar Court even if they are admissible in the State Bar Court as party admissions. Such admissions must be independently assessed under the clear and convincing standard of proof.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[5]**

In its answers to the special findings in a prior civil proceeding against respondent, the jury found that respondent was liable to the plaintiff on the plaintiff's claims for, among other things, breach of fiduciary duty and fraud. In a separate special finding on the issues of malice, oppression, and fraud, the jury found by clear and convincing evidence that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of liability for either breach of fiduciary duty or fraud." The use of the disjunctive conjunction "or" in the phrase "malice, oppression or fraud," precluded the review department from determining whether the jury found that respondent was guilty of malice, oppression, fraud, or some combination thereof. And the use of the disjunctive correlative conjunction "either . . . or" in the phrase "finding of liability for either breach of fiduciary duty or fraud" precluded the Review Department from determining whether the jury found that respondent was guilty of "malice, oppression or fraud" when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both. Nonetheless, regardless of whether the jury based its answer against respondent on the malice, oppression, and fraud special finding on a finding that respondent was guilty of malice, oppression, fraud, or some combination thereof when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both, the jury's answer against him on the malice, oppression, and fraud special finding established, under collateral estoppel principles, that he committed acts involving moral turpitude in violation of statute proscribing acts of moral turpitude, but did not establish the nature and extent of those acts. An attorney who breaches a fiduciary duty (whether to a client or non-client) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law. Similarly, an attorney who commits an act of fraud (whether in the capacity as of an attorney or not) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[6 a-f]**

Even though the hearing judge properly admitted and judicially noticed the record in a prior civil proceeding in which respondent was a party, the hearing judge erred in making factual findings regarding the nature and extent of respondent's violations of the moral turpitude statute based upon the evidence in the civil record independent of the application of collateral estoppel because he did not first give respondent a fair opportunity to attempt to contradict, temper, or explain the evidence in it with other evidence. That error required the reversal of the hearing judge's findings as to the nature and extent of respondent's statutory violations and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the nature and extent of respondent's violations.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[7]**

The requisite elements of a violation of the first subdivision of the former rule of professional conduct governing business transactions with clients (i.e., subdivision (A) of former rule 3-300) were that the transaction was unfair to the client or that the terms of the transaction were not disclosed and transmitted to the client in writing in a manner that the client should have been able to understand. The requisite elements of a violation of the second subdivision of that former rule (i.e., subdivision B of former rule 3-300) were that the client was not advised, in writing, of the right to seek advice from an independent attorney of the client's choice or that the client was not given a reasonable opportunity to exercise that right. None of these elements are addressed in the special finding under

which the jury in a prior civil proceeding in which respondent was a party found, by clear and convincing evidence, that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of [respondent's] liability for either breach of fiduciary duty or fraud." Thus, collateral estoppel does not establish that respondent violated the former rule governing business transactions with clients.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[8]**

In making his factual findings with respect to charged violations of the former rule of professional conduct governing business transactions with clients, the hearing judge erred in reweighing and relying upon the evidence in a prior civil proceeding in which respondent was a party without first giving respondent a fair opportunity to attempt to contradict, temper, or explain that evidence. That error required the reversal of the hearing judge's findings that respondent committed multiple violations of the former rule governing business transactions with clients and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the charged violations of that former rule.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[9 a, b]**

Respondent's production of verifications purporting to bear his client's signature but which were signed by a manipulated means involved dishonesty, an aggravating circumstance. Respondent engaged in moral turpitude whether he was grossly negligent in offering the verifications as signed by his client or prepared them intentionally to mislead. Although there is no direct evidence that respondent personally simulated his client's signature, he offered the documents to exculpate himself and he must bear responsibility for their altered nature.*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. **[5]**

Principles of collateral estoppel may be applied to preclude a respondent from relitigating an issue that was actually litigated and resolved against him in a prior civil proceeding. In State Bar Court proceedings, principles of collateral estoppel may be applied with respect to an adverse prior civil finding if (1) the issue resulting in the civil finding is substantially identical to that in the State Bar Court proceeding, (2) the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, (3) the respondent was a party to the civil proceeding, (4) there is a final judgment on the merits in the civil proceeding, and (5) the respondent does not establish that it would be unfair to bind him to the prior adverse civil finding.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[1]**

Where the only evidence presented in the hearing department to support the contention that it would be unfair to prohibit relitigation of harassment and emotional distress claims was respondent's own testimony without corroborating evidence, respondent's reiteration of his testimony on review does not provide a basis to disturb the hearing judge's rejection of respondent 's testimony. The review department gives great weight to hearing judges' factual findings resolving issues pertaining to credibility of witnesses.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[2 a, b, c]**

Introducing into evidence the pleadings and exhibits from a civil matter without also introducing the trial transcript from the civil proceeding provides little evidence as to the nature and extent of respondent's conduct underlying the adverse civil findings of harassment and intentional infliction of emotional distress on a client or the resulting harm to the client. Such evidence may have had a material effect on the measure of the appropriate level of discipline.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[3]**

The hearing judge erred when he held that the record lacked clear and convincing evidence that respondent filed a frivolous appeal. The general rule is that civil findings are not, by themselves, dispositive of the issues in a disciplinary case. Often the issues in the civil case may be either broader or narrower than the operative issues in a disciplinary proceeding. However, civil findings made under a preponderance of the evidence standard are entitled to a strong presumption of validity in the State Bar Court if supported by substantial evidence. In order to hold that an appeal is frivolous, the law requires an extremely high showing, so that zealous but good faith appeals having any merit are neither deterred nor sanctioned. Accordingly, the court of appeal's decision finding that respondent's appeal of a case was frivolous and pursued in bad faith was, at the very least, a prima facie determination of such. Respondent failed to adduce evidence that overcame that determination. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[1 a-d]**

Unless civil sanctions issues arising under section 128.5 of the Code of Civil Procedure are adequately litigated before the sanctioning court, it would appear inappropriate to apply collateral estoppel in the State Bar Court to the sanction order. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[2]**

Hearing judge erred as a matter of law in finding that petitioner for reinstatement had not previously resigned from State Bar with disciplinary charges pending where petitioner's resignation was entitled "resignation with charges pending;" stated that charges were pending against him; was in form prescribed by California Rule of Court 960; was accepted by Supreme Court without prejudice to further proceedings; and where petitioner stated in his petition for reinstatement that, at time he resigned from State Bar, no formal charges were filed against him by State Bar, but only a number of minor client complaints that he had responded to, taken adequate measures to deal with, and answered State Bar in writing denying any misconduct. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[3]**

The hearing judge did not err by admitting evidence under Evidence Code section 1223, the so-called coconspirator's exception to the hearsay rule. The law supporting use of the coconspirator exception to the hearsay rule does not require absolute proof of a conspiracy, but only that there be independent evidence to establish prima facie the existence of a conspiracy and other preliminary facts. Those requirements were adequately met here. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70. **[3]**

Where statements could have been offered not to prove the truth of the matter stated, but for the purpose of showing that they were made in respondent's presence to disprove respondent's claim of lack of knowledge, the statements were not hearsay. In the absence of an objection and a request, made in accordance with Evidence Code section 355, that the use of the statements be admitted into evidence for the limited purpose, any error in their admission was waived. In any case, the statements were admissible under the adoptive admissions exception to the hearsay rule. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70. **[4]**

Respondent's calling and threatening State Bar witness shortly before trial can be for no purpose other than interference with disciplinary proceeding and tends to demonstrate knowledge of culpability on part of respondent. Because such evidence was not offered to show culpability in uncharged count, it was properly admitted and considered as serious aggravation; see Penal Code section 136.1, subdivision (a)(2) (crime to prevent of dissuade another from attending or testifying). *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[8 a-c]**

Hearing judge did not error in drawing inferences against respondent with respect to authenticity of documents written by respondent when respondent refused to answer proper questions after respondent's claim against self incrimination under Fifth Amendment was denied and she had been ordered to answer. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[11]**

The review department's duty to independently review the record is settled. At the same time, the review department must give great weight to the hearing judge's determination that turns on credibility to be assigned to witness testimony. The department was reluctant, therefore, to ascribe to respondent a specific intent to deceive when the hearing judge who considered respondent's testimony and that of other witnesses found none. This does not exonerate respondent from moral turpitude charges as to his false statement in his motion to disqualify a superior court judge. The hearing judge's conclusion that respondent violated statute and rule of professional conduct requiring attorneys to use only means consistent with truth must be read to find culpability by respondent's gross negligence, as simple neglect would not be sufficient for a statutory violation. Gross negligence is a well-established basis for finding an act of moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[1]**

Even though hearing judge is required to give respondent the benefit of all reasonable doubts, she was not required to devalue evidence she found stronger than that of respondent. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[3]**

Only as to matters in which a conviction is referred by the review department for a hearing and recommendation as to discipline and thereafter considered by the Supreme Court, will the Supreme Court consider all facts underlying a conviction when deciding on the appropriate discipline. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942. **[1]**

Past Supreme Court practice in considering automatic or summary disbarment was not found by the review department to entail weighing and balancing issues such as the motive of the attorney in committing the crime, the extent to which harm did or did not occur, whether the offenses were limited or repeated or other issues pertaining to evidence bearing on either mitigating or aggravating circumstances. Therefore, to the extent that language in the review department opinions *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71, and *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729, would require the review department to undertake such an analysis, such language was disapproved. Although respondent denies that his offense was serious enough to warrant disbarment, all the facts are not before us nor are they undisputed. What is undisputed is that respondent stands finally convicted, inter alia, of mail fraud, a felony which unquestionably involves moral turpitude; and, as we observed collectively in *Segall* and *Salameh*, is the type of offense which has often resulted in disbarment. Our reading of the summary disbarment law and past Supreme Court practice, would not warrant any exception to a summary disbarment recommendation based on respondent's claims. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942.**[2]**

With respect the considered views of the federal judge who presided over the criminal proceeding, the review department was bound by Supreme Court precedent rejecting consideration of very similar remarks by a sentencing judge expressing an opinion on an issue within the unique province of the Supreme Court and of the State Bar Court acting as the Supreme Court's arm. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942.**[3]**

The hearing judge did not err in prohibiting respondent from presenting evidence of his willingness to settle the case by stipulating to the misconduct and a reasonable level of discipline and of the State Bar's unwillingness to present a settlement offer that contained what he considered to be a reasonable level of discipline. Respondent is afforded substantial mitigation for cooperation because, in addition to other instances of cooperation throughout the investigation of the matter, he stipulated to the facts underlying the misconduct and because the stipulated facts were not easily provable. Substantial mitigation is given without regard to the fact that the parties were unable to stipulate to an appropriate level of discipline. Not doing so would "punish" respondent merely for seeking his day in court as to the level of discipline. Not being able to reach a stipulated discipline does not have any effect on the court's analysis of the degree of mitigation awarded for respondent's overall cooperation in helping resolve the charged misconduct. *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902.**[1]**

A petitioner for reinstatement must show by clear and convincing evidence that he or she has met the requirements for readmission. OCTC need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence. Instead, OCTC need only proffer sufficient adverse evidence to lower the persuasiveness of a petitioner's evidence so that he or she does not meet the burden to prove his or her case by clear and convincing evidence. Nor is a petitioner entitled to the benefit of the doubt if equally reasonable inferences may be drawn from a proven fact. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894.**[3]**

The basis of the hearing judge's finding of present moral fitness was character evidence and petitioner's testimony about his volunteer work and his assistance to relatives. However, in determining present moral qualifications, testimony by character witnesses and letters of reference are not conclusive. Similarly, volunteer work and care of relatives are factors to be considered, but are not dispositive. The review department reversed the finding of present moral fitness, finding that by minimizing and denying his serious misconduct, petitioner revealed a failure to appreciate the responsibilities of an attorney and the gravity of his ethical violations. This failure undermined his attempt to prove his present moral qualifications for readmission, as well as his attempt to show rehabilitation. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894.**[5]**

A petitioner's submissions in a reinstatement proceeding can form the basis for a finding of a lack of present ability and learning in the law. Petitioner failed to demonstrate present learning and ability in the law, despite having taken many bar review and continuing education classes and having increased his knowledge of the law, when he filed review briefs that used facts from exhibits that were never admitted into evidence; attempted to use exhibits, admitted for a limited purpose, to assert the truth of the matters therein; misstated the long established burden of proof in reinstatement proceedings; misread the findings of the judge, and unreasonably exaggerated. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894.**[7]**

Without, at least, a factual stipulation establishing aggravation and mitigation, neither the review department nor the Supreme Court have a complete record upon which to evaluate the appropriate discipline for the misconduct that occurred. Where the record consisted of the parties' partial stipulation to facts which did not address any aggravating or mitigating circumstances and two character letters proffered by respondent, the review department determined that the sparse record precluded it from fulfilling its duty to independently review the record and remanded the case for a trial de novo at which an adequate record was made. *In the Matter of Rodriguez* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 884. **[2]**

The State Bar proved that respondent used over $500,000 of his client's assets for speculative ventures in which he had a financial or ownership interest without any disclosures of the investments or his interests to the client and without providing any periodic accountings to her. In view of the evidence presented, to defend the charges, it was incumbent on respondent to present adequate, contemporaneous records showing that he had complied with the ethical and fiduciary duties of an attorney. He failed to do so. The lack of minimal formality and recordkeeping by respondent supports the hearing judge's findings and conclusions and erodes respondent's defense. *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824. **[1]**

An attorney's criminal conviction based on a plea of nolo contendere is deemed a conviction for attorney disciplinary purposes and is conclusive proof of the attorney's guilt on each of the essential elements of the offense of which the attorney was convicted. Thus, respondent cannot collaterally attack his conviction in the State Bar Court even though the victim of respondent's crime lost her civil lawsuit against respondent for damages. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[4]**

The rule requiring the review department to give great weight to the hearing judge's findings of fact that resolve issues pertaining to the credibility of the witnesses, which rule is premised on the hearing judge's ability to see the witnesses' demeanor and conduct during trial, is not applicable when a witness's testimony is present only through a written transcript of the witness's deposition. Thus, in such a case, the review department may independently evaluate the credibility of the witness's deposition testimony without giving great weight to the hearing judge's findings. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[3]**

In determining whether an attorney's convictions meet the statutory criteria for summary disbarment, the review department is limited to the record of conviction and any undisputed facts that may exist. Where the record of conviction did not establish that the offenses were committed in the course of the practice of law or in any way such that a client of respondent's was a victim, the offenses did not meet the criteria for summary disbarment under the version of Business and Professions Code section 6102, subdivision (c), in effect prior to January 1, 1997. Summary disbarment was warranted, if at all, only under the present version of the statute. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[1]**

A hearing judge properly applied collateral estoppel and denied respondent the right to relitigate the issue of dishonest billing in a disciplinary proceeding where respondent had fully litigated the issue in a superior court action; where the jury in the prior action had determined by clear and convincing evidence that respondent had acted with oppression, fraud, and malice; and where no unfairness resulted from precluding the relitigation of the issue. *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. **[1]**

A hearing judge erroneously relied on an unpublished hearing department decision and a Supreme Court order in another case. The unpublished decision of the hearing department in another proceeding, involving another respondent, may not be relied on either as precedent or as evidence. While the hearing department could take judicial notice of the Supreme Court order, that order provided no information that would make it relevant as either evidence or precedent in the matter before the court. It merely recited the discipline ordered, without discussion of the relevant facts or law and therefore should not have been relied on in this proceeding. *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639. **[3]**

In its opinion remanding a petition for reinstatement for further proceeding not inconsistent with the opinion, the review department held, on the record then before it, that the petitioner had demonstrated his moral reform from the acts which lead him to resign from the Bar with disciplinary charges pending. Accordingly, under law of the case, it would be improper for hearing department to reconsider petitioner's moral reform on remand in the absence of additional evidence. As to events that predated the petition, and were disclosed on the petition, it is clear that reopening would be impermissible. The same would be true of events about which the State Bar had a reasonable

opportunity to investigate and present at a hearing. However, one of the underlying purpose of reinstatement proceedings is to insure that only persons of present good moral character are reinstated to the practice of law in this state. Accordingly, with the exceptions noted, the State Bar Court may consider any act or conduct that is relevant to a petitioner's moral character regardless of when or where the act or conduct occurred. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[1]**

A petitioner establishes that he possesses the requisite present moral qualifications for reinstatement by presenting clear and convincing evidence that he possesses good moral character and has been rehabilitated. Any act or conduct bearing on the petitioner's qualities of honest, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and nation, and respect for the rights of others and the judicial process is relevant in a reinstatement proceeding. Unlike a petitioner's rehabilitation from prior bad acts, a petitioner's present moral qualifications for reinstatement is not capable of being conclusively determined for all time and is subject to re-evaluation on the State Bar's motion at least until the effective date of the Supreme Court's reinstatement order. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[2]**

Because jurisdiction vests in only one court at a time, once a review department opinion remanding the proceeding to hearing department for further proceedings becomes final, only the hearing department had jurisdiction to rule on State Bar's motion to expand the issues to be addressed at the trial on remand. Because the review department did not adjudicate the issue of petitioner's present moral fitness in its opinion remanding the proceeding to hearing department, the hearing judge's consideration of that issue on remand was not inconsistent with the review department's remanding opinion, and the hearing judge therefore did not error in admitting additional relevant evidence on the issue. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[3]**

Because the State Bar does not have the burden of proof in reinstatement proceedings, it need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence to prevail. Instead, the State Bar need only proffer sufficient adverse evidence to lower the persuasiveness of the petitioner's evidence so that he does not meet his burden to prove his case by clear and convincing evidence. Of course, the State Bar may elect not to present any adverse evidence if it concludes that petitioner's showing is insufficient to establish his case by clear and convincing evidence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[5]**

Respondent was not entitled to present evidence for the first time on review that a State Bar official had engaged in improper conduct in a separate civil proceeding against respondent, where respondent had the opportunity to make this allegation and present evidence in support of it at the hearing level. Also, respondent failed to show how such evidence had any bearing on either his culpability of the charges against him or the appropriate discipline for his misconduct. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[4]**

On de novo review, entire record is before the review department, and it may rely on evidence introduced at any point in the trail, including the disciplinary phase. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[5]**

Character evidence is important on the issue of the degree of discipline, and the credibility of the character witnesses should be weighed the same as any other witness. Accordingly, it was improper to admit telephonic testimony and the hearsay letters over the objection of the State Bar. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[1]**

A client's complaint letter offered into evidence to prove the truth of the matter asserted was hearsay. Because events were not fresh in the client's mind when he wrote the letter, it did not qualify for admission under the exception for a past recollection recorded that corroborated the client's testimony. Even if the letter did qualify for this exception, it should not have been received into evidence because it was offered by the State Bar rather than by an adverse party. Nor did the letter qualify for admission under the corroborative evidence exception to the hearsay rule because it lacked sufficient indicia of trustworthiness. Accordingly, the letter was struck from the record. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[2]**

Section 6049.2 of the Business and Professions Code authorizes the admission of transcripts of testimony from civil proceedings in State Bar disciplinary proceedings without proof of the witnesses' unavailability. However, section 6049.2 is, under its express terms, applicable only in disciplinary proceedings, and there is no parallel section permitting admission of prior transcripts in moral character proceedings. Accordingly, if a proper objection is made, transcripts of testimony from civil proceedings are admissible in moral character proceedings only upon a showing that the witnesses whose testimony is recorded in such transcripts are unavailable to testify. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[4]**

Prior civil court findings made under a preponderance of the evidence standard of proof merely constitute evidence in a State Bar Court proceeding, not the exclusive record upon which an issue must be adjudicated. While the State Bar may choose to proffer prior civil court findings as its entire case against an attorney or applicant on the underlying issue, the attorney or applicant then has the right to controvert, temper, or explain the civil findings with other evidence, including live testimony from the same witnesses who testified in the civil trial. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[6]**

Prior civil court findings made under the preponderance of the evidence standard of proof are entitled to a strong presumption of validity in State Bar Court proceedings if they are supported by substantial evidence. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[7]**

Although the burden of proof in State Bar proceedings is generally clear and convincing evidence, there is no State Bar rule that specifically sets forth the State Bar's burden of proof on rebuttal in moral character proceedings. An applicant's claim for admission to the practice of law in this state is not a mere privilege, but a claim of right that is afforded the protection of due process. Even though there are distinctions between admission proceedings and disciplinary proceedings, the question involved in both disciplinary and admissions proceedings is the same—is the applicant for admission or the attorney sought to be disciplined a fit and proper person to be permitted to practice law. The test for admission and for discipline is and should be the same. Accordingly, except as otherwise provided by law, the State Bar's burden of proof in adducing evidence of bad moral character on rebuttal of an applicant's prima facie showing is by clear and convincing evidence. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[8]**

Where First Amendment rights are at stake, the State Bar's burden of proof in adducing evidence of bad moral character on rebuttal of an applicant's prima facie showing is proof beyond a reasonable doubt. Where the right of access to the courts is at stake, proof beyond a reasonable doubt may also be required. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[9]**

Neither the Supreme Court nor the State Bar Court is bound by civil findings that exculpate a respondent of charged misconduct, or by an attorney's acquittal in a criminal case, or by the dismissal of criminal charges against an attorney. The reasons the State Bar is not bound by exculpatory civil findings or criminal acquittals in disciplinary proceedings are that the parties are different, the quantum of proof required in each proceeding is virtually always different, and the purposes of each proceeding are vastly different. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[10]**

Neither the Supreme Court nor the State Bar Court will bind an applicant or a respondent to an adverse civil finding made upon the usual civil standard of proof of a preponderance of the evidence when the standard of proof in the State Bar proceeding is clear and convincing evidence. When civil findings are made under a preponderance of the evidence standard, they must be independently assessed under the more stringent standard of proof applicable to disciplinary proceedings of clear and convincing evidence. It is only in this context that civil findings have no disciplinary significance apart from the underlying facts. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[11]**

The State Bar Court may apply collateral estoppel principles to preclude an applicant from relitigating an issue that was actually litigated and resolved adversely to him or her in a prior civil proceeding, provided that the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, that the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, that the applicant was a party to the civil proceeding, that there is a final judgment on the merits in the civil proceeding, and that no unfairness in precluding relitigation of the issue is demonstrated by the applicant. An applicant may

demonstrate that it would be unfair to bind him or her to an adverse civil finding by showing, among other things, that he or she had less incentive or motive to litigate the issue in the civil proceeding, that the civil finding or judgment is itself inconsistent with some other finding or judgment, or that he or she was required to litigate under different and less advantageous procedures in the civil proceeding. Where applicant's fraud judgment met the above criteria and no unfairness was demonstrated, the hearing judge appropriately applied the doctrine of collateral estoppel to the underlying fraud issue in this moral character proceeding. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[12]**

Even though Evidence Code permits legal experts to testify regarding ultimate legal issues, such issues are ultimately for independent decision-making of State Bar Court and Supreme Court. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[6]**

Disbelief of a respondent's testimony does not create evidence to the contrary. Where respondent allegedly misrepresented to insurer that respondent's personal bank account was a client trust account, but only evidence to rebut respondent's testimony to contrary was notation in insurer's records, presence of such notation was not sufficient to establish that it resulted from misrepresentation by respondent, even where hearing judge found respondent not credible. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[2]**

Where client gave written authorization to respondent to apply portion of client's net settlement proceeds to outstanding legal fees client owed respondent on prior case, respondent was not required to prove existence of prior case to establish entitlement to funds applied to fees. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[3]**

The testimony of an investigator is not the best evidence on the contents of court records. Testimony or sworn evidence from the court clerk responsible for the records is more germane and reliable. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[4]**

Hearing judges are accorded wide latitude to receive all relevant evidence, and relief from their decisions will not be granted on the basis of alleged error in admitting evidence unless actual prejudice is established. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[5]**

Where respondent moved to augment record on review to include documentary evidence regarding respondent's pro bono activities, but respondent did not establish good cause why such evidence could not have been presented to hearing department, review department declined to consider such evidence. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[15]**

Even if State Bar prosecutor had duty to disclose exculpatory evidence, unpublished, non-precedential trial court decision did not constitute such evidence, nor was it controlling precedent which prosecutor had duty to disclose to court. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[14]**

When a disciplinary proceeding is pending in State Bar Court, the respondent may be able to argue that evidence sought to be used by the State Bar which was obtained by improper means should be excluded. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[9]**

Petitions to augment the record on review are generally granted only if it is demonstrated that the record below is incomplete or incorrect. (Prov. Rules of Practice, rule 1304.) The general rule is not to entertain evidence not heard by the hearing judge unless it is the only means of presenting limited evidence of subsequent rehabilitation. It is also unusual for petitions to augment to be granted if contested. Where respondent requested to augment the record with documents relating to one of his complaining clients, and with two newspaper articles, respondent did not show good cause for the review department to consider such evidence over the State Bar's objection. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[9]**

List of representative cases respondent had handled, including pro bono matters, which was attached to respondent's brief on review, and expanded from similar list introduced at trial, was of minimal value in terms of mitigation, especially without explanation. Review department therefore declined to augment record to include list and did not consider it. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[11]**

In reinstatement proceeding, where petitioner moved to augment record on review with medical evidence regarding recovery from alcoholism which hearing judge had declined to consider on motion for reconsideration,

and review department concluded that petitioner made favorable showing on all other aspects of rehabilitation, review department considered petitioner's evidence in accordance with case law holding that extrinsic evidence will not be ignored where it is the only means of proving rehabilitation from serious physical or emotional problems. Where such evidence added support to conclusion that petitioner had not demonstrated that recovery program was adequate, and State Bar expressed concern that evidence had been offered without opportunity for cross-examination, review department remanded for further hearing and expert testimony regarding petitioner's recovery. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[5]**

Where respondent's brief on review referred to facts and newspaper articles regarding victim of respondent's misconduct which were not part of the record, review department declined to strike brief or admonish respondent or his counsel, but emphasized that its review is limited to the evidence properly made a part of the record. (Prov. Rules of Practice, rules 1303-1304.) *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[1]**

The question of the proper degree of discipline in a conviction referral matter may rest on a wide scope of evidence not directly connected with the crimes themselves. Evidence that respondent's real estate license had been revoked over a year before his crimes was improperly excluded from rebuttal evidence. Such evidence was not an essential element of the State Bar's case in chief, and could properly be reserved to rebut respondent's contention that his crimes were aberrational. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[9]**

Where administrative proceeding in which respondent had not appeared had resulted in revocation of respondent's real estate license, and record of such administrative proceeding was relevant in State Bar disciplinary proceeding, hearing judge and parties should have addressed issues regarding whether administrative decision had preclusive weight; if not, whether it was admissible under any hearsay exception, and whether respondent should be permitted to introduce evidence concerning culpability or mitigation with respect to the license revocation. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[10]**

Where parties jointly requested augmentation of record with exhibits which they had provided to hearing judge for consideration in rendering decision and had intended to make part of record, and which hearing judge had relied on in reaching decision, and which were vital to review, record would have been incomplete without exhibits, and request to augment was granted. (Prov. Rules of Practice, rule 1304.) *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[2]**

It would have been inappropriate in involuntary inactive enrollment proceeding for judge to draw any inference from pending criminal charges in and of themselves. However, testimony offered under oath and subject to cross-examination in preliminary hearings on such criminal charges supported judge's findings regarding facts of respondent's criminal conduct. This evidence was sufficient to demonstrate a reasonable probability that State Bar would prevail on merits of disciplinary charges brought thereon. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[3]**

Where respondents' non-lawyer agents solicited a client who, unknown to them, was a State Bar attorney, and invited that attorney to respondents' office, that attorney did not improperly search respondents' law office by reading papers spread out on table in front of him by respondents' staff, without touching papers or opening any cabinets, drawers, or files. Such conduct would not have been improper if committed by a police agency in collecting evidence in a criminal case. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[5]**

Testimony of expert witness who did not know facts of specific case but could only give opinion as to respondents' practices was proper expert testimony. Where hearing judge limited expert's testimony to proper opinion testimony on subjects of his qualifications, fair hearing was ensured. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[9]**

A conviction after a plea of nolo contendere is a conviction for disciplinary purposes no less than a conviction after a plea or verdict of guilty. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[3]**

There are numerous factors to consider in assessing witness credibility beyond observing the witness while testifying. The hearing judge, as the trier of fact in State Bar proceedings, is to determine the credibility of witnesses and hearsay declarants. The fact that some witnesses testified at the State Bar hearing by way of a transcript of

the witnesses' criminal court testimony, which is expressly authorized by statute in State Bar proceedings, is not reason to discount their testimony or find it less credible than live witness testimony. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[1]**

Where, as a result of a hearing judge's dismissal of a disciplinary proceeding, the hearing judge did not make findings regarding aggravation/mitigation and concluded there was no need to rule on the admissibility of certain exhibits, thus foreclosing respondent's opportunity to substitute other evidence if the exhibits were not admitted, the review department concluded, when the dismissal was overturned, that it was appropriate to remand the matter to the hearing judge for further proceedings on the degree of discipline. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[13]**

It is well established that an aggrieved party may properly bring to the court's attention the alleged breach of a settlement agreement arrived at before a judge and reflected in an ensuing court order. Rule 1231 of the Provisional Rules of Practice and Evidence Code sections 1152, subdivision (a) and 1154 only preclude evidence of settlement offers and negotiations that do not result in an agreement. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[7]**

The Office of Trial Counsel waived its right to argue on review that certain evidence should not have been admitted when it withdrew its opposition to a post-trial motion before the hearing judge for introduction of the evidence. Accordingly, the review department did not address in detail the Office of Trial Counsel's objections to the evidence. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[5]**

Where the record of a legal specialization proceeding contained no documents explaining the basis for the denial of specialist certification and where responses by the deputy trial counsel to interrogatories clarified the basis for the denial, augmentation of the record with the interrogatory responses was appropriate. (Prov. Rules of Practice, rule 1304.) *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[2]**

The fact that an attorney's untimely affidavit under rule 955 is accepted for filing is not evidence of the attorney's compliance with the rule. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[5]**

Where a court file was moved into evidence without objection or limitation, any objection to the admissibility of a proof of service contained in such file was waived. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[5]**

In considering whether to recommend summary disbarment, the State Bar Court is generally limited to determining whether the statutory and case law criteria have been met on the face of the conviction papers, although undisputed additional facts may also be taken into account. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[3]**

Where respondent committed grand theft by embezzlement, the felony conviction papers demonstrated that an element of respondent's offense was the specific intent to deceive, defraud, steal, or make or suborn a false statement. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[5]**

A motion supported by written submissions, including a detailed psychiatric report, could, if unopposed, be sufficient evidence to warrant abating a disciplinary proceeding due to the respondent's inability to assist in the defense. However, where the adequacy of the respondent's showing is questioned, the respondent's evidence may be weighed in the context of the whole record in the disciplinary proceeding. Any proffered medical submission regarding the respondent's mental competency should address the nature of the medical examination or tests conducted; the attorney's symptoms; the diagnosis and cause of the condition, and any past or proposed treatment. The report should note whether the illness raises doubts about the respondent's ability to assist in the defense, and should relate the respondent's condition to a recognized legal definition of competency. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[9]**

Medical evidence regarding an attorney's competency to assist in the defense of a disciplinary proceeding should be submitted to the State Bar Court at the hearing level. The reliability of evidence concerning a person's mental state is virtually impossible to test in the absence of cross-examination. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[10]**

Where it was unclear what evidence hearing judge considered in deciding to abate disciplinary proceeding due to respondent's claimed inability to assist counsel, and where respondent's medical evidence lacked important elements and was conclusory, and respondent's counsel's declaration was undermined by contrast with earlier declaration regarding respondent's superior performance of paralegal tasks, review department concluded that hearing judge failed to exercise her discretion properly in abating proceeding without holding hearing to allow presentation and resolution of conflicting evidence. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[11]**

External pressures to pay restitution for misappropriated funds, including court orders and agreements with victims of misappropriation, do not preclude consideration of such restitution in reinstatement proceedings. The weight to be accorded to restitution depends on the petitioner's attitude, as evidenced by a spirit of willingness, earnestness, and sincerity. Where a reinstatement petitioner who had misappropriated funds from a probate estate had subsequently recognized the gravity of his misconduct; admitted his misappropriation to the probate court and the State Bar; cooperated in an audit of the estate's records; secured his debt to the estate by granting it interests in his real and personal property, and fully repaid both the misappropriated funds and additional interest, surcharges, fees, and costs, his restitution deserved significant weight even though it was required by a probate court order. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[5]**

The standard of review on the issue of exclusion of evidence depends on the basis for the hearing judge's action. If the proffered evidence was inadmissible as a matter of law, then the standard is independent de novo review. If not, the review department must consider whether the hearing judge had discretion to exclude the evidence, and if so, whether that discretion was properly exercised. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[8]**

Underlying evidence of uncharged misconduct was not made inadmissible by rule prohibiting admission in evidence, except in rebuttal, of records of complaints or charges, where such evidence was offered in aggravation and impeachment in a contested proceeding after respondent testified regarding rehabilitation. (Rule 573, Trans. Rules Proc. of State Bar.) *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[9]**

Under California civil evidence rules, which apply generally in State Bar proceedings, a hearing judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice. Undue consumption of time alone is not in itself grounds for exclusion. Nor is unfair surprise, where the fairness if the trial may otherwise be ensured, if necessary by a continuance. Where evidence is cumulative or remote, however, there is discretion to exclude it. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[10]**

Declarations can be admitted into evidence in lieu of live testimony when no objection is raised. Where a declaration by the respondent was introduced into evidence by the State Bar without limiting the purpose for which the declaration was admitted, the declaration was admissible for all purposes, including the truth of the respondent's hearsay statements contained therein. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[7]**

Hearing judge's refusal to permit respondent to present evidence that value of one estate asset increased during respondent's delay in completing probate did not entitle respondent to relief, where such increase in value did not justify respondent's misconduct in delaying distribution of other estate assets. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[7]**

Hearing judge's denial of respondent's request for continuance to research probate practices in respondent's county was not error, where respondent had had ample time prior to trial to prepare his defense, and evidence sought would have had very little probative value as custom and practice in respondent's county would not explain or excuse respondent's prolonged delay in closing estate at issue. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[8]**

Hearing judge's request that respondent discuss mitigation evidence with examiner and try to "work something out," in order to promote stipulations for the introduction of character letters, did not constitute an improper requirement that respondent obtain the State Bar's prior approval to present mitigation evidence. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[9]**

Transcript of superior court trial regarding probate matter which was subject of disciplinary proceeding was admissible pursuant to Bus. & Prof. Code, § 6049.2, and hearing judge did not err in admitting entire transcript, even though much of testimony was not relevant to disciplinary proceeding, where transcript was admitted subject to respondent's motion to strike parts that were not material or relevant, and respondent failed to make such motion. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[10]**

Former review department's admission of certain exhibits into evidence without allowing respondent an opportunity to present rebuttal evidence was error. Nevertheless, no error in admitting or excluding evidence invalidates a finding of fact, decision or determination unless the error resulted in a denial of a fair hearing. (Rule 556, Trans. Rules Proc. of State Bar.) Where such exhibits were not relied upon in determining culpability and discipline, respondent failed to show that the admission of the documents deprived him of a fair hearing. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[5]**

The passage of an appreciable period of time is an appropriate consideration in determining whether a petitioner for reinstatement has made sufficient progress towards rehabilitation. Where the evidence is uncontroverted and shows exemplary conduct for eight to ten years with no suggestion of wrongdoing, a petitioner would seem to have established rehabilitation. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[10]**

Evidence of pro bono or charitable work reflects on an erring attorney's rehabilitation and present moral qualifications. Where a petitioner for reinstatement had volunteered one full day every week for several years at a legal services program, such extensive pro bono work was a significant factor in favor of the petitioner's reinstatement. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[11]**

Although testimony by character witnesses and letters of reference are not conclusive, favorable character evidence deserves heavy weight in determining whether a petitioner for reinstatement has proved rehabilitation and present moral qualifications. Favorable character testimony and reference letters from employers and attorneys are entitled to special weight. Petitioner's current employer's testimony expressing a high opinion of petitioner's character, demeanor and behavior, and confirming petitioner's sensitivity and concern for proper ethical behavior, merited significant weight. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[13]**

Where respondent's knowledge of welfare fraud perpetrated by his wife was conclusively established by his guilty please to a drime of which fraud was an essential element, the State Bar did not need affirmative evidence beyond the conviction itself to prove respondent's participation in the fraud. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[3]**

The State Bar is a public entity within the scope of the statutory official information privilege (Evid. Code, § 1040). The procedure to be followed in State Bar Court proceedings where the official information privilege is asserted is the same as in civil cases. In a moral character proceeding, where the information sought was the identities of persons whom the State Bar had reserved the right to call as impeachment or rebuttal witnesses at trial, the official information privilege did not apply to such information, either because the consent exception was applicable, or because the reservation of the right to call such persons reduced the Committee of Bar Examiners' need for secrecy to the interest of a party in the outcome of the proceeding, which is not protected under section 1040 and which was outweighed by the interests of the public and the applicant in a fair trial. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[6]**

A hearing judge should scrutinize with care any evidence bearing the earmarks of private spite. Nevertheless, any instigating factor or personal motive in the initiation of a State Bar proceeding is not a matter of controlling concern where the facts disclosed justify disciplinary action. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[11]**

Review department did not need to reach respondent's challenges to hearing judge's evidentiary rulings in order to uphold hearing judge's ultimate findings, where all essential elements of charged violation were established by evidence to which respondent did not object, and any evidentiary errors did not result in denial of a fair hearing. Where factual findings based on challenged evidence were not necessary to decision, remand for new hearing was not necessary even if evidentiary errors underlay some non-essential findings. (Rule 556, Trans. Rules Proc. of State Bar.) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[1]**

Where superior court appellate department had reversed decision revoking respondent's criminal probation due to municipal court's refusal to permit respondent's counsel to cross-examine prosecution's witness, transcript of municipal court proceeding could not have been considered as evidence pursuant to Business and Professions Code section 6049.2. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[11]**

Where examiner's pre-trial statement listed respondent's prior record of discipline among exhibits to be offered at trial, but did not detail or characterize such prior record in any way, and copy of prior record was not considered by hearing judge until after determination of culpability, and respondent demonstrated no prejudice from reference in pre-trial statement and had failed to raise issue before hearing judge, respondent was not entitled to any relief based on asserted violation of rule 571, Trans. Rules Proc. of State Bar. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[4]**

Where notice to show cause could have been more clearly phrased with respect to duration of respondent's alleged misconduct, but hearing judge correctly concluded after colloquy at trial that it encompassed misconduct prior to as well as after a certain date, and where hearing judge prohibited introduction of evidence as to respondent's conduct prior to such date only after respondent had had ample time to present such evidence, and where respondent gave no offer of proof or explanation regarding any additional evidence on such issue, respondent's claims of denial of adequate notice of charges and fair opportunity to present evidence were without merit. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[8]**

Where complaining witness testified credibly that an attorney-client relationship existed between himself and respondent, respondent himself had filed pleadings in civil litigation acknowledging such relationship, and respondent's counsel conceded that respondent had held himself out as complaining witness's attorney, respondent's argument in disciplinary proceeding that complaining witness was not his client was without merit. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[2]**

Where the respondent's testimony is plausible and uncontradicted, it should be regarded as proof of the fact testified to, especially where contrary evidence, if it existed, would be readily available but was not offered. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[6]**

Even if it was error for hearing judge to allow examiner to ask leading questions of complaining witness on direct examination, and to admit testimony as to witness's state of mind when such state of mind was not relevant, such errors were not prejudicial where complaining witness's testimony was clearly insufficient to establish State Bar's case and was not relied on in hearing judge's findings. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[8]**

State Bar disciplinary proceedings are unique—not criminal, civil or administrative. Nonetheless, the respondent is entitled to a guarantee of a fair hearing, one of the elements of which is the right to offer relevant and competent evidence on a material issue. Denial of such right is almost always reversible error. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[10]**

No deference was due to hearing judge's reliance on letters from complaining witness to State Bar, since such letters were not testimony but documentary evidence. Findings based on selected portions of the witness's testimony, which were contradicted in other portions of such testimony, and on the witness's demonstrably untrustworthy hearsay statements in the letters to the State Bar, were not supported by clear and convincing evidence in the record as a whole. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[12]**

Assuming hearing judge disbelieved testimony of all witnesses as to facts exculpating respondent, this was not a basis to find culpability. Testimony not worthy of belief does not reveal the truth itself or warrant an inference that the truth is the converse of the rejected testimony. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[13]**

State Bar has burden to prove culpability by clear and convincing evidence. Where respondent's version of the facts is plausible, even if controverted, it supports a reasonable inference of lack of misconduct. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[14]**

Both at hearing and on review, the court considering a motion to dismiss a notice to show cause for failure to state a disciplinable offense should disregard all factual matters outside the ambit of the notice, except for

judicially noticeable facts. Accordingly, the review department considered respondent's uncontroverted statement that the alleged client referred to in the notice to show cause was respondent's spouse, and also considered respondent's date of admission to the bar and lack of any prior disciplinary record. However, respondent's other factual assertions in support of his motion to dismiss were not suited for judicial notice and were not considered on review. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[4]**

Record of respondent's criminal conviction, which had been judicially noticed by hearing department, was admitted into evidence by review department in order to make it part of record in disciplinary proceeding for Supreme Court review, but was considered solely for purpose of establishing criminal complaint, charges, plea, and conviction. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[2]**

It is appropriate for disciplinary purposes to consider any criminal charges that were dismissed as well as the charges for which the attorney was actually convicted. Thus, where the criminal complaint in a Vehicle Code violation matter charged respondent with being under the influence of phencyclidine, and clear and convincing evidence was presented establishing that respondent was under the influence of phencyclidine, that circumstance could be considered in the disciplinary proceeding even though respondent was not convicted of being under the influence of phencyclidine. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[7]**

A hearing judge's interpretation of a written exhibit is not a determination on the credibility of a witness. The review department is free to make its own findings on issues that turn on documentary evidence, and to disagree with the hearing judge's resolution of such issues. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[4]**

Although an arbitrator's testimony is admissible on the question of what issues were tried in the arbitration, the arbitrator's expression of his own belief does not bind the State Bar Court in adjudicating the effect of the arbitration award. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[14]**

Requests to augment the record at the review department level will be granted only if the original record is incomplete or incorrect. (Rule 1304, Provisional Rules of Practice.) Out-of-court evidence offered at the appellate level is ordinarily hearsay, and impossible to evaluate because of the absence of cross-examination to test the credibility of the declarant. The rule is to rely only on evidence which was presented to the trier of fact. The only general exception is to permit documentary evidence of subsequent rehabilitation when it is the only means to meet the heavy burden of demonstrating recovery from substance abuse or mental disorder. Where proffered additional evidence was derived from the record in another proceeding involving respondent, and was not offered to correct any omission in the record, the review department declined to grant respondent's motion to augment the record. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[2]**

The rules of evidence in civil cases in courts of record, including applicable sections of the Code of Civil Procedure and judicial decisions as well as the Evidence Code, are followed in State Bar disciplinary proceedings. (Rule 556, Rules Proc. of State Bar.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[27]**

Evidence Code section 776, providing for calling the opposing party as an adverse witness, does not empower the State Bar to require the respondent's presence at a disciplinary hearing. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[29]**

Where neither respondent nor respondent's former client testified as to respondent's hourly fee, but respondent had sent one bill to client reflecting an hourly rate of $100, and respondent apparently acquiesced in hearing judge's finding that respondent's fee was $100 per hour, review department adopted such finding. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[1]**

A finding that the amount respondent withdrew from a client trust account was not an earned fee, even though the client did not dispute respondent's testimony that it was an earned fee, was consistent with the evidence that respondent had not performed any legal services during the period of time for which he withdrew the funds; that what work was done by the attorney occurred after the trust funds had been withdrawn; that no value had been placed on the attorney's services during that time, and that the attorney had otherwise been inattentive to the client's case. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[3]**

In a default proceeding, ambiguous evidence that can be interpreted as consistent with allegations of the notice to show cause does not negate the deemed admissions of the notice to show cause. Where evidence introduced at default hearing fell short of clear and convincing proof of charged violations, but was not inconsistent with charging allegations, defaulting respondent should have been found culpable of violations properly charged. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[3]**

Respondent's assertion that the hearing judge improperly considered his prior arrest for growing marijuana, the prosecution of which had been diverted, was without merit, where respondent voluntarily testified, with advice of counsel, that he had grown marijuana at the time in question, and where respondent did not object to questions on the subject. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[1]**

It is not clear that the statute regarding inadmissibility of evidence regarding diversion proceedings (Penal Code section 1000.5), and related case law, applies in attorney disciplinary proceedings, since such proceedings are conducted in the judicial branch of government by the State Bar Court, acting as an arm of the Supreme Court, and are aimed at assessing the attorney's fitness to practice law. Even if such authorities are applicable, evidence of respondent's arrest which resulted in diversion was properly used to show that respondent had a long history of involvement with marijuana. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[2]**

There is no rule that excludes the admission of proper evidence because the object to which testimony relates is not introduced into evidence. Evidence relating to replica gun was therefore admissible, even though gun was not offered into evidence. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[4]**

In proceeding to determine whether criminal convictions involved moral turpitude, the arresting officer's testimony describing a victim's retelling of the incident was hearsay, but was properly admitted because respondent waived hearsay objection by failing to appear at the hearing. The review department independently reviewed the hearsay evidence, found sufficient trustworthiness, and concluded it was properly relied on by the referee. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[5]**

Where facts deemed conclusively established by court order, following respondent's failure to respond to examiner's requests for admissions, showed that respondent had wilfully misled judge, but respondent was permitted to testify that representations made to judge, though false, were true to the best of respondent's knowledge at the time they were made, respondent's testimony on this point was properly received, but only in mitigation, and not to contradict deemed admissions on which culpability findings were based. Deemed admissions, while conclusive as to literal truth of facts clearly set forth in request for admissions, did not preclude referee from admitting and considering other evidence that tended to explain or helped to interpret admitted facts. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[2]**

Where respondent failed to respond to examiner's requests for admissions, those facts deemed admitted were properly considered as conclusive where there had been no timely motion for relief. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[3]**

Respondent's testimony that he unsuccessfully tried to telephone a State Bar investigator in response to a letter the investigator sent him regarding his possible misconduct was admissible only in mitigation, not in defense to his culpability of failing to cooperate in the investigation, which was conclusively established by his deemed admissions resulting from his failure to respond to discovery. Such testimony was not a sufficient basis for a finding in mitigation. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[8]**

Where respondent's testimony was admitted subject to a motion to strike, and examiner thereafter moved to strike only as to culpability, not as to mitigation, and then proceeded to elicit testimony from respondent on cross-examination on same subject matter, examiner thereby waived any objection to such testimony. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[13]**

The hearing department has broad discretion in determining the admissibility and relevance of evidence. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[14]**

Confidentiality for marital communications does not apply to testimony concerning matters prior to the marriage or after the couple's estrangement. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[5]**

The hearing department has wide latitude to receive all admissible evidence, especially since it sits without a jury. Where respondent's ex-spouse's testimony was properly admitted, but because there was little corroboration and due to the marital dissolution the chance of bias was great, the hearing department properly disregarded such testimony, respondent could not successfully claim prejudicial error. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[6]**

Even if respondent waived procedural objection to deposition by appearing and participating, deposition transcript should not have been admitted in evidence, because examiner failed to show that State Bar had been unable to procure deponent's attendance at trial despite reasonable diligence, as required by provision of Civil Discovery Act governing use of depositions at trial. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[18]**

Error in admitting evidence in State Bar proceedings does not invalidate a finding of fact unless the error resulted in the denial of a fair hearing. (Trans. Rules Proc. of State Bar, rule 556.) In light of deposition witness's hazy memory and respondent's contrary testimony, proper determination weighing the conflicting testimony could not be made without face-to-face assessment, and admission of witness's deposition transcript therefore denied respondent a fair trial. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[19]**

A determination of mental incompetency does not require a psychiatric examination. Witness testimony regarding a respondent's behavior and documents allegedly reflecting the respondent's mental infirmity may be introduced as evidence of incompetency, and a qualified psychiatrist may be appointed to render an opinion about the respondent's mental condition on the basis of such testimonial and documentary evidence. Then, if the judge remains unable to make the necessary determination without a mental examination of the respondent and the respondent refuses to consent to such an examination, an order for a compulsory mental examination may be justified as the least intrusive means of accomplishing the government's compelling interest in protecting the public, courts, and profession from mentally incompetent attorneys. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[10]**

Where attorney represented to State Bar Court that no disciplinary investigations against him were pending, examiner's failure to rebut this contention, as permitted by rule 573, Trans. Rules Proc. of State Bar, warranted inference that State Bar did not dispute attorney's representation. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[16]**

Where document was marked as exhibit at hearing and clearly related to central issue in case, and both parties referred to it in briefs on review, review department had it made part of official court file despite offering party's failure to move it into evidence. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[2]**

In a reinstatement proceeding, records of prior discipline, including the proceeding in which the petitioner was disbarred, are admissible, because the evidence of the petitioner's present character must be considered in light of the moral shortcomings which resulted in the prior discipline. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[1]**

In a reinstatement proceeding, the hearing judge acted within his discretion in excluding a second affidavit from a character witness. Like a character reference letter in a disciplinary proceeding, the character reference, even though in affidavit rather than letter form, was excludable as hearsay absent a stipulation to the contrary. Further, the second affidavit was cumulative, and the hearing judge carefully considered the more detailed first affidavit, which he admitted into evidence as part of the reinstatement application. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[6]**

As a formal proceeding of the State Bar Court, a reinstatement hearing is governed by the formal rules of evidence applicable in civil proceedings. (Rule 556, Trans. Rules Proc. of State Bar.) More liberal evidentiary standards applicable in certain other types of statutory proceedings do not apply in State Bar proceedings. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[7]**

Trial judge has discretion to refuse to admit evidence which is cumulative; hearing judge who carefully considered detailed affidavit from witness did not err in excluding second, less detailed affidavit from same witness. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[8]**

As sole trier of fact, hearing judge had responsibility to declare in decision how he weighed evidence at hearing, including credibility of party as witness, where party's attitude toward reformation and restitution was fundamental issue in proceeding. Judge's occasional use of blunt language did not show bias. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[9]**

In a conviction matter, the respondent's criminal conviction by itself constitutes conclusive proof that the respondent committed all acts necessary to constitute the offense charged. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[2]**

Court's rejection, based on documentary and other evidence, of respondent's testimony regarding his knowledge and state of mind six years earlier, did not result in finding that such testimony lacked candor or was offered in bad faith. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[12]**

Respondent's failure to substantiate with documentary evidence his claim that he had earned funds which he claimed were advanced legal fees was properly considered by hearing panel in determining that respondent was not credible on this issue, even though burden of proof was not respondent's. Giving great weight to hearing panel's credibility determination and resolution of conflicting facts against respondent, review department found no basis to reject panel's finding that funds were advanced costs which respondent misappropriated. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[5]**

Court of appeal opinion regarding respondent's criminal appeal could be cited in related disciplinary proceeding, notwithstanding Supreme Court's depublication order, under Cal. Rules of Court, rule 977(b)(2). *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[1]**

160 Standards of Proof/Standards of Review

161 Duty to Present Evidence

After the hearing judge gave respondent the express opportunity to present his evidence, respondent's unpersuasive reasons for failing to do so could not be the basis of any claim of error on review. *In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615. **[2]**

Even if an attorney of record did not have actual knowledge of a trial setting, if a notice of trial setting was properly served on him, his failure to appear at trial will not be excused for State Bar disciplinary purposes unless he establishes that he had office procedures in place that, at a minimum, required his staff (1) to promptly inform him each time a notice of court or administrative trial or hearing is delivered to office, (2) to promptly record date of the trial or hearing in attorney's court calendaring system and in client's file, and (3) to promptly give client actual notice of date, time, and location of the trial or hearing. Respondent did not have any such proper office procedures in place. Thus, where record established that a notice of a hearing was properly served on him in an immigration court case in which he was attorney of record for the alien, respondent's failures to inform client of hearing, to prepare himself for the hearing, and to counsel and prepare client for the hearing could not be excused even if respondent did not learn of the hearing until the day of the hearing. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[23 a-d]**

An offer of proof is a summary of proffered evidence excluded by a trial judge, which is presented (1) to the trial judge to insure that he knows what evidence he has excluded and to provide him with an opportunity to reconsider his denial and permit the introduction of the evidence before the end of trial and (2) to an appellate court so that it may effectively review the trial judge's exclusion of the evidence. Thus, where respondent subpoenaed three immigration court judges to testify on his behalf in State Bar Court disciplinary proceeding, but U.S. Department of Justice greatly restricted the scope of the testimony one immigration court judge could give and refused to permit the other two judges to testify at all, the declaration regarding the immigration judges' testimonies that was executed by respondent's counsel and filed in hearing department was not an offer of proof because hearing judge did not restrict or excluded immigration court judges' testimonies, Department of Justice did, and State Bar Court lacked jurisdiction to review Department's actions. Accordingly, review department struck all statements in respondent's brief based on the declaration of respondent's attorney. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[29 a-c]**

There is no authority for the proposition that the strong presumption of validity accorded to civil findings in a disciplinary proceeding shifts the burden of proof in the disciplinary proceeding to the respondent attorney to rebut the presumption. As in any discipline case, the State Bar bears the burden of proving culpability by clear and convincing evidence.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[2]**

In a proceeding under Business and Professions Code section 6049.1, once it had been conclusively established that respondent was culpable of professional misconduct in California, the remaining issue for consideration in California was the degree of discipline. Where the only evidence in the record consisted of the final record of discipline in Michigan, no portion of the underlying evidentiary record from the Michigan proceedings was placed in evidence, and the Michigan final record of discipline indicated that each of the findings of fact in Michigan was made under a preponderance of the evidence standard of proof, a purported showing of the facts and circumstances found in Michigan to surround the misconduct could not be weighed under the required California standard of clear and convincing evidence. Instead, the misconduct found in Michigan was weighed with only the aggravation and mitigation separately shown in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349.**[4]**

The review department rejected a finding that respondent displayed a lack of cooperation during State Bar proceedings by making unfounded and inflammatory statements in various pleadings filed in this disciplinary matter. Respondent's statements were not proper subjects for aggravation where the State Bar made no showing by clear and convincing evidence that they were false. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[18]**

The review department rejected a finding that respondent displayed a lack of cooperation during State Bar proceedings by filing six petitions for interlocutory review with the review department, at least one petition for review with the California Supreme Court, and over 30 motions in the hearing department. These documents were not proper subjects for aggravation where it was not shown by clear and convincing evidence that the documents were completely lacking in merit and were filed in bad faith. Respondent acted as cocounsel during the hearing department proceedings and was entitled to reasonable access to the courts to seek judicial remedies. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[19]**

The standard of proof in standard 1.4(c)(ii) proceedings for relief from actual suspension is preponderance of the evidence. (Rules Proc. of State Bar, rule 634.) Thus, to be entitled to relief from actual suspension, petitioners must prove, by a preponderance of the evidence, their rehabilitation, present fitness to practice, and present learning and ability in the general law. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289.**[1]**

In comparison to a disbarred attorney, who has been found unfit to practice law and whose name has been stricken from the roll of attorneys, the suspended attorney in standard 1.4(c)(ii) proceeding for relief from actual suspension has suffered a more modest negative evaluation of his character by virtue of his prior misconduct. Thus, in marked contrast to the disbarred attorney whose showing of rehabilitation must be made with stronger proof of present honesty and integrity than one seeking admission for the first time and with proof of a sustained period of exemplary conduct, the suspended attorney in standard 1.4(c)(ii) proceeding may show his rehabilitation, even before the completion of the term of his actual suspension, with proof overcoming a reduced prior finding of a danger to the public and with a relaxed showing of exemplary conduct. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289.**[6]**

Even though moral shortcomings that previously resulted in discipline of the suspended attorney in standard 1.4(c)(ii) proceeding for relief from actual suspension are proportionally less than moral shortcomings that would result in disbarment, the suspended attorney must still show, by a preponderance of the evidence, that he meets the same high moral standards required of all attorneys in this state. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289.**[7]**

The application of collateral estoppel with respect to prior civil findings does not modify the fundamental requirement that the State Bar must establish each element of a disciplinary violation and aggravating circumstance by clear and convincing evidence. The State Bar may rely upon collateral estoppel to establish an element of a disciplinary violation or aggravating circumstance only if that same element was found against the attorney in the

civil proceeding by clear and convincing evidence. If the same element was not found against the attorney in the civil proceeding by clear and convincing evidence, the State Bar must established that element in the State Bar Court with clear and convincing evidence.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[1 a-c]**

The good faith of an attorney in making a false statement is a defense to the charge of violating Business and Professions Code section 6068, subdivision (d). As a defense, respondent had the burden of proving that he acted in good faith and he failed to meet that burden. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.**[2]**

As the reproval imposed on respondent in the prior disciplinary proceeding is final, it and the conditions attached to it are presumed valid and enforceable. The reproval decision is subject to collateral attack only on the grounds that the judge (1) lacked jurisdiction of the subject matter, (2) lacked personal jurisdiction over respondent, or (3) acted in excess of jurisdiction. The burden of proof is on the party who attacks the judgment to show lack of jurisdiction. Furthermore, to succeed on collateral attack, the jurisdictional defect must be proven from the face of the record in the prior proceeding. Respondent's contention that the conditions attached to his prior private reproval are subject to collateral attack because the hearing judge failed to explicitly recite in her decision two findings required by rule 956 of the California Rules of Court, that the reproval conditions would serve to protect the public and to serve respondent's interests, is an allegation that the hearing judge acted in excess of her jurisdiction. Respondent failed to prove from the face of the record in the prior reproval that the conditions attached to it would not serve to protect the public or serve respondent's interest. In any event, the unchallenged factual findings in the hearing judge's decision in the prior case establish that the hearing judge acted within her jurisdiction in attaching the conditions. Without question, the reproval conditions that he take and pass a professional responsibility examination and attend the State Bar's Ethics School will serve to protect the public and serve respondent's interests. The hearing judge's error is not a jurisdictional error that can subject the hearing judge's decision to collateral attack. At most, the error was a procedural defect that respondent waived by failing to appear in the prior proceeding and object to the hearing judge's decision on that ground. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[1]**

In the absence of any direct precedent construing rule 956 of the California Rules of Court, the review department held that the purpose of the rule's findings is to aid in ensuring that any duties attached to a reproval are reasonably related to its purposes. Although rule 956 prescribes a salutary requirement, it cannot be said that it is jurisdictional. The findings themselves do not go to the essential fairness of the underlying disciplinary proceeding or even a subsequent enforcement proceeding. If findings are omitted from a reproval decision to which rule 956 applies, the error can be called to the State Bar Court's attention in a timely manner. If not done timely, the objection is waived, absent a showing that respondent was clearly prejudiced by the omitted findings. No showing of prejudice was made in this proceeding and such a claim would be hard to envision regarding the two duties that respondent was charged with violating in this proceeding: passage of a professional responsibility examination and attendance at the State Bar's Ethics School. These are requirements imposed in almost every disciplinary probation. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[4]**

A petitioner for reinstatement must show by clear and convincing evidence that he or she has met the requirements for readmission. OCTC need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence. Instead, OCTC need only proffer sufficient adverse evidence to lower the persuasiveness of a petitioner's evidence so that he or she does not meet the burden to prove his or her case by clear and convincing evidence. Nor is a petitioner entitled to the benefit of the doubt if equally reasonable inferences may be drawn from a proven fact. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894.**[3]**

The hearing judge's appropriate role is to decide the issues on the evidence presented. If that process leads the hearing judge to conclude that the party bearing the burden of proof had not prevailed, then the judge's duty is to find against the particular party on that issue or to recommend that only that degree of discipline, if any, which is warranted by the evidence presented. The party failing in its burden runs the very risk that the judge will so act. Absent extraordinary circumstances, a hearing judge is not authorized to require the production of added evidence beyond which the parties have chosen to present. If parties or witnesses testify, the hearing judge is at liberty to ask questions of a type consistent with the judicial function of supervising or regulating the trial. Moreover,

allegations against other attorneys can be referred to the State Bar for new investigation. *In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888. **[2]**

The State Bar proved that respondent used over $500,000 of his client's assets for speculative ventures in which he had a financial or ownership interest without any disclosures of the investments or his interests to the client and without providing any periodic accountings to her. In view of the evidence presented, to defend the charges, it was incumbent on respondent to present adequate, contemporaneous records showing that he had complied with the ethical and fiduciary duties of an attorney. He failed to do so. The lack of minimal formality and recordkeeping by respondent supports the hearing judge's findings and conclusions and erodes respondent's defense. *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824. **[1]**

An attorney may be disciplined for making a false statement that attacks the honesty, motivation, integrity, or competence of a judicial officer without violating the attorney's First Amendment guarantee of free speech so long as the attorney knew the statement was false when he made it or made it with a reckless disregard for its truth or falsity. Truth is an absolute defense. The State Bar has the burden of proving the falsity of the statement. The issue of whether a false statement was made with reckless disregard for its truth or falsity is governed by an objective standard under which the court must determine what a reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[2]**

An essential element to establishing an attorney's violation of his statutory duty to maintain the respect due the courts and judicial officers by making a statement that impugns the honesty or integrity of a court or judicial officer is the falsity of the disparaging statement. Even though the State Bar has the burden of proving the essential element of falsity, it did not proffer any evidence to establish the falsity of the respondent's disparaging statements regarding various judicial officers because the hearing judge made a erroneous pre-trial ruling relieving the State Bar of its burden to prove falsity. Therefore, the review department remanded the matter to the hearing department to allow the State Bar an opportunity to prove that respondent's statements were false. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[3]**

Because the State Bar does not have the burden of proof in reinstatement proceedings, it need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence to prevail. Instead, the State Bar need only proffer sufficient adverse evidence to lower the persuasiveness of the petitioner's evidence so that he does not meet his burden to prove his case by clear and convincing evidence. Of course, the State Bar may elect not to present any adverse evidence if it concludes that petitioner's showing is insufficient to establish his case by clear and convincing evidence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[5]**

Petitioner failed to establish that the hearing judge abused his discretion in denying petitioner's post-decision motion to reopen the record to present additional evidence because petitioner did not establish that the evidence he sought to proffer was newly discovered or that it could not have been presented at trial with the exercise of reasonable diligence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[6]**

Possible collateral estoppel effect of attorney's out-of-state discipline could not be addressed where record did not reveal factual underpinnings of such discipline and did not permit determination as to what issues were actually litigated in out-of-state disciplinary matter. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[10]**

Respondent's alleged misconduct in federal civil appeal was not entitled to any weight in aggravation where State Bar did not introduce any evidence regarding respondent's conduct other than appellate court opinion establishing respondent's failure to comply with federal rule of appellate procedure regarding form of briefs, and where record did not provide basis to determine whether respondent's noncompliance with such rule was isolated act of negligence or disciplinable offense, or to assess respondent's conduct independently under clear and convincing standard of proof. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[12]**

Respondent's contention that he detrimentally relied on advice from his probation monitor and counsel regarding compliance with rule 955 might have been persuasive as mitigation if respondent had raised it at the hearing level and produced supporting evidence. However, where record did not support and even contradicted

such contention, review department rejected respondent's attempt to argue it as mitigation. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[3]**

Where examiner failed to introduce appropriate documentary evidence of respondent's prior discipline record, review department notified parties of intent to take judicial notice of specified documents from official State Bar Court records regarding such discipline, and took such notice after neither party objected. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[7]**

While disciplinary hearings can be stressful for accused attorneys to attend, Supreme Court has made clear that accused attorneys must avail themselves of opportunity to participate and present all favorable evidence. Failing that opportunity, the accused may not demand a new hearing to present evidence belatedly. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[6]**

Where the respondent's testimony is plausible and uncontradicted, it should be regarded as proof of the fact testified to, especially where contrary evidence, if it existed, would be readily available but was not offered. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[6]**

On a motion to present additional evidence, the moving party did not show good cause where the substance of the evidence sought to be admitted was not summarized and there was no claim that the witnesses or affiants were unavailable to present their evidence at the disciplinary hearing or that their evidence related to events or observations which occurred after the disciplinary hearing. (Rules Proc. of State Bar, rule 562.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[5]**

Where evidence offered by State Bar at default hearing neither established nor controverted or undermined allegations of notice to show cause, such allegations, which were deemed admitted by respondent's default, could properly be relied on to establish attorney's culpability. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[17]**

The State Bar failed to establish that an attorney violated his duty to cooperate with the State Bar in a disciplinary investigation, where the evidence showed that letters were purportedly sent to the attorney by State Bar investigators, but no evidence was submitted proving that the letters were properly addressed to, or received by, the attorney. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[23]**

Attorneys facing charges of professional misconduct must present to the hearing department all evidence favorable to themselves. A failure to do so may justify denial of a motion for rehearing to present additional evidence. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[4]**

Although rule 644 of the Transitional Rules of Procedure purports to allow a presumption affecting the burden of proof if an attorney fails without good cause to undergo an ordered mental examination, rule 644 must be interpreted as merely allowing a permissive inference of mental infirmity, in order to ensure due process. Rule 644 would not be valid if it operated to relieve the examiner of the burden of proving mental incompetence by clear and convincing evidence. The presumption authorized by rule 644, if applied, would conflict with the appropriate presumption that an attorney remains mentally competent to practice law in the absence of proof to the contrary, and would be tantamount to the imposition of a default judgment for failure to obey a discovery order, in violation of rule 321 of the Transitional Rules of Procedure. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[11]**

While the law does look with favor upon the regeneration of erring attorneys, the petitioner seeking reinstatement bears the burden to show by clear and convincing evidence that the petitioner meets the requirements, and that burden is a heavy one. The person seeking reinstatement after disbarment should be required to present stronger proof of present honesty and integrity than one seeking admission for the first time whose character has never been called into question. A disbarred attorney may be able to show by sustained exemplary conduct over an extended period of time that the attorney has reattained the standard of fitness to practice law. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[3]**

Respondent's failure to substantiate with documentary evidence his claim that he had earned funds which he claimed were advanced legal fees was properly considered by hearing panel in determining that respondent was not credible on this issue, even though burden of proof was not respondent's. Giving great weight to hearing

panel's credibility determination and resolution of conflicting facts against respondent, review department found no basis to reject panel's finding that funds were advanced costs which respondent misappropriated. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[5]**

In disciplinary matters, where the State Bar has the burden of proof, the examiner is obligated to produce sufficient evidence to permit the State Bar Court to make adequate determinations and appropriate recommendations to the Supreme Court as to discipline. (Rules Proc. of State Bar, rule 402.) *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[9]**

It is the duty of any accused member of the bar to present at the evidentiary hearing in the disciplinary proceeding all evidence favorable to him or her. The respondent cannot necessarily rely on the State Bar examiner's position conceding an issue in the case. The review department's review of the record is independent and not limited by the examiner's position, and the Supreme Court, in turn, is not limited by the recommendation of the review department or that of the hearing department in assessing the record. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[4]**

The Supreme Court has consistently held that petitioners seeking reinstatement have the burden to show by clear and convincing evidence that they meet readmission requirements, and that burden is a heavy one. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[1]**

Persons seeking reinstatement after disbarment should be required to present stronger proof of their present honesty and integrity than persons seeking admission for the first time whose character has never been called into question. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[2]**

162 Quantum of Proof Required in Disciplinary Matters

162.10 State Bar's burden (rule 5.103)

162.11 Clear and convincing standard

Rule 1-700, on its face, prohibits attorney judicial candidates only from making false statements, not misleading ones. State Bar has burden of proving falsity of statements by clear and convincing evidence. Attorney judicial candidate was not culpable for violating rule 1-700 for engaging in truthful but misleading or potentially misleading speech about his opponent. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[2 a,b]**

Where State Bar presented no evidence or witnesses to rebut respondent's testimony that her inaccurate report of her MCLE compliance was unintentional, and hearing judge declined to find that respondent acted intentionally, Review Department rejected argument that respondent's conduct intentionally misrepresented her MCLE compliance. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330. **[2]**

The burden is on the State Bar to prove misconduct by clear and convincing evidence. This showing requires evidence so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. *In the Matter of Allen* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198 **[1]**

Although the State Bar may prove an attorney's misconduct with clear and convincing circumstantial evidence, the fact that respondent knew his associate was buying personal injury cases involving vehicles with multiple occupants, had resigned with disciplinary charges pending, had stolen and forged settlement checks from respondent, and had negotiated settlements in cases he referred to respondent, was not clear and convincing evidence that respondent knew of the staged accidents when he was representing the clients his associate referred to him. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[3 a, b]**

Where the record supports an inference beneficial to respondent as equally as it supports an inference adverse to respondent, the inference favoring the attorney must be accepted. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[4]**

The review department found no merit to the State Bar's argument that money in a client trust account is presumed to belong to the clients and that it was respondent's burden to prove otherwise. The State Bar alleged in the notice of disciplinary charges that client money was stolen and it had the burden to present clear and

convincing evidence proving that allegation. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.**[3]**

Regardless of what inferences that may be drawn from an attorney's failure to keep proper books of account or records in an appropriate case, the review department must ultimately recognize that the State Bar's burden requires it to present proof in the form of stipulated facts or admissible evidence to support each of the elements of its disciplinary case. Considering that the State Bar alleged that $1.7 million of trust funds was lost, the State Bar failed to present expected probative testimonial or documentary evidence, choosing to rest solely on respondent's testimony and then criticizing respondent for not having presented records listing her clients and detailing payments to them. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.**[4]**

Rule 4-100(B)(4) of the Rules of Professional Conduct requires that an attorney promptly pay or deliver client money in possession of the member. By its terms, the important date for purposes of this rule is when respondent received the settlement money, not the date that clients signed releases or the date cases settled. Where no evidence was presented showing when respondent received settlement money, the review department, resolving all reasonable doubts in respondent's favor, concluded that the rule 4-100(B)(4) charges were not sustained by convincing proof to a reasonable certainty. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.**[5a-e]**

There is no authority for the proposition that the strong presumption of validity accorded to civil findings in a disciplinary proceeding shifts the burden of proof in the disciplinary proceeding to the respondent attorney to rebut the presumption. As in any discipline case, the State Bar bears the burden of proving culpability by clear and convincing evidence.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[2]**

In a proceeding under Business and Professions Code section 6049.1, once it had been conclusively established that respondent was culpable of professional misconduct in California, the remaining issue for consideration in California was the degree of discipline. Where the only evidence in the record consisted of the final record of discipline in Michigan, no portion of the underlying evidentiary record from the Michigan proceedings was placed in evidence, and the Michigan final record of discipline indicated that each of the findings of fact in Michigan was made under a preponderance of the evidence standard of proof, a purported showing of the facts and circumstances found in Michigan to surround the misconduct could not be weighed under the required California standard of clear and convincing evidence. Instead, the misconduct found in Michigan was weighed with only the aggravation and mitigation separately shown in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349.**[4]**

There is clear distinction between credibility and candor. The determination of a witness's credibility (i.e., believability) is primarily within province of the hearing judge who saw and heard the witness testify, while the determination that a witness's testimony lacked candor (i.e., that the witness lied) must be found by clear and convincing evidence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[10]**

Even though a witness's candor must ordinarily be shown by clear and convincing evidence, great weight is still give to the hearing judge's findings on candor. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[11]**

Because bankruptcy court's findings that attorney engaged in actual fraud when attorney incurred credit card debts were made under preponderance of the evidence standard and not clear and convincing standard applicable in disciplinary proceedings, hearing judge correctly (1) declined to apply principles of collateral estoppel to bind attorney with bankruptcy court's findings that attorney engaged in actual fraud; (2) reweighed evidence from bankruptcy court proceedings under clear and convincing standard after giving attorney fair opportunity to contradict, temper, and explain that evidence; and (3) permitted State Bar to present additional evidence regarding attorney's culpability. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[3]**

The application of collateral estoppel with respect to prior civil findings does not modify the fundamental requirement that the State Bar must establish each element of a disciplinary violation and aggravating circumstance by clear and convincing evidence. The State Bar may rely upon collateral estoppel to establish an element of a disciplinary violation or aggravating circumstance only if that same element was found against the attorney in the civil proceeding by clear and convincing evidence. If the same element was not found against the attorney in the

civil proceeding by clear and convincing evidence, the State Bar must established that element in the State Bar Court with clear and convincing evidence.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[1 a-c]**

Rule 219 of the Rules of Procedure of the State Bar provides that, after the party with the burden of proof has rested, the opposing party may move for a determination that the party with the burden of proof has failed to meet that burden. In deciding the motion, the hearing judge is required to consider all the evidence introduced, weigh that evidence and make determinations of credibility. The review department held that the hearing judge's ruling on a motion made pursuant to rule 219 is reviewable on plenary review under rule 301 of the Rules of Procedure of the State Bar and that such review is de novo. The review department must determine, based upon its independent review of the evidence before the hearing judge at the time the motion was made, whether clear and convincing evidence was presented of each element of the charged offenses. In deciding these issues, the review department must give great weight to the hearing judge's credibility determinations. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. **[1 a-c]**

In the context of an emotional and adversarial lawsuit, propounding discovery that falsely intimated that respondent and the plaintiff, respondent's former client, had a sexual relationship and that the plaintiff was sexually promiscuous is not clear and convincing evidence of acts of moral turpitude in violation of Business and Professions Code section 6106. Further, it is unclear that Business and Professions Code section 6068, subdivision (f), which prohibits the advancing of prejudicial facts to the honor or reputation of a party or witness, proscribes the use of such intimations.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[4 a - b]**

Although the burden of proof in State Bar proceedings is generally clear and convincing evidence, there is no State Bar rule that specifically sets forth the State Bar's burden of proof on rebuttal in moral character proceedings. An applicant's claim for admission to the practice of law in this state is not a mere privilege, but a claim of right that is afforded the protection of due process. Even though there are distinctions between admission proceedings and disciplinary proceedings, the question involved in both disciplinary and admissions proceedings is the same—is the applicant for admission or the attorney sought to be disciplined a fit and proper person to be permitted to practice law. The test for admission and for discipline is and should be the same. Accordingly, except as otherwise provided by law, the State Bar's burden of proof in adducing evidence of bad moral character on rebuttal of an applicant's prima facie showing is by clear and convincing evidence. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[8]**

Statute limiting contingent fees in medical negligence cases prohibits attorneys from either contracting for or collecting a contingent fee in excess of statutory limits. Where respondent had no written fee agreement, but agreed orally to accept fee to be awarded by court if result was successful, evidence was not clear and convincing that respondent had a contingent fee contract. However, once respondent received court-awarded fee after settlement of case, respondent collected a contingent fee within meaning of fee limit statute. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[5]**

Where State Bar failed to prove by clear and convincing evidence that respondent's client's signatures on loan agreement and release were forgeries, and evidence submitted did not undermine authenticity of loan agreement, State Bar Court resolved doubt in respondent's favor and found that loan was made. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[1]**

Disbelief of a respondent's testimony does not create evidence to the contrary. Where respondent allegedly misrepresented to insurer that respondent's personal bank account was a client trust account, but only evidence to rebut respondent's testimony to contrary was notation in insurer's records, presence of such notation was not sufficient to establish that it resulted from misrepresentation by respondent, even where hearing judge found respondent not credible. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[2]**

Attorney discipline is an available sanction for violation of rule 11 of Federal Rules of Civil Procedure. Where respondent testified that he had been disciplined by federal court as result of rule 11 matter, and federal court had suspended respondent from practice before it as part of relief granted in ruling on rule 11 motion, federal court's action constituted discipline. However, State Bar must prove aggravating circumstances by clear and convincing evidence. Where record before review department did not reveal factual underpinnings of federal court discipline,

and review department was therefore unable to examine nature and chronology of respondent's prior discipline to determine impact it should have on current discipline recommendation, review department gave no weight to respondent's federal discipline as factor in aggravation. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[11]**

Respondent's alleged misconduct in federal civil appeal was not entitled to any weight in aggravation where State Bar did not introduce any evidence regarding respondent's conduct other than appellate court opinion establishing respondent's failure to comply with federal rule of appellate procedure regarding form of briefs, and where record did not provide basis to determine whether respondent's noncompliance with such rule was isolated act of negligence or disciplinable offense, or to assess respondent's conduct independently under clear and convincing standard of proof. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[12]**

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

Where record contained no evidence about circumstances of loss of client's settlement check, respondent could not be found culpable of reckless failure to perform competently based on such loss. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[20]**

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In original disciplinary proceedings for violation of statute requiring adherence to conditions of disciplinary probation, standard of proof is clear and convincing evidence, and discipline may be disbarment. In proceedings on motion to revoke probation, standard of proof is preponderance of evidence and recommended actual suspension may not exceed entire period of stayed suspension. (Trans. Rules Proc. of State Bar, rules 610-614 (eff. Jan. 1, 1993).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[4]**

Due to difference in applicable standards of proof, a civil court finding is not binding on the State Bar Court for purposes of discipline. Where, upon evidence presented to civil court plus additional testimony, hearing judge concluded, contrary to civil court's decision, that respondent's loan to a client was not a sham transaction, then, resolving all reasonable doubts in respondent's favor, it was appropriate to dismiss charges that the loan transaction violated statutory duties to counsel only legal or just actions and to employ only truthful means of maintaining clients' causes; constituted act of moral turpitude; and violated rule against advising violations of law. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[1]**

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

Where there was clear conflict in testimony with regard to whether respondent provided clients with an accounting, and hearing judge was unable to resolve such conflict, there was insufficient evidence to support charge that respondent did not provide accounting. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[6]**

The State Bar must prove culpability by clear and convincing evidence. Where respondent requested review department to make supplementary finding concerning culpability, but record clearly and convincingly established a fact inconsistent with such proposed finding, review department declined to adopt proposed finding. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[4]**

Where respondents set up distant branch office with intent to be present only one day per week; authorized non-lawyer independent contractors to explain complex and unusual fee agreements to prospective clients; did not review cases or speak with clients until after clients had signed fee agreements; paid contractors in cash based on viability of cases, and implausibly characterized contractors as investigators; ignored indications of excessive non-lawyer control of cases; chose to disbelieve clients' reports that contractors had solicited them, and did not present convincing explanation about how they believed clients had come to retain them, hearing judge's findings that respondents knew of contractors' solicitation of clients were supported by clear and convincing evidence. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[11]**

Ordinarily, the standard of proof in disciplinary proceedings is by clear and convincing evidence, and that standard has been applied in involuntary inactive enrollment proceedings under both section 6007(c) and section 6007(b)(3). *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[8]**

Because the preponderance of the evidence standard of proof in a civil malpractice trial is lower than the clear and convincing evidence standard of proof in a disciplinary proceeding, the conclusions reached by civil courts in a malpractice action against respondent are not dispositive of disciplinary charges. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[6]**

Disciplinary charges must be proved by the State Bar examiner by clear and convincing evidence. All reasonable doubts must be resolved in favor of the accused attorney. If equally reasonable inferences may be drawn from a proven fact, the inference leading to innocence must be chosen. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[2]**

Where a client had difficulty communicating with respondent for a short period of time, but respondent did reply in some limited fashion to the client's status inquiries, and where it was not clear from the record whether any significant developments occurred with regard to the client's litigation during that period of time, there was not clear and convincing evidence of a failure to communicate. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[8]**

Testimony disregarded by the hearing judge which provides a plausible explanation of the respondent's conduct may be considered on de novo review as evidence that the hearing judge's fact findings were not supported by clear and convincing evidence. On independent review of the record, both the Supreme Court and the review department resolve all reasonable doubts and inferences in favor of the respondent. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[4]**

Where State Bar's chief witness exhibited poor memory, repeatedly testified inconsistently on key issues, admittedly had misrepresented facts to insurance company and State Bar, and admittedly was motivated by anger and economic stress at time of complaint to State Bar, hearing judge's findings based solely on selected portions of such witness's inconsistent testimony were not supported by clear and convincing evidence in light of the record as a whole. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[11]**

No deference was due to hearing judge's reliance on letters from complaining witness to State Bar, since such letters were not testimony but documentary evidence. Findings based on selected portions of the witness's testimony, which were contradicted in other portions of such testimony, and on the witness's demonstrably untrustworthy hearsay statements in the letters to the State Bar, were not supported by clear and convincing evidence in the record as a whole. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[12]**

State Bar has burden to prove culpability by clear and convincing evidence. Where respondent's version of the facts is plausible, even if controverted, it supports a reasonable inference of lack of misconduct. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[14]**

Given conflicting documentary evidence and unreliable and inconsistent testimony by complaining witness, review department may conclude on independent review, without attempting to resolve such evidentiary conflicts, that State Bar did not meet its burden to show culpability by clear and convincing evidence to a reasonable certainty. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[16]**

The State Bar must prove aggravating factors as well as culpability by clear and convincing evidence to a reasonable certainty. Accordingly, finding in aggravation of bad faith could not be predicated on selected portions of complaining witness's unreliable correspondence and inconsistent testimony. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[20]**

Proof by clear and convincing evidence to a reasonable certainty means that irreconcilable conflicts in the testimony of the chief State Bar witness by their very nature severely undermine the State Bar's case. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[23]**

Where no evidence was introduced establishing that respondent knew his out-of-state driver's license was not valid at the time he presented it to police, and where respondent's explanation of his failure to disclose all of his driving under the influence convictions on his application for such license was unrebutted and not inherently incredible, examiner failed to establish by clear and convincing evidence that respondent's use or obtaining of the license were aggravating factors. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[4]**

Rejection of a witness's testimony by the hearing judge does not in and of itself create affirmative evidence to the contrary. Where respondent's testimony on a factual issue was plausible and uncontradicted, it was appropriate to resolve all reasonable doubts in favor of respondent and reject a finding contrary to respondent's testimony as unsupported by clear and convincing evidence. Where respondent's version of events was plausible, even though controverted, it supported a reasonable inference of lack of misconduct, and where there was only circumstantial evidence to the contrary, misconduct was not established by clear and convincing evidence. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[10]**

Findings in aggravation, like findings of culpability, must be supported by clear and convincing evidence. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[3]**

Where respondent's client denied having had a certain conversation with respondent, and the hearing judge credited the client on that point, but the record as a whole showed that respondent lacked a motive to lie in testifying about the conversation, the evidence suggested that the client might have forgotten the conversation, and the client exaggerated in other testimony and was very bitter toward respondent, the review department, while not rejecting the credence given to the client's testimony by the hearing judge, did find that the client's testimony failed to constitute clear and convincing evidence of intentional misrepresentation by respondent. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[4]**

Where the hearing judge accepted as true the testimony of two State Bar witnesses, but such testimony did not contradict respondent's own plausible version of events, the review department found that State Bar had failed to prove by clear and convincing evidence that respondent had testified falsely. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[5]**

In an attorney discipline proceeding, all reasonable doubts must be weighed in favor of the attorney. Where the evidence presented by documents raised an inference of irregularity concerning the genuineness of a bankruptcy court order, but there was no evidence from the bankruptcy court concerning its practices nor any evaluation of the genuineness of the purported order itself, there was not clear and convincing evidence that the respondent had fabricated the order. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[23]**

Circumstances in mitigation and aggravation must be established by clear and convincing evidence. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[35]**

Where hearing judge accepted respondent's testimony that respondent's prolonged failure to file personal income tax returns resulted from problems with respondent's accountants, and examiner did not object to hearing judge's determination that there was no clear and convincing evidence of misconduct in connection with respondent's failure to file tax returns, review department adopted judge's findings and conclusion of non-culpability. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[3]**

In a default proceeding, ambiguous evidence that can be interpreted as consistent with allegations of the notice to show cause does not negate the deemed admissions of the notice to show cause. Where evidence introduced at default hearing fell short of clear and convincing proof of charged violations, but was not inconsistent with charging allegations, defaulting respondent should have been found culpable of violations properly charged. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[3]**

Specific charging in the notice to show cause is important; it prevents a respondent from having to guess at the charges. In addition, since the standard for a culpability finding in attorney discipline matters is clear and convincing evidence, the State Bar has the burden to charge the alleged misconduct correctly so that this standard can be met. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[3]**

Where a municipal court order finding an appeal frivolous and awarding sanctions did not explain the basis for such finding or the statutory basis for awarding sanctions, and no additional evidence was introduced to establish that the appeal was substantively without merit, the record did not clearly and convincingly establish for disciplinary purposes that the appeal was frivolous or pursued in bad faith. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[7]**

Like the standard of proof in disciplinary proceedings and in proceedings under section 6007(c), the standard of proof in involuntary inactive enrollment proceedings under section 6007(b)(3) is clear and convincing evidence. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[2]**

Where court in civil action related to disciplinary proceeding had concluded (applying preponderance of evidence standard) that there was substantial evidence that purported transfer of partnership interest to respondent was fraudulent, and it was undisputed that respondent had prepared partnership transfer document, referee's conclusion in disciplinary proceeding that there was no evidence that respondent actively participated in fraud in preparation of document could only be consistent with civil court finding if referee's conclusion was based on difference in applicable standard of proof, in that culpability in disciplinary cases must be proven by clear and convincing evidence. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[7]**

In order to find a violation of the rule against misleading courts and judicial officers, the State Bar must show clearly and convincingly that the attorney knowingly presented a false statement intending to mislead the court, and such deceit would, in almost every case, be an act of dishonesty in violation of the statute authorizing discipline for acts of moral turpitude, corruption and dishonesty. When an attorney makes a false or misleading statement to a court, that act involves moral turpitude. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[11]**

State Bar must prevail by clear and convincing evidence; if it is equally likely that respondent is telling the truth about controverted facts, State Bar has not met its burden. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[7]**

Client's issuance of check to attorney marked "for filing fees" was insufficient evidence to show clearly and convincingly that attorney was obligated to file suit on behalf of client. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[8]**

Where hearing department found unpersuasive client's testimony that he did not consent to respondent's application of client trust funds to respondent's outstanding legal fees, State Bar did not demonstrate trust account irregularities or misappropriation by clear and convincing evidence. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[9]**

The difference in wording between the rules governing pretrial and mid-trial contact with jurors, and the rule governing post-trial contact, reflects a difference in the intent of the drafters as to the elements of each rule. In order to establish a violation of the rule governing post-trial contact, the State Bar must prove by clear and convincing evidence that the respondent subjectively had the specific intent to harass or embarrass the jurors or to influence the jurors' actions in future jury service. Where no such subjective intent was established, based on referee's findings as to witnesses' credibility, review department found no violation and dismissed proceeding without addressing question of rule's constitutional validity. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[5]**

In every disciplinary proceeding it is the State Bar's burden to prove specific charged misconduct by clear and convincing evidence. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[14]**

On review, the burden remains on the State Bar to prove its case by clear and convincing evidence. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[3]**

Reasonable doubts in proving a charge of professional misconduct must be resolved in the accused attorney's favor. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[11]**

The State Bar must prove aggravating factors by clear and convincing evidence. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[12]**

162.12 Preponderance of evidence standard

Wilfully failing to comply fully with a disciplinary probation condition constitutes a violation of the statute providing that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline. Wilfulness in this context requires merely that the person charged acted or omitted to act purposely,

that is, knew what he was doing or not doing and intended either to commit the act or abstain from committing it. The violation must be proved by a preponderance of the evidence. Substantial compliance is insufficient to avoid culpability on this charge, and any good faith on the part of the attorney is relevant to mitigation rather than culpability. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[3]**

Where hearing judge viewed proceeding as one to revoke probation, not to impose added culpability or discipline, and recommended actual suspension would not exceed imposition of previously stayed suspension if respondent made restitution within such time, applicable standard of proof was preponderance of evidence standard applicable to probation revocation proceedings, even though notice to show cause also alleged violations of respondent's statutory oath and duties and of a court order. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[5]**

In original disciplinary proceedings for violation of statute requiring adherence to conditions of disciplinary probation, standard of proof is clear and convincing evidence, and discipline may be disbarment. In proceedings on motion to revoke probation, standard of proof is preponderance of evidence and recommended actual suspension may not exceed entire period of stayed suspension. (Trans. Rules Proc. of State Bar, rules 610-614 (eff. Jan. 1, 1993).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[4]**

Because the preponderance of the evidence standard of proof in a civil malpractice trial is lower than the clear and convincing evidence standard of proof in a disciplinary proceeding, the conclusions reached by civil courts in a malpractice action against respondent are not dispositive of disciplinary charges. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[6]**

162.19 Other/general

Ordinarily in disciplinary proceedings culpability must be established by convincing proof and to a reasonable certainty. However, this standard does not apply where otherwise provided by law. Therefore in finding a violation of rule 1–300, proof beyond a reasonable doubt is constitutionally required because the applicable South Carolina statute regulating the profession makes the unauthorized practice of law a crime. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[8]**

At least in absence of admission by attorney, proving that an attorney borrowed money without intending to repay it is rarely capable of being proved with direct evidence. Circumstantial evidence is sufficient, however, if it is clear and convincing. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[1]**

Because attorney's act of borrowing money without intending to repay it involves dishonesty and moral turpitude as a matter of law, State Bar need only prove that attorney borrowed money without intending to repay it to establish that attorney violated statutory duty not to engage in acts of dishonesty or involving moral turpitude. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[4]**

Hearing judge's findings that attorney incurred credit card debts totaling $19,327 without intending to repay them and thereby committed acts of dishonesty and moral turpitude were supported by clear and convincing circumstantial evidence where, despite his meager and unpredictable income, and monthly living expenses in excess of $2,200, respondent continued to obtain cash advances totaling $32,054 on his four credit cards in the face of staggering gambling losses and lack of adequate liquid assets to repay his debts. Respondent could not have possibly have failed to perceive the hopelessness of repaying his mounting cash advances in the face of his gambling losses and lack of assets and current income. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[7]**

Where State Bar neither impeached nor rebutted attorney's testimony that he had not gambled for more than five years, where State Bar did not proffer any expert testimony that attorney suffered from compulsive gambling, and where there was no evidence that attorney currently suffered from compulsive gambling, record did not support hearing judge's recommendation that attorney be required to attend Gamblers Anonymous meetings while on disciplinary probation. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[12]**

Where hearing judge declined to order restitution but offered to reconsider if State Bar could show that misconduct victim had not already been compensated for funds taken by respondent, this ruling misallocated the burden of proof. Once State Bar met its burden to prove initial trust account violation, it was respondent's burden

to prove that restitution had in effect already been made by a third party. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[15]**

The testimony of a single witness who is entitled to full credit is sufficient for proof of any fact. Where hearing judge found complaining witness's version of events to be more credible, and such testimony, though at odds with respondent's, was consistent on material issues, review department found no basis to disturb hearing judge's factual findings. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[4]**

Culpability can be established in attorney disciplinary proceedings either by direct or circumstantial evidence, and circumstantial evidence has been considered on a regular basis in cases involving improper client solicitation by an attorney's agents. Culpability findings regarding charge of improper client solicitation were proper where, in addition to circumstantial evidence, there was inculpatory direct evidence in the record, and hearing judge properly evaluated and weighed witness testimony. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[10]**

On the issue of whether a respondent acted in good faith, the credibility determinations of the hearing judge deserve great weight. (Trans. Rules Proc. of State Bar, rule 453(a).) In addition, the State Bar Court must resolve all reasonable doubts about culpability in favor of the accused attorney and must choose the inference leading to innocence if equally reasonable inferences may be drawn from the facts. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[6]**

In a disciplinary proceeding, a culpability determination must not be debatable. Accordingly, where the applicable rule of professional conduct did not expressly require written consent to joint representation of clients with potentially conflicting interests, the issue for the court was whether the case law at the time of an attorney's alleged violation of the rule made it clear that such consent was required in civil litigation. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[7]**

Once a trust account balance has fallen below the appropriate amount, an inference of misappropriation may be drawn, and the burden shifts to the attorney to show that misappropriation did not occur. Where there were numerous instances over several years in which funds were depleted or nearly depleted from respondent's trust account; respondent delayed in making repayment until the client complained to the State Bar or was sued, and respondent's explanations lacked credibility, the evidence supported the conclusion that respondent's repeated acts of misappropriation were due to dishonesty rather than negligence. The distinction between negligent and dishonest misappropriation can be very significant in determining appropriate discipline. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[11]**

An attorney is responsible for the reasonable supervision of the attorney's staff. Where a client repeatedly demanded her file from respondent's office over a six-month period, this was sufficient to establish respondent's lack of reasonable supervision. Respondent's ignorance of the client's demands and lack of prior notice of his staff's failure to inform him of client communications did not absolve respondent from culpability absent additional evidence demonstrating his reasonable supervision of his staff. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[2]**

Where both respondent's admission in discovery and client's testimony supported finding that respondent accepted responsibility for proceeding with lawsuit on client's behalf, and there was no evidence that contradicted or undercut respondent's admission, no additional corroboration was necessary to find that respondent agreed to prosecute case, and respondent could therefore be found culpable of misconduct based on failure to perform legal services requested by client. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[1]**

Where record established that respondent agreed to handle litigation and thereafter abandoned case; former and current Rules of Professional Conduct were virtually identical regarding duties imposed on an attorney who wishes to withdraw from employment; both rules were charged in notice to show cause, and violation clearly occurred during period when either one rule or the other was in effect, review department found respondent culpable of improper withdrawal despite lack of evidence regarding exactly when relevant events occurred. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[2]**

Where respondent's knowledge of welfare fraud perpetrated by his wife was conclusively established by his guilty plea to a crime of which fraud was an essential element, the State Bar did not need affirmative evidence beyond the conviction itself to prove respondent's participation in the fraud. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[3]**

Documents must be authenticated before they can be introduced into evidence. Authentication means establishing by evidence or other means that the document is the writing which its proponent claims it is. By admitting a document into evidence, hearing judge initially concluded that there was sufficient evidence that it was what it was claimed to be. By allowing the document to be admitted as an authenticated exhibit and not offering affirmative evidence of fabrication, examiner provided court with no basis to find that document was in fact fabricated. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[15]**

Where respondent, who had been previously suspended from practice, described his legal career to a prospective employer in such a way as to indicate that respondent's practice of law had been uninterrupted, it was sufficient to establish culpability of misrepresentation to show that respondent knowingly presented a statement which itself tended to mislead. It was not material that the employer did not rely on the application or was not in fact deceived. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[6]**

When an attorney withdraws from employment or the client terminates the attorney's employment, the attorney must promptly refund any unearned part of an advance fee. However, where respondent faced competing demands regarding the funds used to pay an advance fee, from a client and from a third party to whom respondent owed a fiduciary duty, respondent had a duty to retain the funds in trust until the client's entitlement to the funds was established, and therefore did not commit misconduct by declining to refund the advance fee. Respondent's motives for retaining the funds in trust were irrelevant because the issue turned on a question of law, not motivation. The State Bar had the burden of proving that the client was entitled to receive the funds. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[9]**

A respondent's default results in the admission of the facts alleged in the charging allegations of the notice to show cause, and no further proof is required to establish the truth of those charges. (Trans. Rules Proc. of State Bar, rules 552.1(e), 555(e).) *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[2]**

Where hearing referee failed to determine whether respondent's default was properly entered, review department was required to do so, and for that purpose it took judicial notice of respondent's membership records address under Evidence Code section 459; evidence of membership records address is essential in a default case to assess the propriety of the default procedures. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[3]**

An attorney's license to practice law creates a continuing presumption, in the absence of proof to the contrary, that the attorney is not only morally fit but also mentally competent to practice law. This presumption underlies the rule in disciplinary proceedings that all reasonable doubts are to be resolved in favor of respondents and that, if equally reasonable inferences may be drawn from a fact, the inference to be accepted is the one leading to a conclusion of innocence. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[13]**

Where attorney represented to State Bar Court that no disciplinary investigations against him were pending, examiner's failure to rebut this contention, as permitted by rule 573, Trans. Rules Proc. of State Bar, warranted inference that State Bar did not dispute attorney's representation. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[16]**

In a default matter, the well-pleaded allegations in the notice to show cause must be deemed admitted even if the State Bar did not so request. (Rules Proc. of State Bar, rule 552.1(d)(iii).) *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[18]**

Where examiner stipulated to admissibility of character reference letters at hearing, and thus chose not to require the declarants to be cross-examined, examiner's attempt to discount letters before review department was without foundation. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[21]**

Where entry of attorney's default for failure to appear at disciplinary hearing resulted in the admission of all allegations in the notice to show cause, but certain of those allegations were in conflict with evidence adduced

at hearing, examiner properly requested reconsideration of hearing decision to delete findings contrary to evidence adduced at hearing, and hearing referee properly deleted such findings from the decision, based on their conflict with the evidence. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[1]**

162.20 Respondent's burden in disciplinary matters

Where respondent's therapist chose not to testify, in order to preserve confidential nature of therapeutic relationship, and respondent did not subpoena the therapist and did not identify any other evidence he was prevented from introducing, Review Department rejected respondent's argument that he was prevented from presenting evidence regarding his abstention from alcohol. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402 **[1]**

The opinion of another attorney is not a defense to a violation of the rules or statutes governing attorney ethics. Where respondent claimed to have followed the advice of ethics counsel regarding permissible conduct during his suspension, but in fact continued to use his designation as an attorney in advertisements and on his website and stationery, totality of evidence left no doubt that respondent engaged in the unauthorized practice of law while suspended. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[3]**

An attorney has a duty to present all favorable evidence at his disciplinary trial. Where an attorney did not call witnesses from his bank or provide other documentary evidence to prove dishonored checks he wrote were actually paid, his claim that the checks were ultimately honored was properly rejected. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[2]**

Where respondent claims that others should have presented evidence to exculpate him, it was respondent's burden to undertake the defense of the charges against him. *In the Matter of Fahy* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141 **[1]**

Where respondent failed to corroborate or substantiate his testimony with evidence that one would have expectedly produced, respondent's unexplained failure to produce such evidence is a strong indication that respondent's testimony is not credible. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[7]**

After the hearing judge gave respondent the express opportunity to present his evidence, respondent's unpersuasive reasons for failing to do so could not be the basis of any claim of error on review. *In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615. **[2]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Even if an attorney of record did not have actual knowledge of a trial setting, if a notice of trial setting was properly served on him, his failure to appear at trial will not be excused for State Bar disciplinary purposes unless he establishes that he had office procedures in place that, at a minimum, required his staff (1) to promptly inform him each time a notice of court or administrative trial or hearing is delivered to office, (2) to promptly record date of the trial or hearing in attorney's court calendaring system and in client's file, and (3) to promptly give client actual notice of date, time, and location of the trial or hearing. Respondent did not have any such proper office procedures in place. Thus, where record established that a notice of a hearing was properly served on him in an immigration court case in which he was attorney of record for the alien, respondent's failures to inform client of hearing, to

prepare himself for the hearing, and to counsel and prepare client for the hearing could not be excused even if respondent did not learn of the hearing until the day of the hearing.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[23 a-d]**

Principle that, in the normal course of operation of a law office, an attorney should not be at risk of discipline for failure to have knowledge of every item of information that comes in his office is based on presumptions that the attorney has adequate office procedures in place for the proper operation of his office, trains his staff on those procedures; employs safeguards to insure that procedures are followed, and supervises staff to insure they perform their jobs.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[24]**

There is no authority for the proposition that the strong presumption of validity accorded to civil findings in a disciplinary proceeding shifts the burden of proof in the disciplinary proceeding to the respondent attorney to rebut the presumption. As in any discipline case, the State Bar bears the burden of proving culpability by clear and convincing evidence.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[2]**

Where respondent failed (1) to establish through expert testimony that his depression, his physical maladies, and his financial difficulties were directly responsible for his misconduct and (2) to establish through clear and convincing evidence that he no longer suffered from the difficulties and disabilities or even that he could take, and was taking, steps to overcome them, the difficulties and disabilities were not treated as mitigating circumstances.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[4]**

Financial difficulties may be considered in mitigation if they are extreme and result from circumstances that are not reasonably foreseeable or that are beyond the attorney's control. Respondent bears the burden of establishing mitigating circumstances by clear and convincing evidence. Respondent failed to present a complete picture of his financial condition and therefore failed to establish that any financial problems he was facing were extreme or beyond his control. Further, the little evidence that was presented indicated that respondent's income was limited at the time he entered into the stipulation to facts and disposition in the underlying disciplinary case. Thus, respondent also failed to establish that any financial problems he experienced were not reasonably foreseeable. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.**[6]**

Intent to repay debt requires some factual underpinning that would lead person to a degree of certainty that he or she would have ability to repay. Mere hope and unrealistic or speculative sources of income are insufficient. This is particularly true where respondent obtained large cash advances on the same day he was repaying gambling debts in the form of casino markers. And it is particularly true where respondent did not proffer any documentary evidence to support his claims that he was an experienced and successful or winning blackjack player. Moreover, in light of the fact that respondent never kept any records of his gambling winnings and losses, any hope of repaying any portion of his credit card debts with gambling winnings was unreasonable. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[6]**

Rule of Procedure requiring hearing judges to file decisions within 90 days after taking cases under submission is neither mandatory nor jurisdictional. Thus, respondent's contention that the hearing judge's decision was void because it was filed four days after the expiration of the ninety-day time limit was rejected. Furthermore, because respondent failed to establish that he suffered any actual harm or prejudice, he was not entitled to any relief for the hearing judge's failure to file his decision timely. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[8]**

The good faith of an attorney in making a false statement is a defense to the charge of violating Business and Professions Code section 6068, subdivision (d). As a defense, respondent had the burden of proving that he acted in good faith and he failed to meet that burden. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166.**[2]**

The hearing judge erred when he held that the record lacked clear and convincing evidence that respondent filed a frivolous appeal. The general rule is that civil findings are not, by themselves, dispositive of the issues in a disciplinary case. Often the issues in the civil case may be either broader or narrower than the operative issues in a disciplinary proceeding. However, civil findings made under a preponderance of the evidence standard are entitled to a strong presumption of validity in the State Bar Court if supported by substantial evidence. In order to hold that an appeal is frivolous, the law requires an extremely high showing, so that zealous but good faith appeals

having any merit are neither deterred nor sanctioned. Accordingly, the court of appeal's decision finding that respondent's appeal of a case was frivolous and pursued in bad faith was, at the very least, a prima facie determination of such. Respondent failed to adduce evidence that overcame that determination. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[1 a-d]**

It is not evident whether defense of selective prosecution is applicable in State Bar disciplinary proceedings. Even if such defense were available, respondent would have been required to show an intentional violation of essential principle of practical uniformity and an element of intentional or purposeful discrimination. That is respondent would have been required to demonstrate that she had been deliberately singled out for prosecution on basis of some invidious criterion. There is no evidence in record on any of these issues. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[14 a-c]**

The State Bar proved that respondent used over $500,000 of his client's assets for speculative ventures in which he had a financial or ownership interest without any disclosures of the investments or his interests to the client and without providing any periodic accountings to her. In view of the evidence presented, to defend the charges, it was incumbent on respondent to present adequate, contemporaneous records showing that he had complied with the ethical and fiduciary duties of an attorney. He failed to do so. The lack of minimal formality and recordkeeping by respondent supports the hearing judge's findings and conclusions and erodes respondent's defense. *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824. **[1]**

In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held and reasonable. Respondent's beliefs regarding his interpretation of the Supreme Court order were honestly held but were unreasonable and, therefore, were not a mitigating circumstance. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[5]**

Rehabilitation from alcoholism or drug addiction is a mitigating circumstance only if the substance abuse caused the attorney's misconduct. Where respondent failed to present clear and convincing evidence of a causal nexus between her substance abuse and her misconduct, the review department denied her request for a remand to the hearing department to provide evidence of her continued sobriety, and did not consider her steps toward recovery a mitigating circumstance. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[1]**

Where respondent's client's settlement had always been treated by civil court and by counsel in civil proceeding as having certain value, respondent's argument in disciplinary proceeding that settlement had different value for purpose of applying statutory contingent fee limits was without merit. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[10]**

It is not clear that selective prosecution may be raised as defense in State Bar disciplinary proceedings. Even if such defense were available, it cannot be premised on asserted discrimination due to notoriety rather than on constitutionally prohibited basis such as race, gender, or exercise of constitutional rights. In absence of allegation of prohibited basis for prosecution, State Bar's failure to prove all charges was not sufficient to show invidiously discriminatory prosecution. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[16]**

Where client gave written authorization to respondent to apply portion of client's net settlement proceeds to outstanding legal fees client owed respondent on prior case, respondent was not required to prove existence of prior case to establish entitlement to funds applied to fees. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[3]**

Hearing judges are accorded wide latitude to receive all relevant evidence, and relief from their decisions will not be granted on the basis of alleged error in admitting evidence unless actual prejudice is established. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[5]**

A loan from a client, like all attorney-client business transactions, is scrutinized for unfairness, and when such transactions are called into question, attorney has burden to prove that they were fair and reasonable to client. Where client's loan to attorney was unsecured in situation where security would ordinarily be considered essential, and where no periodic payments were provided for despite client's financial circumstances, such facts were evidence that terms and conditions of loan transaction were unfair to client. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[9]**

Where respondent moved to augment record on review to include documentary evidence regarding respondent's pro bono activities, but respondent did not establish good cause why such evidence could not have been presented to hearing department, review department declined to consider such evidence. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[15]**

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

Attorney disciplinary proceedings are not decided on principles of contract law, but where, due to vagueness of terms of purported agreement allowing attorney to use client's funds, contract law principles would not permit court to find any binding contract, such purported agreement could not provide defense to charges of professional misconduct. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[2]**

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

Even if selective prosecution were a valid defense in State Bar proceedings, claim that respondent was singled out for prosecution based on success and fame could not succeed in absence of authority that claims of selective prosecution may be premised on asserted discrimination due to notoriety rather than on a constitutionally prohibited basis such as race, sex, or exercise of constitutional rights. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[9]**

It is not clear that selective prosecution may be raised as defense in State Bar disciplinary proceedings, in which respondents do not enjoy full panoply of procedural protection afforded to criminal defendants. If such defense were available, burden of proof to establish selective prosecution would be on respondent. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[10]**

Pursuant to case law, selective prosecution claims should be raised by motion prior to trial, and as a practical matter, such claims have little chance of success if not raised initially by pretrial motion, due to difficulty of proving them without aid of discovery. However, it is not clear that such claims cannot be raised as part of respondent's defense case at trial; accordingly, review department considered such claim despite respondent's failure to raise it by pretrial motion. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[11]**

Even if claim of selective prosecution could be founded on alleged discrimination on basis of success and fame, there was insufficient evidence to support such claim, where principal factual basis was that many charges were dismissed or were assertedly without merit. A prosecutor's failure to prove all charges brought in a case has not been held to be sufficient to show invidiously discriminatory prosecution. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[12]**

State Bar Court is reluctant to interfere with reasonable exercise of prosecutorial discretion. When presented with a complaint, State Bar can legitimately charge attorney based on facts as they appear from investigation. Where large number of counts filed against respondent resulted primarily from size and volume of respondent's practice and his chronic problem with handling medical liens, fact that State Bar could not establish factual or legal basis for some counts and charges was not sufficient to establish that charges were brought without reasonable basis or that respondent was victim of prosecutorial misconduct. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[13]**

Where hearing judge declined to order restitution but offered to reconsider if State Bar could show that misconduct victim had not already been compensated for funds taken by respondent, this ruling misallocated the burden of proof. Once State Bar met its burden to prove initial trust account violation, it was respondent's burden to prove that restitution had in effect already been made by a third party. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[15]**

Business transactions between clients and their attorneys are closely scrutinized. The burden is on the attorney to demonstrate that the dealings are fair and reasonable. Where respondent loaned a large sum to one client so that the client could repay a debt to another client, respondent owed a fiduciary duty to both clients and was obligated to explain his role in the transaction and the impact it could have on his continued representation of their interests. Where one client, notwithstanding his written consent, did not understand the full implications of the transaction, and the other client did not consent in writing, respondent violated the rule governing business transactions with clients. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[2]**

Respondent's favorable character showing, while attested to by many references, did not amount to a showing of extraordinary demonstration of good character, where not all witnesses were familiar with the magnitude and nature of respondent's crimes, and where respondent's repeated contention that he did not act to defraud his victim served to undercut his favorable character showing in light of the conclusive effect of his convictions for grand theft and forgery. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[7]**

Respondent must establish mitigating circumstances by clear and convincing evidence. Where respondent requested review department to make supplementary findings pertaining to mitigating circumstances, but did not present clear and convincing evidence in support of such proposed findings, review department declined to adopt them. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[5]**

Where respondent's declaration attached to stipulation suggested mitigating circumstances, but stipulation did not specify whether State Bar accepted statements in declaration as true and hearing judge did not indicate whether statements were found to be persuasive, review department declined to reach conclusion regarding possible mitigating factors suggested by declaration. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[8]**

State Bar prosecutors have statutory authority to apply to superior court to grant immunity from criminal prosecution to a witness in an attorney disciplinary proceeding. Where such procedures were properly invoked, and respondents showed no prejudice to themselves on account of the procedures followed in seeking such immunity, respondents were not entitled to relief based on asserted error in such procedures. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[6]**

Once a trust account balance has fallen below the appropriate amount, an inference of misappropriation may be drawn, and the burden shifts to the attorney to show that misappropriation did not occur. Where there were numerous instances over several years in which funds were depleted or nearly depleted from respondent's trust account; respondent delayed in making repayment until the client complained to the State Bar or was sued, and respondent's explanations lacked credibility, the evidence supported the conclusion that respondent's repeated acts of misappropriation were due to dishonesty rather than negligence. The distinction between negligent and dishonest misappropriation can be very significant in determining appropriate discipline. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[11]**

An attorney is responsible for the reasonable supervision of the attorney's staff. Where a client repeatedly demanded her file from respondent's office over a six-month period, this was sufficient to establish respondent's lack of reasonable supervision. Respondent's ignorance of the client's demands and lack of prior notice of his staff's failure to inform him of client communications did not absolve respondent from culpability absent additional evidence demonstrating his reasonable supervision of his staff. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[2]**

Where respondent received two letters from client's new counsel after respondent claimed to be confused as to whether client was discharging him, respondent's confusion did not excuse his delay in contacting successor counsel and forwarding client's file. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[3]**

Respondent's bitterness and disaffection over his prior disciplinary suspension might explain some misconduct toward his clients thereafter, but it could not excuse his misconduct, especially since the suspension and its terms were designed to seek respondent's rehabilitation. Also, respondent's evidence of rehabilitation was depreciated by his inability to comply with his probation conditions, which was relatively recent and occurred after respondent had time to become familiar with his responsibilities. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[21]**

A motion supported by written submissions, including a detailed psychiatric report, could, if unopposed, be sufficient evidence to warrant abating a disciplinary proceeding due to the respondent's inability to assist in the defense. However, where the adequacy of the respondent's showing is questioned, the respondent's evidence may be weighed in the context of the whole record in the disciplinary proceeding. Any proffered medical submission regarding the respondent's mental competency should address the nature of the medical examination or tests conducted; the attorney's symptoms; the diagnosis and cause of the condition, and any past or proposed treatment. The report should note whether the illness raises doubts about the respondent's ability to assist in the

defense, and should relate the respondent's condition to a recognized legal definition of competency. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[9]**

Medical evidence regarding an attorney's competency to assist in the defense of a disciplinary proceeding should be submitted to the State Bar Court at the hearing level. The reliability of evidence concerning a person's mental state is virtually impossible to test in the absence of cross-examination. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[10]**

A showing of specific prejudice is required to invalidate a hearing judge's decision based on procedural errors. Where respondent did not allege and/or demonstrate that he suffered any specific prejudice as a result of numerous alleged procedural errors, he was not entitled to relief. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[3]**

No delay in bringing disciplinary charges occurred where complaint against respondent was sent to State Bar in July 1988, respondent's last act of misconduct was in June 1989, and notice to show cause was filed in May 1990. In addition, where none of evidence allegedly lost due to delay was material to issue of respondent's misconduct, no specific prejudice was demonstrated from alleged delay in bringing charges. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[4]**

Where discovery period was extended, giving respondent ample time to conduct discovery, and where respondent engaged in discovery, did not seek additional time for further discovery, and did not move to compel further responses or to compel attendance of witnesses at depositions, respondent's contentions that errors occurred during discovery lacked merit. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[5]**

State Bar's pretrial dismissal of three out of four original counts in notice to show cause did not entitle respondent to any relief, where respondent did not demonstrate how such dismissal caused specific prejudice. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[6]**

Hearing judge's refusal to permit respondent to present evidence that value of one estate asset increased during respondent's delay in completing probate did not entitle respondent to relief, where such increase in value did not justify respondent's misconduct in delaying distribution of other estate assets. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[7]**

Hearing judge's denial of respondent's request for continuance to research probate practices in respondent's county was not error, where respondent had had ample time prior to trial to prepare his defense, and evidence sought would have had very little probative value as custom and practice in respondent's county would not explain or excuse respondent's prolonged delay in closing estate at issue. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[8]**

Compliance with the time limitations set forth in the Probate Code is not a defense to a charge that the attorney failed to act competently, nor does noncompliance with such time limitations establish per se a failure to act competently. The focus of the inquiry on a charge of failure to act competently is whether the attorney intentionally, recklessly, or repeatedly failed to apply the learning, skill, and diligence necessary to discharge the duties arising from the attorney's employment or representation. Compliance with the time limitations of the Probate Code is but one factor to be considered in making this determination. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[11]**

A respondent has the burden of proving mitigation by clear and convincing evidence. While respondent's honest belief in his innocence was not an aggravating factor, it precluded finding by clear and convincing evidence that respondent's recognition of his wrongdoing was a mitigating factor. Recognition of wrongdoing does not require false penitence, but it does require acceptance of culpability. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[19]**

Excessive delay in the conduct of a disciplinary proceeding may be a mitigating circumstance, but the attorney must demonstrate that the delay impeded the preparation or presentation of an effective defense. A delay in a disciplinary proceeding merits consideration only if it has caused specific, legally cognizable prejudice. Where respondent was able to present evidence on all issues as to which respondent claimed prejudicial delay, and did

not specify what missing evidence would have shown, respondent failed to show that delay caused specific prejudice. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[21]**

Respondent's contention that he detrimentally relied on advice from his probation monitor and counsel regarding compliance with rule 955 might have been persuasive as mitigation if respondent had raised it at the hearing level and produced supporting evidence. However, where record did not support and even contradicted such contention, review department rejected respondent's attempt to argue it as mitigation. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[3]**

Where respondent, who had pleaded guilty to welfare fraud based on eligibility statements signed by him but filled out by his wife, attempted to establish in mitigation that he did not know of his wife's fraudulent conduct, it was respondent's burden to prove such mitigation, and review department gave great weight to hearing judge's contrary finding based on evaluation of credibility of respondent and his wife. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[2]**

Medical emergency might have excused respondent's failure to attend pre-trial conference, but did not excuse respondent's failure to file pre-trial statement which would have better preserved respondent's posture at trial. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[2]**

While disciplinary hearings can be stressful for accused attorneys to attend, Supreme Court has made clear that accused attorneys must avail themselves of opportunity to participate and present all favorable evidence. Failing that opportunity, the accused may not demand a new hearing to present evidence belatedly. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[6]**

A respondent seeking review by the review department of a hearing department decision does not have the burden of showing that the hearing judge's findings are not supported by substantial evidence. That is a statutory burden applicable only to a respondent appearing before the Supreme Court. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[3]**

When an attorney-client business transaction is involved, the attorney bears the burden of showing that the dealings between the parties were fair and reasonable and were fully known and understood by the client. Attorneys are subject to discipline for inducing clients to invest in business enterprises without fully apprising them of the risks. Where respondent admitted entering into a business transaction with a client and failed to show full disclosure to the client regarding the risks involved in the transaction, a violation of the rule was established. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[3]**

Where a fire which destroyed some of respondent's files did not occur until over a year after respondent had promised the State Bar to check his files in response to a client complaint, respondent demonstrated no prejudice from the State Bar's delay in bringing formal charges arising out of the complaint. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[1]**

Under Supreme Court precedent and the State Bar Rules of Procedure, before entering into a stipulation resolving a disciplinary matter, the State Bar should notify the respondent of any other pending investigations or complaints. However, where respondent had been notified of a second complaint before respondent entered into a stipulation to a public reproval in an earlier, separate matter, respondent demonstrated no prejudice from the failure of the earlier stipulation to refer to the pendency of the second complaint. (Rules Proc. of State Bar, rule 406.) *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[2]**

The standard of review applied by the Supreme Court and the review department is independent review of the record, giving deference to the credibility determinations of the hearing judge. Unlike in the Supreme Court, in the review department the respondent does not have the burden of demonstrating that the hearing decision is erroneous. The review department makes its own independent determination whether there is clear and convincing evidence to support culpability, giving great weight to the hearing judge's findings resolving issues pertaining to testimony, but also taking into account the hearing judge's evaluation of the believed witness's general credibility. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[3]**

Although not constituting a factor in aggravation, respondent's trial tactics in not revealing exhibits to examiner in advance undermined respondent's credibility with hearing judge, created risk that exhibits would be

excluded, and unnecessarily prolonged hearing. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[25]**

Where, as justification for taking client trust funds, respondent asserted that his written fee agreements had been modified to provide for a large contingent fee in one matter and a large flat fee in another matter, but did not produce any documents to support this contention, and offered varying characterizations of the alleged change in the fee arrangements, and, in contrast, the client testified credibly that he had never consented to a change in the fee agreements and had never been billed for additional fees, respondent failed to establish entitlement to the claimed fees. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[2]**

Where the evidence concerning an attorney's authority to apply client trust funds to attorney's fees consisted largely of conflicting testimony, the hearing judge's finding that the attorney did not have the authority to use the funds, coupled with the documentary evidence supporting culpability, constituted clear and convincing evidence supporting the judge's conclusion that the attorney improperly used and misappropriated client trust funds. Because the attorney's trust account balance repeatedly dropped below the necessary amount over a period of many months, and the attorney did not have an adequate explanation for the inadequate trust account balance, the attorney's misconduct, though not involving intentional dishonesty, constituted gross negligence amounting to moral turpitude. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[2]**

In order to establish a denial of a fair trial because of delay between the making of a complaint to the State Bar and the filing of a formal notice to show cause, an attorney must show specific instances of actual prejudice from the delay. Where information in support of respondent's claim of prejudice was available and known to respondent at the time of respondent's motion to dismiss before the hearing judge, but was not set forth in support of the motion, respondent could not improve on review the record he had the opportunity to make in the hearing department. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[2]**

Although an attorney cannot be held responsible for every detail of office operations, the attorney violates the trust account rules if the attorney does not manage funds as required by the rules, regardless of the attorney's intent or the absence of injury to anyone. Violations resulting from serious and inexcusable lapses in office procedure may be deemed wilful despite the absence of deliberate wrongdoing. If an attorney's trust account balance drops below the necessary amount, an inference of misappropriation may be drawn. The burden then shifts to the attorney to show that office procedures were adequate. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[7]**

Where the stipulation of the parties did not preclude a conclusion that respondent's misappropriations were acts of moral turpitude, and given the number and similarity of the matters in which respondent admitted to misappropriating trust funds, the burden shifted to respondent to rebut the conclusion that moral turpitude was involved. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[4]**

Testimony concerning a psychological disorder related to respondent's misconduct constitutes at most mitigating evidence, and is not admissible during the culpability phase of the hearing unless the respondent asserts a defense of insanity or claims to be unable to assist in his or her own defense. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[14]**

Circumstances in mitigation and aggravation must be established by clear and convincing evidence. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[35]**

Where neither respondent nor respondent's former client testified as to respondent's hourly fee, but respondent had sent one bill to client reflecting an hourly rate of $100, and respondent apparently acquiesced in hearing judge's finding that respondent's fee was $100 per hour, review department adopted such finding. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[1]**

Where the testimony of the State Bar's witnesses was in conflict with that of respondent, and the referee resolved those conflicts against respondent, respondent could not show error in the findings merely by repeating his own version of the facts, and respondent's generalized challenge to the complainant's credibility was not sufficient to persuade the review department to reject the referee's findings. In the absence of a strong showing that the referee was mistaken, the review department is required to defer to the referee's determinations as to credibility, and it is reluctant to deviate from the referee's credibility-based findings in the absence of a specific

showing that they were in error. (Rule 453, Trans. Rules Proc. of State Bar.) *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[1]**

It is not clear that the doctrine of selective prosecution applies in State Bar disciplinary proceedings, in which respondents do not enjoy the full panoply of procedural protection afforded to criminal defendants. But even if it does, there are several threshold procedural and evidentiary hurdles to be overcome before a case of selective prosecution can be established, and where respondent did not even attempt to make the requisite showing, respondent's claim of selective prosecution was without merit. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[22]**

There is no statutory or case law definition for the type of showing necessary to support the setting aside of an interim suspension order of an attorney convicted of a felony or of a crime of moral turpitude. Generally, "good cause" is dependent on the particular facts of each case. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[1]**

One distinction between an interim suspension order and a final order of discipline is the type of record before the court. At the interim suspension stage, the court has the criminal conviction and a statutory mandate to order interim suspension absent a showing of good cause. The petitioner has the burden of showing good cause to set aside an order of interim suspension, and no evidentiary hearing has occurred to test alleged mitigating factors. Thus, contested facts cannot be relied upon as a basis for vacating the order of interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[4]**

Every attorney convicted of a felony or crime of moral turpitude can anticipate an order of interim suspension and attendant hardships, but hardship to the attorney's family does not outweigh the need to protect the public and maintain the integrity of the legal profession pending a full hearing on the merits. Where, due to delay in transmittal of conviction, attorney had had several months to make alternative employment arrangements, and attorney had given no details of his current income, recent earnings, or efforts to seek other employment, attorney's showing of hardship was insufficient in light of all factors to constitute good cause to vacate interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[9]**

Although the Supreme Court requires that lawyers' claims in mitigation based upon substance abuse show adequate evidence of a causal connection between the abuse and misconduct and a meaningful and sustained rehabilitative period, the Court does not require that the respondent's rehabilitation be complete to qualify as mitigation. Where respondent showed that his marijuana use and alcohol abuse led in part to his criminal activity, and that he had undertaken a program of steady progress toward rehabilitation, and had successfully dealt with his addiction and maintained sobriety, mitigation was properly found. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[8]**

To prevail on a claim of error by the hearing referee in denying respondent's motion for mistrial based on the assertedly prejudicial effect on the referee of the examiner's revelation during the hearing that the examiner had been hired as State Bar Court counsel, respondent was required to do more than hint at bias. Where respondent failed to show how any bias specifically prejudiced him, and record showed no error or bias, motion for mistrial was properly denied. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[2]**

Attorneys facing charges of professional misconduct must present to the hearing department all evidence favorable to themselves. A failure to do so may justify denial of a motion for rehearing to present additional evidence. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[4]**

Party requesting relief from default has burden of proving excusable neglect by a preponderance of the evidence. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[6]**

It is the policy of the law under section 473 of the Code of Civil Procedure to favor a hearing on the merits; any doubts in applying section 473 must be resolved in favor of the party seeking relief from default. A trial court order denying relief is scrutinized more carefully than an order permitting trial on the merits. Nonetheless, it is the moving party's responsibility to recite facts that meet the burden of proving mistake, inadvertence, surprise or excusable neglect. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[11]**

Where record showed that respondent cured defects in otherwise timely answer within six days of mailing of notice to do so by clerk's office, review department's duty of independent record review precluded it from ignoring those facts in determining just disposition of motion for relief from default, despite weakness of respondent's moving papers. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[12]**

Unless the respondent demonstrates that the respondent's defense was actually compromised, a slight variance in the evidence that relates to the noticed charge does not, in itself, deprive the respondent of adequate notice. This situation, however, is patently different from one in which ambiguity and lack of specificity in the notice to show cause make it unclear which aspect of the respondent's conduct over a number of years allegedly violated the rules and statutes cited in the notice. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[17]**

The scope of the respondent's defense is determined by the scope of the notice to show cause. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[20]**

Even if it were established that examiner had sent complaining witness's letter to hearing referee, respondent had waived any claim of prejudicial misconduct by his counsel's failure to preserve the objection at trial, and in any event no identifiable prejudice resulted from the referee's exposure to the letter's hearsay statements where the referee heard five days of testimony, including testimony on the same subject by the letter's author and by persons with personal knowledge. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[7]**

Where respondent failed to identify any specific prejudice resulting from delay of approximately three and one half years in filing of notice to show cause after client's initial complaint, and merely made generalized reference to fading memories, delay was not a basis for the dismissal of charges. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[8]**

A respondent's own testimony regarding the respondent's community service may be considered as some evidence in mitigation notwithstanding that it does not meet the requirement that good character be established by a wide range of references. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[16]**

Respondent's failure to substantiate with documentary evidence his claim that he had earned funds which he claimed were advanced legal fees was properly considered by hearing panel in determining that respondent was not credible on this issue, even though burden of proof was not respondent's. Giving great weight to hearing panel's credibility determination and resolution of conflicting facts against respondent, review department found no basis to reject panel's finding that funds were advanced costs which respondent misappropriated. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[5]**

It is the duty of any accused member of the bar to present at the evidentiary hearing in the disciplinary proceeding all evidence favorable to him or her. The respondent cannot necessarily rely on the State Bar examiner's position conceding an issue in the case. The review department's review of the record is independent and not limited by the examiner's position, and the Supreme Court, in turn, is not limited by the recommendation of the review department or that of the hearing department in assessing the record. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[4]**

162.30 Issues and burden of proof in section 6049.1 proceedings

The State Bar was not barred from relying on Michigan proceedings to impose discipline in California under the authority of Business and Professions Code section 6049.1 notwithstanding that, at the time of a prior California disciplinary case in which the State Bar and respondent entered into a stipulation disposing of the charges, the State Bar knew of disciplinary proceedings pending in Michigan but nevertheless advised respondent in writing pursuant to Rules of Procedure of the State Bar, rule 133(a)(12) that there were no additional State Bar investigations pending against him. The clear purpose of Rules of Procedure of the State Bar, rule 133(a)(12) is to require the State Bar to give notice to respondents before the State Bar Court or to attorneys being investigated by the State Bar of the pendency of other complaints lodged with the State Bar against such attorneys, and to expand that requirement to include complaints lodged in other jurisdictions would impose a far greater burden than that contemplated. At the time of the stipulation, both respondent and the State Bar knew of the Michigan proceedings,

yet the stipulation did not in any way deal with the California consequences of the Michigan matter, there was no evidence that the Michigan proceedings were included in discussions leading to the stipulation, respondent entered into the stipulation without inquiring about including the Michigan matter in the stipulation, and the State Bar had no way to evaluate the seriousness of the Michigan proceedings. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[1]**

Where respondent asserted for the first time at oral argument that Business and Professions Code section 6049.1 was being unconstitutionally applied because a Michigan disciplinary action required only a preponderance of the evidence for a finding of culpability and that California reliance on that lower standard deprived him of due process and equal protection of the law, respondent's failure to have raised the issue before the hearing department or in his briefs on review constituted a waiver of the issue. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[2]**

A certified copy of a final disciplinary order of the State of Michigan finding respondent culpable of misconduct conclusively established that respondent was culpable of professional misconduct in California. Such misconduct, which included misappropriation of client funds, failure to account, failure to respond to a client's reasonable inquiries, failure to pay to a client funds to which she was entitled, moral turpitude, failure to take necessary legal action to protect a client's interest, failure to respond to a client's inquiries concerning the status of her funds, and failure to respond to investigations, warranted discipline in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[3]**

In a proceeding under Business and Professions Code section 6049.1, once it had been conclusively established that respondent was culpable of professional misconduct in California, the remaining issue for consideration in California was the degree of discipline. Where the only evidence in the record consisted of the final record of discipline in Michigan, no portion of the underlying evidentiary record from the Michigan proceedings was placed in evidence, and the Michigan final record of discipline indicated that each of the findings of fact in Michigan was made under a preponderance of the evidence standard of proof, a purported showing of the facts and circumstances found in Michigan to surround the misconduct could not be weighed under the required California standard of clear and convincing evidence. Instead, the misconduct found in Michigan was weighed with only the aggravation and mitigation separately shown in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[4]**

Business and Professions Code section 6049.1 provides that, with exceptions not applicable here, the Illinois Supreme Court disciplinary order imposed on respondent conclusively established his culpability in California. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213. **[1]**

Respondent objects to giving conclusive weight to the Michigan proceedings, since they were adjudicated under a lower standard of proof than that required in California. Respondent's license revocation and judicial removal were judged under standards requiring only a preponderance of evidence to find him culpable of judicial misconduct. However, the Michigan Supreme Court considered the evidence of respondent's culpability overwhelming; and, in any event, the record of this proceeding contains ample evidence that was received in the Michigan proceedings to permit us to independently determine that sufficient evidence is present to clearly and convincingly establish respondent's culpability in California. Respondent's argument lacks merit. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[2]**

Attorney's out-of-state discipline was not entitled to preclusive effect under California statute providing for expedited disciplinary proceeding based on discipline in other jurisdictions where State Bar did not proceed pursuant to procedures set forth in such statute. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[9]**

162.90 Other/general

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

Even if respondent failed to appear at an immigration court hearing because he simply forgot to record the date of the hearing in his calendar, his failure to appear must be viewed in light of the record as a whole because, even if an attorney does not act intentionally or recklessly, he violates the rule of professional conduct regarding attorneys' duty to competently perform legal services if he repeatedly fails to competently perform. Respondent's failure to appear at the hearing could not be excused for disciplinary purposes because, under record as a whole, his failure to appear was not isolated, but one of many such failures.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[25]**

Collateral estoppel may be applied in the State Bar Court to deny an attorney the right to relitigate an issue that was litigated and resolved against him or her in a prior civil proceeding only if (1) the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, (2) the civil finding was made under the same burden of proof applicable to the same issue in the State Bar Court, (3) the attorney was a party to civil proceeding, (4) there is final judgment on the merits in the civil proceeding, (5) the attorney fails to demonstrate any unfairness in precluding the relitigation of the issue, and (6) the civil finding was necessary to the judgment in the civil proceeding. The requirement that the civil finding be necessary to the judgment in the civil proceeding is required by procedural fairness to insure that preclusive effect is not given to nonessential prior findings.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[2 a, b]**

Whenever the State Bar relies upon all or part of the record in prior civil proceeding to prove an element of a disciplinary violation or aggravating circumstance independent of the application of collateral estoppel, neither the evidence nor any factual findings in the civil proceeding may be judicially noticed as conclusive or otherwise given preclusive effect in the State Bar Court, but must be independently assessed under the clear and convincing standard of proof. In addition, the attorney must be given a fair opportunity to contradict, temper, or explain the evidence and findings in the civil proceeding with other evidence, including the live testimony of the same witnesses who testified in the civil proceeding. The attorney need not be given free reign to completely retry the civil suit in the State Bar Court. The hearing judge retains the sound discretion to restrict or excluded cumulative evidence and otherwise control the introduction of evidence as in any other case.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[4 a, b]**

Independent of the application collateral estoppel, admissions made by an attorney in a prior civil proceeding are not conclusive and cannot be given preclusive effect in the State Bar Court even if they are admissible in the State Bar Court as party admissions. Such admissions must be independently assessed under the clear and convincing standard of proof.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[5]**

In its answers to the special findings in a prior civil proceeding against respondent, the jury found that respondent was liable to the plaintiff on the plaintiff's claims for, among other things, breach of fiduciary duty and fraud. In a separate special finding on the issues of malice, oppression, and fraud, the jury found by clear and convincing evidence that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of liability for either breach of fiduciary duty or fraud." The use of the disjunctive conjunction "or" in the phrase "malice, oppression or fraud," precluded the review department from determining whether the jury found that respondent was guilty of malice, oppression, fraud, or some combination thereof. And the use of the disjunctive correlative conjunction "either . . . or" in the phrase "finding of liability for either breach of fiduciary duty or fraud" precluded the Review Department from determining whether the jury found that respondent was guilty of "malice, oppression or fraud" when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both. Nonetheless, regardless of whether the jury based its answer against respondent on the malice, oppression, and fraud special finding on a finding that respondent was guilty of malice, oppression, fraud, or some combination thereof when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both, the jury's answer against him on the malice, oppression, and fraud special finding established, under collateral estoppel principles, that he committed acts involving moral turpitude in violation of statute proscribing acts of moral turpitude, but did not establish the nature and extent of those acts. An attorney who breaches a fiduciary duty (whether to a client or non-client) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law. Similarly, an attorney who commits an act of fraud (whether in the capacity as of an attorney or not) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[6 a-f]**

The requisite elements of a violation of the first subdivision of the former rule of professional conduct governing business transactions with clients (i.e., subdivision (A) of former rule 3-300) were that the transaction was unfair to the client or that the terms of the transaction were not disclosed and transmitted to the client in writing in a manner that the client should have been able to understand. The requisite elements of a violation of the second subdivision of that former rule (i.e., subdivision B of former rule 3-300) were that the client was not advised, in writing, of the right to seek advice from an independent attorney of the client's choice or that the client was not given a reasonable opportunity to exercise that right. None of these elements are addressed in the special finding under which the jury in a prior civil proceeding in which respondent was a party found, by clear and convincing evidence, that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of [respondent's] liability for either breach of fiduciary duty or fraud." Thus, collateral estoppel does not establish that respondent violated the former rule governing business transactions with clients.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[8]**

Principles of collateral estoppel may be applied to preclude a respondent from relitigating an issue that was actually litigated and resolved against him in a prior civil proceeding. In State Bar Court proceedings, principles of collateral estoppel may be applied with respect to an adverse prior civil finding if (1) the issue resulting in the civil finding is substantially identical to that in the State Bar Court proceeding, (2) the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, (3) the respondent was a party to the civil proceeding, (4) there is a final judgment on the merits in the civil proceeding, and (5) the respondent does not establish that it would be unfair to bind him to the prior adverse civil finding.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[1]**

Where the only evidence presented in the hearing department to support the contention that it would be unfair to prohibit relitigation of harassment and emotional distress claims was respondent's own testimony without corroborating evidence, respondent's reiteration of his testimony on review does not provide a basis to disturb the hearing judge's rejection of respondent 's testimony. The review department gives great weight to hearing judges' factual findings resolving issues pertaining to credibility of witnesses.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[2 a, b, c]**

Introducing into evidence the pleadings and exhibits from a civil matter without also introducing the trial transcript from the civil proceeding provides little evidence as to the nature and extent of respondent's conduct underlying the adverse civil findings of harassment and intentional infliction of emotional distress on a client or the resulting harm to the client. Such evidence may have had a material effect on the measure of the appropriate level of discipline.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[3]**

The hearing judge erred when he held that the record lacked clear and convincing evidence that respondent filed a frivolous appeal. The general rule is that civil findings are not, by themselves, dispositive of the issues in a disciplinary case. Often the issues in the civil case may be either broader or narrower than the operative issues in a disciplinary proceeding. However, civil findings made under a preponderance of the evidence standard are entitled to a strong presumption of validity in the State Bar Court if supported by substantial evidence. In order to hold that an appeal is frivolous, the law requires an extremely high showing, so that zealous but good faith appeals having any merit are neither deterred nor sanctioned. Accordingly, the court of appeal's decision finding that respondent's appeal of a case was frivolous and pursued in bad faith was, at the very least, a prima facie determination of such. Respondent failed to adduce evidence that overcame that determination. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[1 a-d]**

The hearing judge's appropriate role is to decide the issues on the evidence presented. If that process leads the hearing judge to conclude that the party bearing the burden of proof had not prevailed, then the judge's duty is to find against the particular party on that issue or to recommend that only that degree of discipline, if any, which is warranted by the evidence presented. The party failing in its burden runs the very risk that the judge will so act. Absent extraordinary circumstances, a hearing judge is not authorized to require the production of added evidence beyond which the parties have chosen to present. If parties or witnesses testify, the hearing judge is at liberty to ask questions of a type consistent with the judicial function of supervising or regulating the trial. Moreover, allegations against other attorneys can be referred to the State Bar for new investigation. *In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.**[2]**

In a conviction referral proceeding involving respondent's misdemeanor conviction of being an accessory after the fact in connection with the submission of false information to a federally insured bank for the purpose of inducing it to loan money to respondent for the purchase of a farm (18 U.S.C. §1014), respondent's contention that, at the time she obtained the loan, she fully expected the farm to succeed and to repay the loan in full might avoid a finding in aggravation, but did not entitle her to any mitigating credit. Respondent was not entitled to any credit for merely intending to do that which she contracted to do. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[4]**

A hearing judge properly applied collateral estoppel and denied respondent the right to relitigate the issue of dishonest billing in a disciplinary proceeding where respondent had fully litigated the issue in a superior court action; where the jury in the prior action had determined by clear and convincing evidence that respondent had acted with oppression, fraud, and malice; and where no unfairness resulted from precluding the relitigation of the issue. *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. **[1]**

The review department rejected the argument that substantial compliance with a probation condition was a defense to culpability. Disciplinary probation serves the critical function of protecting the public and rehabilitating the attorney. The importance of these goals makes distinctions between substantial and insubstantial or technical violations of probation inappropriate. However, for purposes of discipline, not every probation violation should be treated the same. Belated compliance with a probation condition may be considered as a mitigating factor in determining discipline. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[2]**

Neither the Supreme Court nor the State Bar Court is bound by civil findings that exculpate a respondent of charged misconduct, or by an attorney's acquittal in a criminal case, or by the dismissal of criminal charges against an attorney. The reasons the State Bar is not bound by exculpatory civil findings or criminal acquittals in disciplinary proceedings are that the parties are different, the quantum of proof required in each proceeding is virtually always different, and the purposes of each proceeding are vastly different. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[10]**

Neither the Supreme Court nor the State Bar Court will bind an applicant or a respondent to an adverse civil finding made upon the usual civil standard of proof of a preponderance of the evidence when the standard of proof in the State Bar proceeding is clear and convincing evidence. When civil findings are made under a preponderance of the evidence standard, they must be independently assessed under the more stringent standard of proof applicable to disciplinary proceedings of clear and convincing evidence. It is only in this context that civil findings have no disciplinary significance apart from the underlying facts. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[11]**

Clients may not waive statutory limit on contingent fees in medical negligence cases, and superior court award of such fees in excess of statutory limits is erroneous. Where attorney did not reveal material issue of potential applicability of such statutory fee limit to superior court in connection with approval of settlement and award of fees, such award did not constitute res judicata, because attorney and client were not adversaries in proceeding. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[9]**

Disbelief of a respondent's testimony does not create evidence to the contrary. Where respondent allegedly misrepresented to insurer that respondent's personal bank account was a client trust account, but only evidence to rebut respondent's testimony to contrary was notation in insurer's records, presence of such notation was not sufficient to establish that it resulted from misrepresentation by respondent, even where hearing judge found respondent not credible. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[2]**

The State Bar Court may take judicial notice of the records of any California court. (See Evid. Code, § 452, subd. (d)(1); Trans. Rules Proc. of State Bar, rule 556.) Such notice may include the facts stated in court orders, findings of fact, conclusions of law, and judgments. Although civil findings bear a strong presumption of validity if supported by substantial evidence, they must be assessed independently under the more stringent standard of proof applicable to disciplinary proceedings. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[4]**

Summary disbarment is statutorily authorized where an attorney is convicted of a felony and (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim.

The crime of forgery includes as one of its elements the specific intent to defraud. A forgery conviction for altering a court document was unquestionably committed in the course of the practice of law in that it involved fraud on the court perpetrated on behalf of the attorney's client. Accordingly, summary disbarment was appropriate in the absence of conflicting Supreme Court precedent or a violation of due process in disbarring respondent without a hearing. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[2]**

The question of the proper degree of discipline in a conviction referral matter may rest on a wide scope of evidence not directly connected with the crimes themselves. Evidence that respondent's real estate license had been revoked over a year before his crimes was improperly excluded from rebuttal evidence. Such evidence was not an essential element of the State Bar's case in chief, and could properly be reserved to rebut respondent's contention that his crimes were aberrational. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[9]**

Summary disbarment is statutorily authorized if an attorney commits a California or federal felony as to which: (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement; and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. If the State Bar Court determines that disbarment would be ordered by the Supreme Court without regard to mitigating circumstances, a recommendation of summary disbarment is justified. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[2]**

Interim suspension is imposed on an attorney who commits a crime of moral turpitude or a felony, unless an exception is appropriate in the interest of justice, with due regard to maintaining the integrity of, and confidence in, the legal profession. Whether interim suspension is warranted prior to a hearing on the merits of a felony conviction depends, among other things, on the nature of the crime, its relationship to the practice of law, the undisputed surrounding factual circumstances, and the likely range of final discipline. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[5]**

A determination whether a disciplinary proceeding should be abated on the ground of inability of the respondent to assist in the defense resembles a competency hearing in a criminal matter. In the law of attorney discipline, the respondent is presumed competent. Inability to assist in the defense of a disciplinary proceeding suggests a more serious form or degree of mental illness than inability to practice competently without endangering clients or the public. Therefore, facts sufficient to institute inactive status proceedings under section 6007(b) may not be sufficient to support abatement of a disciplinary proceeding. The appropriate standard for abatement is proof by a preponderance of the evidence that the attorney is incompetent to assist in the defense. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[6]**

Evidence that respondent paid court-ordered sanctions with a trust account check, and that the client had not provided the funds, established respondent's improper use of the trust account, either by commingling trust and personal funds or by misappropriating funds belonging to other clients. Weighing all reasonable doubts in respondent's favor, a finding of commingling, the less serious offense, was appropriate. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[13]**

The hearing judge's determinations of testimonial credibility must receive great weight because the hearing judge observed the witnesses' demeanor. However, the review department, examining the record independently, must reweigh the evidence and pass upon its sufficiency. Where testimonial credibility was not an issue and the determination to be made was whether the quality and quantity of a party's evidence met the applicable burden of proof, the issue was a question of law. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[6]**

In matter where record lacked any evidence of impropriety of respondent or respondent's staff in dealing with clients, case law requiring all reasonable inferences to be resolved in respondent's favor supported attribution of no base motives to respondent. Thus, in deciding to dismiss charges, hearing judge properly saw case as one involving a dispute between two attorneys over clients, files, and the first attorney's fee, and did not improperly fail to consider totality of respondent's conduct. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[4]**

Where the respondent's testimony is plausible and uncontradicted, it should be regarded as proof of the fact testified to, especially where contrary evidence, if it existed, would be readily available but was not offered. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[6]**

State Bar has burden to prove culpability by clear and convincing evidence. Where respondent's version of the facts is plausible, even if controverted, it supports a reasonable inference of lack of misconduct. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[14]**

A hearing judge's statement that the State Bar Court has a duty to ensure that suspended attorneys are scrupulously honest regarding their suspensions did not indicate that the judge had improperly shifted the burden of proof on culpability at the disciplinary hearing from the State Bar to the respondent. The view that suspended attorneys have a duty not to mislead the public about their suspensions has also been expressed by the Supreme Court. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[8]**

Where the hearing judge found the complaining witness worthy of belief on the crucial factual issues, and that witness's testimony was bolstered by other evidence in the record, and respondent's contrary contention that he had been discharged by his clients was not corroborated by documents that ordinarily would have been prepared by an attorney upon discharge, the hearing judge's conclusion that respondent abandoned his clients without notifying them was supported by the record, even though the complaining witness's testimony was not uniformly reliable regarding exact details. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[9]**

Rejection of a witness's testimony by the hearing judge does not in and of itself create affirmative evidence to the contrary. Where respondent's testimony on a factual issue was plausible and uncontradicted, it was appropriate to resolve all reasonable doubts in favor of respondent and reject a finding contrary to respondent's testimony as unsupported by clear and convincing evidence. Where respondent's version of events was plausible, even though controverted, it supported a reasonable inference of lack of misconduct, and where there was only circumstantial evidence to the contrary, misconduct was not established by clear and convincing evidence. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[10]**

Where respondent's testimony was plausible and uncontradicted, it should have been regarded as proof of the fact testified to, especially where contrary evidence, if it existed, would be readily available, but was not offered. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[4]**

Where respondent's client's testimony contradicted respondent's testimony, and the hearing judge found the client's testimony to be more credible on the disputed point, but other circumstances revealed by the record nonetheless limited the effect of the client's testimony, the review department held that the record did not establish by clear and convincing evidence that respondent's testimony was a lie. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[5]**

While attorneys have a duty to reasonably supervise their staffs, they cannot be held responsible for every event which takes place in their offices. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[9]**

Where the State Bar chooses to present evidence in a default hearing that undercuts or negates the allegations of the notice to show cause, it is the evidence, and not the allegations, that controls the findings of fact. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[2]**

Where evidence offered by State Bar at default hearing neither established nor controverted or undermined allegations of notice to show cause, such allegations, which were deemed admitted by respondent's default, could properly be relied on to establish attorney's culpability. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[17]**

Probation revocation proceedings are disciplinary proceedings, and no additional discipline can be imposed for a breach of probation absent proof of such violation in conformity with fundamental due process (notice and an opportunity to be heard), as set forth in rules 612-613, Trans. Rules Proc. of State Bar. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[4]**

For the purpose of determining culpability for violation of restitution requirement imposed as condition of disciplinary probation, it is inappropriate to distinguish between "substantial" and "insubstantial" or "technical" violations. Restitution conditions are as significant as the notification requirements in rule 955, Cal. Rules of Court, as to which the Supreme Court has declined to draw such a distinction. The importance of the goals of restitution makes distinctions between "substantial" and "insubstantial" or "technical" failures to make restitution inappropriate. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[9]**

Civil verdicts and judgments have no disciplinary significance apart from the underlying facts. While civil findings bear a strong presumption of validity if supported by substantial evidence, the disciplinary court must assess them independently under the more stringent standard of proof applicable to disciplinary proceedings. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[8]**

Where court in civil action related to disciplinary proceeding had concluded (applying preponderance of evidence standard) that there was substantial evidence that purported transfer of partnership interest to respondent was fraudulent, and it was undisputed that respondent had prepared partnership transfer document, referee's conclusion in disciplinary proceeding that there was no evidence that respondent actively participated in fraud in preparation of document could only be consistent with civil court finding if referee's conclusion was based on difference in applicable standard of proof, in that culpability in disciplinary cases must be proven by clear and convincing evidence. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[7]**

Although referee indicated that he had not reached a final decision despite preparation of draft findings, he appeared to have placed a greater burden of proof on the respondent than permitted by law. If a trier of fact imposes the wrong burden of proof, that itself can constitute reversible error. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[6]**

In a default matter, to the extent that evidence negates allegations of notice to show cause, it is evidence and not allegations that controls findings of fact. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[19]**

In a conviction matter, the respondent's criminal conviction by itself constitutes conclusive proof that the respondent committed all acts necessary to constitute the offense charged. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[2]**

The State Bar Court must make appropriate findings as to the manner in which an attorney's conduct violated charged rules and statutes. Conclusory language in an examiner's papers indicating that the factual findings supported a conclusion of culpability under a given statute or rule was inadequate and did not promote meaningful review. The conduct proved under each count which supports culpability of particular charged violations must be identified. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[3]**

In disciplinary matters, where the State Bar has the burden of proof, the examiner is obligated to produce sufficient evidence to permit the State Bar Court to make adequate determinations and appropriate recommendations to the Supreme Court as to discipline. (Rules Proc. of State Bar, rule 402.) *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[9]**

Taking of evidence which negated allegation of notice to show cause permitted hearing department to reject allegations based on a conflict between the admission of the allegations by default and the evidence adduced at trial. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[10]**

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Where respondent admitted that he hid cameras in restaurant bathrooms for specific purpose of making surreptitious recordings, and that he knew at the time his actions were unethical and illegal, and where respondent's psychiatrist was unaware of respondent's prior similar conduct, had not directly observed respondent in manic state, and based his opinion solely on respondent's version of the facts, psychiatrist's opinion that respondent was not responsible for his misconduct due to bipolar disorder was contrary to evidence, and did not preclude finding that respondent's criminal conduct involved moral turpitude. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[2]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law

that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Even if an attorney of record did not have actual knowledge of a trial setting, if a notice of trial setting was properly served on him, his failure to appear at trial will not be excused for State Bar disciplinary purposes unless he establishes that he had office procedures in place that, at a minimum, required his staff (1) to promptly inform him each time a notice of court or administrative trial or hearing is delivered to office, (2) to promptly record date of the trial or hearing in attorney's court calendaring system and in client's file, and (3) to promptly give client actual notice of date, time, and location of the trial or hearing. Respondent did not have any such proper office procedures in place. Thus, where record established that a notice of a hearing was properly served on him in an immigration court case in which he was attorney of record for the alien, respondent's failures to inform client of hearing, to prepare himself for the hearing, and to counsel and prepare client for the hearing could not be excused even if respondent did not learn of the hearing until the day of the hearing.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[23 a-d]**

Principle that, in the normal course of operation of a law office, an attorney should not be at risk of discipline for failure to have knowledge of every item of information that comes in his office is based on presumptions that the attorney has adequate office procedures in place for the proper operation of his office, trains his staff on those procedures; employs safeguards to insure that procedures are followed, and supervises staff to insure they perform their jobs.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[24]**

Even if respondent failed to appear at an immigration court hearing because he simply forgot to record the date of the hearing in his calendar, his failure to appear must be viewed in light of the record as a whole because, even if an attorney does not act intentionally or recklessly, he violates the rule of professional conduct regarding attorneys' duty to competently perform legal services if he repeatedly fails to competently perform. Respondent's failure to appear at the hearing could not be excused for disciplinary purposes because, under record as a whole, his failure to appear was not isolated, but one of many such failures.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[25]**

While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, the law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[3]**

Respondent violated statute proscribing acts of moral turpitude through her gross negligence in fulfilling her trust account duties. Even though respondent had an agreement with her husband and law partner that he would manage their client trust account, there was no evidence of established or agreed on procedures for the operation of trust account. And respondent overextended herself in the handling landmark litigation cases and in advocating for legislation dealing in that specialized area of law, allowed herself to be disconnected from management of law office over extended period of time during a period when her husband (whom respondent knew was abusive and controlling) was grossly mismanaging their trust account, and made no inquiry as to operation of the trust account even after she heard of specific complaint regarding the underpayment of trust funds to clients.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[4]**

Because respondent allowed herself to be disconnected from management of her law office over extended period of time and did not undertake any effort to fulfill her personal and nondelegable duty to monitor client funds and her trust account, hearing judge properly accepted parties' stipulation and correctly found, on respondent's plea of nolo contendere, that respondent was culpable of violating trust account rules even though respondent relied on her husband and law partner to manage the trust account.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[6]**

Wilfulness for purposes of probation revocation (and other disciplinary) proceedings is simply a general purpose or willingness to commit an act or to make an omission; it does not require any intent to violate the law or the probation condition and does not necessarily involve bad faith. Moreover, wilfulness does not require actual knowledge of the provision violated. Respondent admitted that he did not pay the restitution, and there was no

evidence in the record suggesting that this omission was other than a purposeful act. Thus, the failure to pay the restitution was unquestionably wilful under the above definitions. Whether respondent believed that he had no obligation to pay the money because the restitution was discharged in his bankruptcy was simply not relevant to the issue of the wilfulness of his failure to pay, as it need not be shown that respondent intended the consequences of his omission or was even aware of the disciplinary provision he was violating. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[3]**

Respondent's failure to perform any substantive work on client's workers' compensation case for more that five years was clearly repeated and reckless failure to competently perform legal services and violated rule regarding attorneys' duty of competence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[6]**

The failure to disclose a material fact on an application for admission is deemed willful whenever the application calls for disclosure with reasonable clarity. Respondent's arrest on felony charges of conspiracy to commit theft (which occurred after he filed his initial application for admission to practice law, but before he admitted to practice) and his pending trial on those charges were material facts that respondent was required to disclose, under the plain language of his initial application by updating his initial application. Thus, respondent's failure to do so was willful. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[10]**

Where hearing judge found that respondent acted with reckless disregard in failing to honor rights of statutory lienholder, and where in one matter respondent intentionally did not honor known statutory lien based on incorrect legal theory without any legal research, advice, or inquiry, and in two other matters respondent made no effort to determine whether clients' health care providers might have statutory liens, and where respondent took no steps to ascertain the law as to his obligations to statutory lienholder, respondent's failure to honor statutory liens was product of gross negligence rather than of good faith, negligent mistake, and thus constituted violation of statute requiring attorneys to support the law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[18]**

Rule requiring prompt payment of entrusted funds on demand requires no special state of mind to establish violation; mere fact that payment was not made is sufficient to constitute wilfulness for purpose of finding wilful violation of rule. Without justification, failure to pay third party lien on demand violates such rule. Where attorney negotiates with lienholder to reduce lien amount, and it becomes clear negotiations will not be productive, attorney violates rule if attorney neither promptly pays lien in full nor takes appropriate steps to resolve dispute promptly. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[24]**

The statute providing that attorneys have a duty to support the constitution and laws of California and the United States constitutes a conduit whereby attorneys may be disciplined for violating laws which are not otherwise disciplinable under the State Bar Act. However, a negligent mistake made in good faith does not constitute a violation of this statute. Thus, where respondent believed he had satisfied his obligation to a statutory medical lienholder by informing it of a source of insurance coverage, and thus believed that his client was entitled to all of the settlement funds obtained from a different source of coverage, respondent's failure to notify the lienholder of the impending settlement, as required by statute, did not violate his statutory duty to obey California law, because it constituted a negligent mistake, based on the good faith, erroneous belief that he was entitled to distribute all the settlement funds to the client and let the client deal with the statutory lien. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[5]**

Unlike the proof of a violation of the State Bar Act, the proof of a wilful violation of the Rules of Professional Conduct merely has to demonstrate that the person charged acted or omitted to act purposely, that is, that he knew what he was doing or not doing and that he intended either to commit the act or to abstain from committing it. Where respondent knew he was settling a personal injury claim without ensuring the payment of an applicable Medi-Cal lien and intended to do so, he acted wilfully; and a determination of culpability under the rule requiring proper payment of entrusted funds was appropriate even if he acted in good faith. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[10]**

Respondent's carelessness and confusion concerning the requirements of rule 955 did not obviate culpability of wilful failure to file a rule 955 affidavit timely, where respondent did not seek relief based on good cause for his late filing. All that is necessary for a wilful violation of rule 955 is a general purpose or willingness to commit the act or make the omission. However, respondent's credible evidence of carelessness was properly considered in considering respondent's good faith attempts at timely compliance. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[4]**

The purpose of a proof of service is to establish notice of an order or other document, and it is the kind of document relied upon in the conduct of serious affairs. Where a proof of service of a sanctions order on respondent was in evidence, and there was no indication in the record of any misconduct by respondent's staff concerning receipt of the order, respondent was presumed to have been served with the court order. His receipt of the order and his admission that he did not satisfy it established a violation of the statute requiring attorneys to obey court orders. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[6]**

Wilfulness with regard to a rule of professional conduct violation does not require proof of an evil intent or bad purpose, but merely proof that the attorney intended to do that which the rule prohibits. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[3]**

Where an attorney permitted a non-lawyer to misuse the attorney's name to conduct a large personal injury practice, the attorney could not be held separately culpable for each item of harm that resulted, without proof of his or her actual knowledge. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[3]**

Bad faith is not a prerequisite to a finding of wilful failure to comply with rule 955. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[4]**

An attorney has an obligation to perform services diligently and if the attorney knows he or she does not have or will not acquire sufficient time to do so, the attorney must not continue representation in the matter. Reckless or repeated inattention to client needs need not involve deliberate wrongdoing or purposeful failure to attend to duties in order to constitute wilful violation of duty to perform competently. Fact that respondent performed some services for a probate estate did not excuse his misconduct in delaying closure of the estate, especially where respondent's asserted justification for delay was that he was busy on other matters. Respondent's repeated failure to perform acts needed to distribute assets and close estate for five years, knowing that beneficiaries desired earliest possible distribution, constituted wilful violation of the duty to perform services competently. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[12]**

Violations of probation require the same mental state to justify discipline as violations of rule 955, Cal. Rules of Court. For such purposes, wilfulness need not involve bad faith; a general purpose or willingness to comment an act or permit an omission is sufficient. Accordingly, despite respondent's asserted good faith belief that probation reports were sufficient, respondent's intentional failure to include a required statement in such reports was wilful for purposes of a probation violation. Respondent's subjective intentions were relevant only with regard to aggravation and mitigation. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[6]**

Although the term "moral turpitude" has been defined very broadly, the Supreme Court has always required a certain level of intent, guilty knowledge, wilfulness, or, at the very least, gross negligence before labelling an attorney's conduct moral turpitude. Where respondent reasonably and in good faith believed that he had the authority to endorse his clients' former attorney's name to settlement drafts, and there was no evidence that respondent misused funds intended for clients or medical providers and no evidence of fraud, hearing judge correctly concluded that there was no clear and convincing evidence of moral turpitude. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[3]**

In order to find an attorney culpable of a rule violation, the attorney's misconduct must be found to have been wilful. Where no such finding was expressly set forth in hearing judge's decision, review department deemed it to have been made based on hearing judge's conclusions. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[3]**

A finding of a wilful violation of a Rule of Professional Conduct does not necessarily indicate intent to violate ethical guidelines, but merely an intent to perform an act which results in a violation. Even where there was no evidence of intentional misconduct, evidence of repeated acts of negligence justified finding respondent culpable of wilfully violating the rule regarding failure to perform services competently. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181. **[1]**

An attorney's failure to communicate with and reckless or repeated inattention to the needs of a client have long been grounds for discipline. Such misconduct need not involve deliberate wrongdoing or a purposeful failure to attend to the duties due to a client, and the attorney's acts need not be shown to be wilful where there is a repeated

failure of the attorney to attend to the needs of the client. Where respondent received several notices regarding the inheritance taxes owed by his client in a probate matter, and did not notify his client of any of them, and the client was reasonably relying on respondent to provide her with such notice, respondent failed to perform legal services competently in wilful violation of the applicable Rule of Professional Conduct. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175. **[1]**

Although an attorney cannot be held responsible for every detail of office operations, the attorney violates the trust account rules if the attorney does not manage funds as required by the rules, regardless of the attorney's intent or the absence of injury to anyone. Violations resulting from serious and inexcusable lapses in office procedure may be deemed wilful despite the absence of deliberate wrongdoing. If an attorney's trust account balance drops below the necessary amount, an inference of misappropriation may be drawn. The burden then shifts to the attorney to show that office procedures were adequate. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[7]**

Although attorneys cannot be held responsible for every detail of office operations, fiduciary violations resulting from serious and inexcusable lapses in office procedure may be deemed wilful for disciplinary purposes even in the absence of deliberate wrongdoing. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[7]**

The analysis of gross negligence in cases decided before the adoption of the Standards for Attorney Sanctions for Professional Misconduct is not affected by the adoption of the standards, but the discipline imposed now takes into account guidelines provided by the standards, although they are not rigidly applied. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[8]**

Misappropriation resulting from serious, inexcusable violation of a lawyer's duty to oversee trust funds is deemed wilful even in the absence of deliberate wrongdoing. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[10]**

Wilfulness, for the purpose of finding a violation of the Rules of Professional Conduct, is defined as having acted or omitted to act purposely to do the act forbidden by the rule or not to do the act required by the rule. Where there was no evidence that respondent was incapable of forming the requisite purpose or intent, the review department upheld a finding that respondent was capable of the wilfulness necessary to commit the charged rule violation (accepting employment without resources to perform competently.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[24]**

Notwithstanding omission of term "wilful" from statute and rule governing imposition of discipline for probation violations, wilfulness is a necessary element to establish culpability in a probation revocation case alleging failure to pay restitution. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[6]**

Although attorney disciplinary proceedings are sui generis and not criminal in nature, rules of criminal law may provide guidance in appropriate circumstances; case law and statutes in criminal law indicate that lack of wilfulness constitutes a reason not to revoke probation. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[7]**

In disciplinary cases arising from violations of rule 955, Cal. Rules of Court, a showing of wilfulness requires only a "general purpose or willingness" to commit the act or suffer the omission, and need not involve bad faith. The same definition of wilfulness applies to the mental state required to justify discipline for violations of probation conditions. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[8]**

A wilful breach of respondent's restitution duty was established where respondent: (1) had the financial ability to make some restitution payments during the period when he had not done so; (2) repeatedly chose to pursue professional goals which foreseeably rendered him financially unable to make timely restitution; (3) failed to protect his funds from attachment by creditors; and (4) failed to seek an extension of time to make his restitution payments. His conduct showed a conscious disregard of his restitution obligations and a failure to make sufficient good faith efforts to acquire the resources to pay. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[12]**

Wilfulness is established by proof that the attorney acted or omitted to act purposely. No rational relationship exists between an attorney's years in practice and the attorney's ability to act or omit to act purposefully on a specified occasion. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[12]**

There is a distinction between the proof necessary to establish a rule violation where the only intent necessary is the intent to do the act, and the proof necessary to establish culpability of a disciplinary offense which requires proof of specific (i.e., subjective) intent. To prove a "wilful" breach of the Rules of Professional Conduct, it is only necessary to prove that the person charged acted or omitted to act purposely, that is, intended to commit the act. With respect to charges of which subjective intent is an element, however, such intent must be proven convincingly and to a reasonable certainty. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[6]**

Only violations of the Rules of Professional Conduct that are wilful are grounds for discipline. Where hearing referee's decision did not expressly state that respondent's rule violation was wilful, but referee's comments indicated conclusion of wilfulness, review department regarded referee as having found violation to be wilful. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[1]**

Respondent's admission to a State Bar investigator that he misused advanced costs given to him by his clients and failed to place them in a trust account, and his clients' testimony that he did no work on the matter for which the costs were advanced and failed to refund or account for the advanced costs, established respondent's wilful violation of his duties to hold the funds in a trust account, to render an accounting for the funds, and to refund them on request. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[7]**

164 Proof of Intent

Where State Bar presented no evidence or witnesses to rebut respondent's testimony that her inaccurate report of her MCLE compliance was unintentional, and hearing judge declined to find that respondent acted intentionally, Review Department rejected argument that respondent's conduct intentionally misrepresented her MCLE compliance. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330. **[2]**

Great weight is given to a hearing judge's finding as to intent. Where hearing judge determined respondent was grossly negligent when verifying his clients' complaint and State Bar relied on same evidence already considered by the hearing judge to argue respondent was intentionally deceitful, there was no basis to conclude that respondent's decision to sign verification rose to an act of intentional dishonesty rather than mere gross neglect. *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151 **[1]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Even if an attorney of record did not have actual knowledge of a trial setting, if a notice of trial setting was properly served on him, his failure to appear at trial will not be excused for State Bar disciplinary purposes unless he establishes that he had office procedures in place that, at a minimum, required his staff (1) to promptly inform him each time a notice of court or administrative trial or hearing is delivered to office, (2) to promptly record date of the trial or hearing in attorney's court calendaring system and in client's file, and (3) to promptly give client actual notice of date, time, and location of the trial or hearing. Respondent did not have any such proper office procedures in place. Thus, where record established that a notice of a hearing was properly served on him in an immigration court case in which he was attorney of record for the alien, respondent's failures to inform client of hearing, to prepare himself for the hearing, and to counsel and prepare client for the hearing could not be excused even if

respondent did not learn of the hearing until the day of the hearing. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[23 a-d]**

Principle that, in the normal course of operation of a law office, an attorney should not be at risk of discipline for failure to have knowledge of every item of information that comes in his office is based on presumptions that the attorney has adequate office procedures in place for the proper operation of his office, trains his staff on those procedures; employs safeguards to insure that procedures are followed, and supervises staff to insure they perform their jobs. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[24]**

Even if respondent failed to appear at an immigration court hearing because he simply forgot to record the date of the hearing in his calendar, his failure to appear must be viewed in light of the record as a whole because, even if an attorney does not act intentionally or recklessly, he violates the rule of professional conduct regarding attorneys' duty to competently perform legal services if he repeatedly fails to competently perform. Respondent's failure to appear at the hearing could not be excused for disciplinary purposes because, under record as a whole, his failure to appear was not isolated, but one of many such failures. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[25]**

Respondent violated statute proscribing acts of moral turpitude through her gross negligence in fulfilling her trust account duties. Even though respondent had an agreement with her husband and law partner that he would manage their client trust account, there was no evidence of established or agreed on procedures for the operation of trust account. And respondent overextended herself in the handling landmark litigation cases and in advocating for legislation dealing in that specialized area of law, allowed herself to be disconnected from management of law office over extended period of time during a period when her husband (whom respondent knew was abusive and controlling) was grossly mismanaging their trust account, and made no inquiry as to operation of the trust account even after she heard of specific complaint regarding the underpayment of trust funds to clients. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[4]**

Because respondent allowed herself to be disconnected from management of her law office over extended period of time and did not undertake any effort to fulfill her personal and nondelegable duty to monitor client funds and her trust account, hearing judge properly accepted parties' stipulation and correctly found, on respondent's plea of nolo contendere, that respondent was culpable of violating trust account rules even though respondent relied on her husband and law partner to manage the trust account. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[6]**

Respondent's deliberate and unjustified failure to attend a status conference in client's workers' compensation case was reckless failure to competently perform legal services and violated rule regarding attorneys' duty of competence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[4]**

At least in absence of admission by attorney, proving that an attorney borrowed money without intending to repay it is rarely capable of being proved with direct evidence. Circumstantial evidence is sufficient, however, if it is clear and convincing. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[1]**

Objective inferences drawn from consideration of the 12 factors often considered in bankruptcy proceedings to determine whether a debtor incurred credit card debts with fraudulent intent are also highly probative in determining whether attorney incurred credit card debts without intending to repay them. But 12 factors are not exclusive, none is dispositive, and attorney's conduct need not satisfy a minimum number to find that attorney lacked intent to repay debts. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[2]**

Because attorney's act of borrowing money without intending to repay it involves dishonesty and moral turpitude as a matter of law, State Bar need only prove that attorney borrowed money without intending to repay it to establish that attorney violated statutory duty not to engage in acts of dishonesty or involving moral turpitude. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[4]**

Intent to repay debt requires some factual underpinning that would lead person to a degree of certainty that he or she would have ability to repay. Mere hope and unrealistic or speculative sources of income are insufficient. This is particularly true where respondent obtained large cash advances on the same day he was repaying gambling

debts in the form of casino markers. And it is particularly true where respondent did not proffer any documentary evidence to support his claims that he was an experienced and successful or winning blackjack player. Moreover, in light of the fact that respondent never kept any records of his gambling winnings and losses, any hope of repaying any portion of his credit card debts with gambling winnings was unreasonable. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[6]**

Hearing judge's findings that attorney incurred credit card debts totaling $19,327 without intending to repay them and thereby committed acts of dishonesty and moral turpitude were supported by clear and convincing circumstantial evidence where, despite his meager and unpredictable income, and monthly living expenses in excess of $2,200, respondent continued to obtain cash advances totaling $32,054 on his four credit cards in the face of staggering gambling losses and lack of adequate liquid assets to repay his debts. Respondent could not have possibly have failed to perceive the hopelessness of repaying his mounting cash advances in the face of his gambling losses and lack of assets and current income. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[7]**

The good faith of an attorney in making a false statement is a defense to the charge of violating Business and Professions Code section 6068, subdivision (d). As a defense, respondent had the burden of proving that he acted in good faith and he failed to meet that burden. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. **[2]**

Respondent's argument is that a misrepresentation to a court is not material unless it successfully misleads the court is contrary to the express wording of Business and Professions Code section 6068 subdivision (d), which provides that it is the duty of an attorney to never seek to mislead a judge by a false statement of fact or law. The conduct denounced by this statute is not the act of an attorney by which he successfully misleads the court, but the presentation of a statement of fact, known by him to be false, which tends to do so. It is the endeavor to secure an advantage by means of falsity which is denounced. Whether respondent violated section 6068, subdivision (d) depends first upon whether his representation to the court was in fact untrue, and second, whether he knew that his statement was false and he intended thereby to deceive the court. With regard to whether respondent intended to deceive the court, the presentation to a court of a statement of fact known to be false presumes an intent to secure a determination based upon it and is a clear violation of section 6068, subdivision (d). Respondent's statements to the two courts were in fact untrue and he knew they were untrue. Thus, it is presumed that the statements were made with an intent to secure an advantage. No credible evidence rebutted this presumption. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. **[4 a-d]**

The review department's duty to independently review the record is settled. At the same time, the review department must give great weight to the hearing judge's determination that turns on credibility to be assigned to witness testimony. The department was reluctant, therefore, to ascribe to respondent a specific intent to deceive when the hearing judge who considered respondent's testimony and that of other witnesses found none. This does not exonerate respondent from moral turpitude charges as to his false statement in his motion to disqualify a superior court judge. The hearing judge's conclusion that respondent violated statute and rule of professional conduct requiring attorneys to use only means consistent with truth must be read to find culpability by respondent's gross negligence, as simple neglect would not be sufficient for a statutory violation. Gross negligence is a well-established basis for finding an act of moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[1]**

In broad terms, any act contrary to honesty and good morals involves moral turpitude. Although an evil intent is not necessary for moral turpitude, some level of guilty knowledge or at least gross negligence is required. Where respondent's failure to comply with a court order was either intentional or grossly negligent, this failure involved moral turpitude. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[7]**

Hearing judge's credibility findings based on respondent's demeanor while testifying are entitled to great weight. Where hearing judge found that respondent did not mislead court about applicability of statutory fee limitation because respondent had honest but unreasonable belief that statute did not apply, but review department concluded that respondent's failure to disclose fee limitation was unreasonable under circumstances, review department found that respondent violated duty not to mislead courts and committed act of dishonesty, but that such misconduct occurred through gross negligence rather than intentional dishonesty. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[14]**

Where there was no evidence that respondent acted intentionally in failing to notify statutory medical lienholder of settlement or in failing to honor statutory lien, but rather, respondent's state of mind was that he was not actually aware of existence of lien or his duties in regard to it because he took no steps to investigate his client's medical coverage or his obligations under law, respondent's conduct evidenced reckless disregard rather than intentional violation of law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[1]**

Where hearing judge found that respondent acted with reckless disregard in failing to honor rights of statutory lienholder, and where in one matter respondent intentionally did not honor known statutory lien based on incorrect legal theory without any legal research, advice, or inquiry, and in two other matters respondent made no effort to determine whether clients' health care providers might have statutory liens, and where respondent took no steps to ascertain the law as to his obligations to statutory lienholder, respondent's failure to honor statutory liens was product of gross negligence rather than of good faith, negligent mistake, and thus constituted violation of statute requiring attorneys to support the law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[18]**

An attorney's duties to a client do not cease to exist because client is also represented by another attorney. Where respondent wished to be relieved of responsibility for defending client's deposition, but knew that successor counsel was not available to do so, respondent had obligation to take appropriate steps to avoid prejudice to client. Where respondent intentionally absented himself from client's deposition even though he was still officially counsel of record and knew client would be unrepresented in his absence, respondent intentionally failed to perform legal services competently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[28]**

Once a trust account balance has fallen below the appropriate amount, an inference of misappropriation may be drawn, and the burden shifts to the attorney to show that misappropriation did not occur. Where there were numerous instances over several years in which funds were depleted or nearly depleted from respondent's trust account; respondent delayed in making repayment until the client complained to the State Bar or was sued, and respondent's explanations lacked credibility, the evidence supported the conclusion that respondent's repeated acts of misappropriation were due to dishonesty rather than negligence. The distinction between negligent and dishonest misappropriation can be very significant in determining appropriate discipline. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[11]**

Where respondent's knowledge of welfare fraud perpetrated by his wife was conclusively established by his guilty plea to a crime of which fraud was an essential element, the State Bar did not need affirmative evidence beyond the conviction itself to prove respondent's participation in the fraud. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[3]**

Although the term "moral turpitude" has been defined very broadly, the Supreme Court has always required a certain level of intent, guilty knowledge, wilfulness, or, at the very least, gross negligence before labelling an attorney's conduct moral turpitude. Where respondent reasonably and in good faith believed that he had the authority to endorse his clients' former attorney's name to settlement drafts, and there was no evidence that respondent misused funds intended for clients or medical providers and no evidence of fraud, hearing judge correctly concluded that there was no clear and convincing evidence of moral turpitude. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[3]**

The rule regarding prejudicial withdrawal from representation applies when an attorney ceases to provide services, even absent formation of an intent to withdraw as counsel. Whether or not an attorney's ceasing to provide services amounts to an effective withdrawal depends on the surrounding circumstances. Where time is of the essence, failure to provide services constitutes an effective withdrawal even if the attorney's period of inaction is relatively brief. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[7]**

An attorney's total cessation of services to a client for a period of two years, standing alone, and even though unintentional, was clear and convincing evidence that the attorney effectively withdrew from employment without taking steps to protect the client's interests. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[9]**

The commercial or distribution aspect of respondent's crime was conclusively established by his conviction of possession of marijuana for sale. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[4]**

Intent is a necessary element of an assignment. Where the physical transfer of an assignment of a promissory note and deed of trust from client to attorney was not intended to transfer an interest in the promissory note to the attorney, the transfer did not result in an acquisition by the attorney of an interest in the client's property, and thus did not violate the rule governing attorneys' business transactions with clients. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[14]**

Appearing in court while suspended or enrolled inactive does not inherently involve moral turpitude; nor does it necessarily involve deception of the court, if the attorney is unaware of his or her inactive status. Evidence that an attorney made a single court appearance while ignorant of his or her inactive status is insufficient to establish clearly and convincingly that the attorney acted with moral turpitude or intent to deceive the court. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[22]**

The difference in wording between the rules governing pretrial and mid-trial contact with jurors, and the rule governing post-trial contact, reflects a difference in the intent of the drafters as to the elements of each rule. In order to establish a violation of the rule governing post-trial contact, the State Bar must prove by clear and convincing evidence that the respondent subjectively had the specific intent to harass or embarrass the jurors or to influence the jurors' actions in future jury service. Where no such subjective intent was established, based on referee's findings as to witnesses' credibility, review department found no violation and dismissed proceeding without addressing question of rule's constitutional validity. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[5]**

There is a distinction between the proof necessary to establish a rule violation where the only intent necessary is the intent to do the act, and the proof necessary to establish culpability of a disciplinary offense which requires proof of specific (i.e., subjective) intent. To prove a "wilful" breach of the Rules of Professional Conduct, it is only necessary to prove that the person charged acted or omitted to act purposely, that is, intended to commit the act. With respect to charges of which subjective intent is an element, however, such intent must be proven convincingly and to a reasonable certainty. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[6]**

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There is a distinction between the proof necessary to establish a rule violation where the only intent necessary is the intent to do the act, and the proof necessary to establish culpability of a disciplinary offense which requires proof of specific (i.e., subjective) intent. To prove a "wilful" breach of the Rules of Professional Conduct, it is only necessary to prove that the person charged acted or omitted to act purposely, that is, intended to commit the act.

With respect to charges of which subjective intent is an element, however, such intent must be proven convincingly and to a reasonable certainty. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[6]**

165 Adequacy of Hearing Department Decision

Rule of Procedure of State Bar 262, which authorizes proceedings to be dismissed in the furtherance of justice, is construed in the State Bar Court in the same manner as its analog Penal Code section 1385 is construed in criminal proceedings. State Bar rule does not permit respondents to make motions. Motions may be made only by the State Bar as the prosecutor or a dismissal may be entered on State Bar Court's own motion after taking required steps. Hearing judge's dismissal of proceeding comported with those required pre-dismissal steps because she issued an order to show cause to the parties, allowed for responses from them, considered all appropriate interests, and stated in detail her reason for dismissal, and since the hearing judge acted promptly after the proceeding was filed and since the dismissal was expressly without prejudice to refiling, review department saw no prejudice to the State Bar. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721.**[2 a-c]**

Because review department relied on respondent's repeated and reckless failure to communicate with client to establish his culpability for violating rule of professional conduct prohibiting attorneys from abandoning clients and withdrawing from employment without taking adequate steps to protect their clients' interests, review department did not adopt hearing judge's finding that respondent violated statute requiring attorneys to adequately communicate with their clients, but dismissed charge with prejudice as being duplicative.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[22]**

Civil verdicts and judgments have no disciplinary significance apart from the underlying facts. Nevertheless, civil findings made under a preponderance of the evidence test are entitled to a strong presumption of validity in disciplinary proceedings if they are supported by substantial evidence. Where the trial judge in a civil proceeding found that respondent knew prior to filing a lawsuit that he had not been defamed, that his law firm had not been disparaged, and that his retainer contract with his clients had not been interfered with at all, and those findings were supported by substantial evidence in the record, the hearing judge's conclusion in the disciplinary proceeding that respondent filed the lawsuit based on his honest and reasonable belief in its validity was contrary to the civil findings and did not appear to have accorded the civil findings the strong presumption of validity to which they were entitled. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[1]**

In view of the review department's duty to independently review the record and make findings of fact and conclusions of law, any alleged denial of due process by the hearing judge's failure to clearly identify respondent's misconduct in the hearing judge's decision was remedied by the review department's issuance of an opinion that superseded the hearing judge's decision. Therefore, respondent's due process contention was rendered moot and was not addressed on the merits.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[2]**

Even though the parties entered into a stipulation as to facts and conclusions of law (Rules Proc. of State Bar, rule 132) in which they agreed to be bound by stipulated facts regardless of the degree of discipline recommended or imposed and in which respondent pleaded nolo contendere to the disciplinary charges in the stipulation (Bus. & Prof. Code, § 6085.5, subd. (c)) and acknowledged that her "the plea of nolo contendere shall be considered the same as an admission of culpability" for disciplinary purposes, the State Bar Court still had an affirmative duty to independently determine whether the parties' stipulated conclusions of law were supported by the record before accepting them.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[1a-c]**

Regardless of whether respondent had the right on review to challenge the conclusions of culpability to which she stipulated to in the hearing department, the review department still had an affirmative duty to determine if the culpability findings were supported by the record.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[2]**

In reviewing a hearing judge's decision on a standard 1.4(c)(ii) petition for relief from actual suspension, the standards of review are abuse of discretion and error of law. (Rules Proc. of State Bar, rules 300(k), 639.) Under abuse of discretion standard, review department does not review hearing judge's decision with the intention of substituting its view for that of hearing judge, but rather with the intention of employing the equivalent of the substantial evidence test by accepting hearing judge's resolution of credibility and conflicting evidence and hearing judge's choice of possible reasonable inferences. Review department reviews the record to determine if

hearing judge's findings are supported by substantial evidence and whether any errors of law were committed. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289.**[2]**

In standard 1.4(c)(ii) proceeding for relief from actual suspension, hearing judge did not abuse his discretion in determining that State Bar's evidence establishing that Client Security Fund had previously paid one of petitioner's former clients more than $3,400 based on the client's claim that petitioner improperly failed to pay that sum to the client's medical care providers did not prevent petitioner from showing his rehabilitation because hearing judge based that determination on his findings that petitioner did not know (1) of the client's claim or (2) of Client Security Fund's actions until petitioner's deposition was taken in standard 1.4(c)(ii) proceeding and because those two findings are supported by substantial evidence consisting of petitioner's own testimony, which was supported with a number of letters from the client's file demonstrating that medical providers had been paid. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289.**[4]**

Because record in standard 1.4(c)(ii) proceeding for relief from actual suspension established (1) that, when petitioner committed the misconduct in his prior record that resulted in his actual suspension, he was abusing and addicted to alcohol and cocaine, (2) that his abuses of and addictions to alcohol and cocaine causally contributed to his prior misconduct, (3) that he had undergone a meaningful and sustained period of rehabilitation from his abuses and addictions, (4) that, when the discipline was imposed on him in his prior record, these facts were not known to State Bar, State Bar Court, the Supreme Court, and (5) that when discipline was imposed in prior proceeding, petitioner was in denial regarding his abuses of and addictions to alcohol and cocaine, review department found, when it reviewed record to determine whether hearing judge's findings of rehabilitation and present fitness were supported by substantial evidence, that petitioner's addictions were not excuses for, but explanations of his prior misconduct. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289.**[9]**

Substantial evidence supported hearing judge's findings in standard 1.4(c)(ii) proceeding for relief from actual suspension that petitioner established his rehabilitation and present fitness to practice where petitioner proved (1) that he eliminated his abuses of alcohol and cocaine that causally contributed to his prior misconduct; (2) that he openly described his prior misconduct to an insurance company for whom he worked and to his church, Cocaine Anonymous group, friends, and relatives and to the five character witnesses who convincingly testified as to his rehabilitation and good moral character; and (3) that he became a leader in Cocaine Anonymous and president of his church. State Bar did not impeach petitioner's showings of rehabilitation and present fitness with the incomplete copy of petitioner's application for license to act as a life insurance agent to which State Bar alleged, but did not prove, petitioner attached an addendum that contained a false and misleading description of his prior record of discipline. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289.**[10]**

Hearing judge did not abuse his discretion in finding that petitioner in standard 1.4(c)(ii) proceeding for relief from actual suspension established his present learning and ability in the general law where petitioner proved that he recently (1) completed 100 hours of classes dealing with insurance contracts, claims, procedures, and ethics; (2) spent more than 200 hours studying estate planning and taxation for small business; (3) litigated his personal bankruptcy and his own child custody case; (4) obtained a dismissal of criminal charges his child's mother brought against him regarding visitation rights with his daughter; and (5) two attorneys testified that he had extensive knowledge of laws regarding estate and business taxation. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289.**[11]**

Because Rules of Professional Conduct 3-700(A)(2) (prohibiting prejudicial withdrawal from employment) and 3-700(D)(1) (mandating return of client property) have not been amended or modified since they were first adopted and became effective on May 27, 1989, there are no "former" versions of those rules. Thus, the review department deemed the charged and found violations that State Bar and the hearing judge incorrectly described as violations of "former" rules 3-700(A)(2) and 3-700(D)(1) to be charged and found violations of rules 3-700(A)(2) and 3-700(D)(1), which became effective on May 27, 1989. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[1]**

Even though respondent's misconduct in present proceeding did not resemble the serious misconduct to which respondent stipulated in his prior record of discipline and even though respondent's present misconduct began well before State Bar initiated the prior disciplinary proceeding against him, review department gave respondent's prior record of discipline some greater weight in aggravation than did the hearing judge because

respondent's present misconduct continued and accelerated during pendency of the prior proceeding, with the more egregious portion of the present misconduct occurring after respondent had stipulated to culpability on the charges of serious misconduct brought against in the prior proceeding. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[9]**

In the hearing judge's discipline recommendation that respondent "be suspended from the practice of law for three years and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) [of the Standard for Attorney Sanctions for Professional Misconduct], that said suspension be stayed; and that he be placed on probation for four years subject to the following conditions: . . ," the provision that respondent's three-year suspension continue until he proves his rehabilitation, fitness, learning, and ability in accordance with standard 1.4(c)(ii) is stayed along with the recommended three-year suspension so that, if the State Bar files a probation revocation proceeding against respondent seeking to have all, or a part, of the three-year stayed suspension imposed on him, a standard 1.4(c)(ii) would be an available condition. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[13]**

Hearing judge's findings that attorney incurred credit card debts totaling $19,327 without intending to repay them and thereby committed acts of dishonesty and moral turpitude were supported by clear and convincing circumstantial evidence where, despite his meager and unpredictable income, and monthly living expenses in excess of $2,200, respondent continued to obtain cash advances totaling $32,054 on his four credit cards in the face of staggering gambling losses and lack of adequate liquid assets to repay his debts. Respondent could not have possibly have failed to perceive the hopelessness of repaying his mounting cash advances in the face of his gambling losses and lack of assets and current income. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[7]**

Rule of Procedure requiring hearing judges to file decisions within 90 days after taking cases under submission is neither mandatory nor jurisdictional. Thus, respondent's contention that the hearing judge's decision was void because it was filed four days after the expiration of the ninety-day time limit was rejected. Furthermore, because respondent failed to establish that he suffered any actual harm or prejudice, he was not entitled to any relief for the hearing judge's failure to file his decision timely. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[8]**

Even if credit card cash advances that attorney obtained and lost while gambling in Nevada casinos were "gambling debts" and therefore not enforceable debts in California, hearing judge's recommendation that attorney be required to make restitution to credit card company was not only legal, but appropriate and necessary to respondent's rehabilitation and for protection of public in light of hearing judge's findings that attorney obtained the cash advances without intending to repay them. Requiring attorney to make restitution will force attorney to confront his misconduct in concrete terms. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[11]**

In default proceeding, period of stayed suspension and disciplinary provision authorizing probation conditions to be imposed on attorney in the future by State Bar Court ought not to be rejected by hearing judge merely because attorney's actual suspension will continue until attorney establishes rehabilitation under standard 1.4(c)(ii) or until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[3]**

The hearing judge erred when he held that the record lacked clear and convincing evidence that respondent filed a frivolous appeal. The general rule is that civil findings are not, by themselves, dispositive of the issues in a disciplinary case. Often the issues in the civil case may be either broader or narrower than the operative issues in a disciplinary proceeding. However, civil findings made under a preponderance of the evidence standard are entitled to a strong presumption of validity in the State Bar Court if supported by substantial evidence. In order to hold that an appeal is frivolous, the law requires an extremely high showing, so that zealous but good faith appeals having any merit are neither deterred nor sanctioned. Accordingly, the court of appeal's decision finding that respondent's appeal of a case was frivolous and pursued in bad faith was, at the very least, a prima facie determination of such. Respondent failed to adduce evidence that overcame that determination. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[1 a-d]**

Where the State Bar Court recommends that an attorney who has defaulted in a disciplinary proceeding be placed on actual suspension, rule 205(a) of the Rules of Procedure requires that the discipline recommendation contain two elements: (1) a specific period of actual suspension; and (2) a statement that the attorney's actual suspension shall continue unless the State Bar Court grants a motion to terminate the actual suspension at the conclusion of the specific period of actual suspension or upon such later date ordered by the court. In the present case the hearing judge recommended that respondent be actually suspended until he accomplishes certain tasks (i.e., provide evidence of reimbursement to his former client, attend Ethics School, pass the professional responsibility examination, and make a motion to the State Bar Court to terminate the actual suspension). This recommendation does not meet the requirement of rule 205(a) that the recommended discipline include a specific period of actual suspension. At best, the hearing judge's recommendation will result in an indefinite, as distinguished from a specific, period of actual suspension. To extend an attorney's recommended actual suspension until he or she moves the State Bar Court to terminate that suspension under rule 205 there must be a stated, defined and measurable period of actual suspension recommended. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[1 a, h]**

Issues raised in State Bar's petition for interlocutory review as to (1) whether Rules of Procedure required petitioner for reinstatement to provide proof, at time he presented his petition for filing, that he had passed a professional responsibility examination within last year (i.e., one before filing of petition) and (2) whether hearing judge erred in finding that petitioner had not previously resigned from State Bar with disciplinary charges pending were proper for interlocutory review because they could determine outcome of proceeding and determine whether petitioner's rehabilitation was an issue in proceeding. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[1 a-e]**

Where hearing judge did not issue written ruling on his denial of State Bar's motion to dismiss former attorney's petition for reinstatement, review department determined hearing judge's reasoning from written transcript of hearing on motion, which was included in appendix to State Bar's petition for interlocutory review. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[2]**

Hearing judge erred as a matter of law in finding that petitioner for reinstatement had not previously resigned from State Bar with disciplinary charges pending where petitioner's resignation was entitled "resignation with charges pending;" stated that charges were pending against him; was in form prescribed by California Rule of Court 960; was accepted by Supreme Court without prejudice to further proceedings; and where petitioner stated in his petition for reinstatement that, at time he resigned from State Bar, no formal charges were filed against him by State Bar, but only a number of minor client complaints that he had responded to, taken adequate measures to deal with, and answered State Bar in writing denying any misconduct. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[3]**

Even though respondent was not entitled to any mitigating credit for five years of discipline free practice under standard 1.2(e)(i) and case law, there was no error in hearing judge's giving respondent mitigating credit for discipline free practice because weight assigned to such mitigation by hearing judge was nominal (i.e., "exists in name only;" not real or substantial). *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. **[2]**

Good character evidence consisting of recent letters from two judges before whom respondent had regularly appeared and two attorneys who had known respondent since 1986 was not entitled to substantial mitigating credit because evidence did not come from a wide range of references in general and legal communities as required by standard 1.2(e)(vi). However, respondent was entitled to some mitigating weight for that evidence because it represented a fair reference from legal community. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[4 a-b]**

The review department's duty to independently review the record is settled. At the same time, the review department must give great weight to the hearing judge's determination that turns on credibility to be assigned to witness testimony. The department was reluctant, therefore, to ascribe to respondent a specific intent to deceive when the hearing judge who considered respondent's testimony and that of other witnesses found none. This does not exonerate respondent from moral turpitude charges as to his false statement in his motion to disqualify a superior court judge. The hearing judge's conclusion that respondent violated statute and rule of professional conduct requiring attorneys to use only means consistent with truth must be read to find culpability by

respondent's gross negligence, as simple neglect would not be sufficient for a statutory violation. Gross negligence is a well-established basis for finding an act of moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[1]**

Even though hearing judge expressly found that respondent's violation of statute and rule of professional conduct was based on respondent's gross negligence, she inexplicably declined to apply that gross negligence to find that respondent's conduct involved moral turpitude in violation of statute prescribing attorneys from engaging in acts of moral turpitude. Gross negligence is a well-established basis for finding moral turpitude. Accordingly, review department independently found respondent culpable of act involving moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[2]**

A close reading of the hearing judge's conclusion that petitioner had proven rehabilitation, together with several adverse findings of petitioner's actions regarding her former husband led the review department to support the judge's positive recommendation. Regarding petitioner's testimony about the restraining orders she attempted to obtain in the State Bar Court against her former husband, the judge found it either negligent or intentionally misleading. However, he did not specify at which end of that wide range petitioner's testimony rested. Certainly, if petitioner's understanding of restraining orders was simply careless, no adverse conclusions were justified. The review department found no basis for a conclusion of dishonesty on petitioner's part regarding the status of the restraining orders. The review department also drew no adverse moral conclusions from petitioner's frequent litigation in the State Bar Court over a protective order. Petitioner had a right of reasonable access to this court to seek judicial remedies. Her contact of members of the Board of Governors and senior State Bar staff was also within her rights and she did not pursue inappropriate means to influence judicial decisions. The review department also concluded that petitioner disclosed adequate facts about the matter in her communications. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1. **[2 a-b]**

The hearing judge's discussion of his concerns over petitioner's actions in terms of according her a "reasonable doubt" made review somewhat difficult. It is clear that in a disciplinary proceeding, where the State Bar has the burden of proving charges by clear and convincing evidence, the accused is entitled to the exercise of reasonable doubts. However, in a reinstatement proceeding, where the petitioner unquestionably has the burden of presenting clear and convincing evidence of her qualifications, petitioner can not be given the benefit of reasonable doubts. However, by reading the decision in its entirety, the review department construed the hearing judge's decision finding reasonable doubts in favor of petitioner to not invoke the normal meaning of the term "reasonable doubt" as used in this area of law, but rather, such narrow doubt that would be acceptable in a satisfactory showing for reinstatement. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1. **[3 a-b]**

As the reproval imposed on respondent in the prior disciplinary proceeding is final, it and the conditions attached to it are presumed valid and enforceable. The reproval decision is subject to collateral attack only on the grounds that the judge (1) lacked jurisdiction of the subject matter, (2) lacked personal jurisdiction over respondent, or (3) acted in excess of jurisdiction. The burden of proof is on the party who attacks the judgment to show lack of jurisdiction. Furthermore, to succeed on collateral attack, the jurisdictional defect must be proven from the face of the record in the prior proceeding. Respondent's contention that the conditions attached to his prior private reproval are subject to collateral attack because the hearing judge failed to explicitly recite in her decision two findings required by rule 956 of the California Rules of Court, that the reproval conditions would serve to protect the public and to serve respondent's interests, is an allegation that the hearing judge acted in excess of her jurisdiction. Respondent failed to prove from the face of the record in the prior reproval that the conditions attached to it would not serve to protect the public or serve respondent's interest. In any event, the unchallenged factual findings in the hearing judge's decision in the prior case establish that the hearing judge acted within her jurisdiction in attaching the conditions. Without question, the reproval conditions that he take and pass a professional responsibility examination and attend the State Bar's Ethics School will serve to protect the public and serve respondent's interests. The hearing judge's error is not a jurisdictional error that can subject the hearing judge's decision to collateral attack. At most, the error was a procedural defect that respondent waived by failing to appear in the prior proceeding and object to the hearing judge's decision on that ground. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929. **[1]**

In the absence of any direct precedent construing rule 956 of the California Rules of Court, the review department held that the purpose of the rule's findings is to aid in ensuring that any duties attached to a reproval

are reasonably related to its purposes. Although rule 956 prescribes a salutary requirement, it cannot be said that it is jurisdictional. The findings themselves do not go to the essential fairness of the underlying disciplinary proceeding or even a subsequent enforcement proceeding. If findings are omitted from a reproval decision to which rule 956 applies, the error can be called to the State Bar Court's attention in a timely manner. If not done timely, the objection is waived, absent a showing that respondent was clearly prejudiced by the omitted findings. No showing of prejudice was made in this proceeding and such a claim would be hard to envision regarding the two duties that respondent was charged with violating in this proceeding: passage of a professional responsibility examination and attendance at the State Bar's Ethics School. These are requirements imposed in almost every disciplinary probation. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929. **[4]**

Without, at least, a factual stipulation establishing aggravation and mitigation, neither the review department nor the Supreme Court have a complete record upon which to evaluate the appropriate discipline for the misconduct that occurred. Where the record consisted of the parties' partial stipulation to facts which did not address any aggravating or mitigating circumstances and two character letters proffered by respondent, the review department determined that the sparse record precluded it from fulfilling its duty to independently review the record and remanded the case for a trial de novo at which an adequate record was made. *In the Matter of Rodriguez* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 884. **[2]**

Quarterly probation reporting is important because it requires attorney probationers, four times a year, to reflect upon their prior misconduct and to review their current conduct to ensure that it complies with all of the conditions of their probation. However, quarterly probation reporting is not mandated in all cases in which probation is recommended. When the circumstances in a case establish that quarterly probation reporting is not necessary, the circumstances should be set forth in the court's decision. In this case involving attorney-client misconduct with a recent priorreproval, however, the appropriateness of a quarterly-reporting condition of probation was clear. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[4]**

As respondent had a substance abuse problem, an appropriate substance abuse condition of probation was warranted. The review department did not have the entire record before it on summary review and was unable to determine a suitable condition. It therefore remanded the case to the hearing judge. As the modification of one probation condition may require the modification of other conditions, the review department did not limit the hearing judge on remand to reconsideration of the substance abuse condition alone. The hearing judge could reconsider the entire discipline recommendation, including the probation conditions. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[4]**

In summary review proceedings, the full record was not before the review department therefore it could not consider any issues other than those raised by the parties, absent the conversion of the matter into a plenary review proceeding. Accordingly, where the review department did not modify the hearing judge's decision as a result of the summary review proceeding, the hearing judge's decision remained the final decision of the State Bar Court. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[5]**

Once violation of ethical duties is found, hearing judge should not disregard culpability finding, but must examine surrounding circumstances and may consider either good or bad faith of respondent in mitigation or aggravation. Where respondent was found culpable of wilful failure to return illegal fees on demand, such culpability should have been considered in making discipline recommendation despite respondent's good faith belief in entitlement to funds, which was properly considered as mitigating factor. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[13]**

Hearing judge's credibility findings based on respondent's demeanor while testifying are entitled to great weight. Where hearing judge found that respondent did not mislead court about applicability of statutory fee limitation because respondent had honest but unreasonable belief that statute did not apply, but review department concluded that respondent's failure to disclose fee limitation was unreasonable under circumstances, review department found that respondent violated duty not to mislead courts and committed act of dishonesty, but that such misconduct occurred through gross negligence rather than intentional dishonesty. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[14]**

In the Matter of Respondent R (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227.

Where hearing judge concluded that certain alleged rule violations were duplicative and inconsequential in considering level of discipline, and State Bar did not take issue with such conclusion, and review department determined that respondent should be disbarred based on other findings, review department did not address allegations found to be duplicative. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[10]**

Where respondent's wilful misappropriation of client trust funds was accompanied by aggravating factors which clearly predominated over mitigation, and where hearing judge recommended disbarment based on consideration of respondent's demeanor and related issues, review department concurred that disbarment was appropriate. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[8]**

In considering whether respondent's misconduct constituted a pattern, hearing judge should not have considered charges which had been dismissed or of which respondent was not culpable. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[9]**

Review department's review of record is independent, and it may draw its own conclusions from record whether or not a party has requested it to do so. Where hearing judge's conclusion that respondent had committed act of moral turpitude was difficult to reconcile with judge's conclusion as to appropriate discipline, it was appropriate for review department to give particular scrutiny to culpability conclusion as well as degree of discipline, even though respondent had not requested review of moral turpitude conclusion. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[8]**

Where hearing judge declined to order restitution but offered to reconsider if State Bar could show that misconduct victim had not already been compensated for funds taken by respondent, this ruling misallocated the burden of proof. Once State Bar met its burden to prove initial trust account violation, it was respondent's burden to prove that restitution had in effect already been made by a third party. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[15]**

The testimony of a single witness who is entitled to full credit is sufficient for proof of any fact. Where hearing judge found complaining witness's version of events to be more credible, and such testimony, though at odds with respondent's, was consistent on material issues, review department found no basis to disturb hearing judge's factual findings. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[4]**

Where hearing judge's oral comments at close of case regarding appropriate discipline deviated from the recommendation made in judge's written decision, but hearing overall was fair and respondent's counsel had opportunity to present argument regarding degree of discipline, hearing judge's written decision controlled, and respondent was not denied due process. Respondent could not, as a matter of law, rely on hearing judge's oral or written discipline recommendation since it was not binding on review department or Supreme Court. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[10]**

Evidence of uncharged misconduct can be considered in aggravation or for purposes such as impeaching witness credibility. However, where hearing judge's findings on uncharged misconduct were too tentative to warrant consideration for enhanced discipline, review department did not adopt them as findings or conclusions, although it declined to strike them from the decision. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[1]**

Where there was clear conflict in testimony with regard to whether respondent provided clients with an accounting, and hearing judge was unable to resolve such conflict, there was insufficient evidence to support charge that respondent did not provide accounting. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[6]**

Where administrative proceeding in which respondent had not appeared had resulted in revocation of respondent's real estate license, and record of such administrative proceeding was relevant in State Bar disciplinary proceeding, hearing judge and parties should have addressed issues regarding whether administrative decision had preclusive weight; if not, whether it was admissible under any hearsay exception, and whether respondent should be permitted to introduce evidence concerning culpability or mitigation with respect to the license revocation. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[10]**

When judges are asked to approve stipulations, they cannot rely solely on State Bar's acquiescence in proposed discipline, but must exercise their independent judgment in carrying out their obligation to examine stipulation, admitted facts, and proposed discipline for fairness to parties and for extent to which public will be adequately protected thereby. (Trans. Rules Proc. of State Bar, rule 407(a).) *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[9]**

Where respondent had missed a court appearance on behalf of a client shortly after stipulating to discipline based in part on similar past conduct; had brought an illegal drug to court, attempted to visit an incarcerated client with the drug in his possession, and thrown the drug on the floor after refusing to be searched; had been stopped on another occasion with the drug in his car; and had been observed to be under the influence of a controlled substance while with a client, there was a clear likelihood of harm to both respondent's clients and the public if respondent were allowed to practice law pending adjudication of criminal and State Bar proceedings, and hearing judge erred in focusing exclusively on threat of harm to clients and finding insufficient evidence thereof to justify inactive enrollment. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[5]**

Where there was uncontroverted evidence of repeated client harm and other violations of law by respondent, and no evidence of recognition by respondent of substance abuse problem, hearing judge erred in denying involuntary inactive enrollment of respondent without considering substantial harm which public was likely to suffer from such denial. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[8]**

Culpability can be established in attorney disciplinary proceedings either by direct or circumstantial evidence, and circumstantial evidence has been considered on a regular basis in cases involving improper client solicitation by an attorney's agents. Culpability findings regarding charge of improper client solicitation were proper where, in addition to circumstantial evidence, there was inculpatory direct evidence in the record, and hearing judge properly evaluated and weighed witness testimony. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[10]**

There are numerous factors to consider in assessing witness credibility beyond observing the witness while testifying. The hearing judge, as the trier of fact in State Bar proceedings, is to determine the credibility of witnesses and hearsay declarants. The fact that some witnesses testified at the State Bar hearing by way of a transcript of the witnesses' criminal court testimony, which is expressly authorized by statute in State Bar proceedings, is not reason to discount their testimony or find it less credible than live witness testimony. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[1]**

Where, as a result of a hearing judge's dismissal of a disciplinary proceeding, the hearing judge did not make findings regarding aggravation/mitigation and concluded there was no need to rule on the admissibility of certain exhibits, thus foreclosing respondent's opportunity to substitute other evidence if the exhibits were not admitted, the review department concluded, when the dismissal was overturned, that it was appropriate to remand the matter to the hearing judge for further proceedings on the degree of discipline. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[13]**

The fact that no live witness appeared for the prosecution in a proceeding did not preclude the hearing judge from making a credibility determination based on prior recorded trial testimony which was subject to cross-examination. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[4]**

Lack of candor toward the State Bar during disciplinary investigation or proceedings, including presenting intentionally misleading testimony, fabricating evidence, or attempting to mislead the court through material omissions, is an aggravating circumstance. However, a respondent's honest, if mistaken belief in his or her innocence, and resulting in failure to acquiesce in the State Bar Court's findings, is not in and of itself aggravating. Lack of candor cannot be found based merely on a respondent's different memory of events from that of complaining former clients. Where respondent's testimony concerning his former office manager's conduct in hiding or destroying letters and messages was uncontroverted and not implausible, and was corroborated by an eyewitness, hearing judge's finding that such testimony lacked candor was not adopted by review department. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[9]**

Where hearing judge concluded that respondent misappropriated a portion of client's cost advance under trust account rule, and violated moral turpitude statute by gross negligence in supervising client trust funds, it

was unnecessary for review department to amend hearing judge's conclusions to establish that those sections were violated, and review department declined to adopt additional conclusion that respondent acted dishonestly in misappropriating client's funds. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[6]**

A recommendation as to the degree of discipline properly results from a balanced consideration of all factors, requiring the State Bar Court to weigh mitigating and aggravating factors. Where respondent had committed serious and wide-ranging misconduct, his sincere expression of remorse and his favorable character references could not be weighed heavily, and had been given greater weight by the hearing judge than warranted by the record. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[17]**

In determining whether evidence of additional uncharged ethical misconduct should be admitted as aggravating evidence in the discipline phase of the hearing, the hearing judge must balance the desire for additional relevant evidence against the due process requirement of fair notice of all discipline charges. Where there was sufficient evidence in the record to warrant a recommendation of disbarment, it was unnecessary for the review department to resolve a claim that the hearing judge erred in failing to admit aggravating evidence of uncharged misconduct. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[18]**

A respondent may be disciplined only for misconduct properly charged in the notice to show cause. In probation revocation matter, where notice to show cause charged that respondent failed to deliver financial records to an accountant, and hearing judge found that respondent failed to render an accounting, respondent was properly found culpable of failing to deliver the records, based on his admission by default of the allegations of the notice to show cause. Respondent's failure to file quarterly reports other than those listed in the notice to show cause could not be used as a basis for culpability or as aggravating circumstances in a default matter. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[1]**

Where respondent violated Supreme Court order imposing disciplinary probation, and hearing judge properly found that respondent had violated statute requiring compliance with probation conditions, respondent was also culpable of violating statute requiring compliance with court orders. However, review department did not need to modify hearing judge's decision to include additional statute and rule violations where review department's recommendation did not depend on whether the misconduct also violated those additional duplicative violations. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[2]**

In probation revocation matter, where notice to show cause informed respondent who was subject to stayed suspension that he could be enrolled inactive upon finding of probation violation and recommendation of actual suspension therefor, it would have been appropriate for hearing judge to order such inactive enrollment with or without request from Office of Trial Counsel, and where hearing judge had not done so, review department made such order. Under statute providing that inactive enrollment for probation violation shall be credited against ensuing actual suspension, review department recommended that respondent's one-year actual suspension commence as of the date of his inactive enrollment. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[7]**

Where Office of Trials argued that recommended discipline was too low in light of existing findings, and also suggested supplemental findings, and on de novo review, review department agreed that discipline was insufficient in light of findings made by hearing judge, review department did not need to address issue of supplemental findings. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[1]**

Where a resigned attorney continued to work as a paralegal for his son's law firm despite the son's adoption of a firm name which might have been construed to imply that the resigned attorney was a member of the firm, but the evidence indicated that the firm name was beyond the resigned attorney's control, and there was no credible evidence that the public or clients were in fact misled or that the resigned attorney had practiced law after resigning, the review department deferred to the hearing judge's favorable credibility determinations and concluded that the resigned attorney had not held himself out as entitled to practice law. The resigned attorney's continued employment in a situation where the public and clients could easily be misled clearly called into question his suitability for reinstatement, but under all the circumstances did not establish his lack of rehabilitation or present moral qualifications. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[18]**

Where a hearing judge's decision in one matter indicated that if the respondent filed a post-decision declaration in that matter, this would be taken into account in assessing discipline in a second pending matter, the examiner's objections on review to this aspect of the decision were rendered moot by the respondent's failure to file any such declaration, by the State Bar's apparent satisfaction with the result in the second matter, and by the review department's recommendation of disbarment in the first matter based on other grounds. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[6]**

Where respondent, who had pleaded guilty to welfare fraud based on eligibility statements signed by him but filled out by his wife, attempted to establish in mitigation that he did not know of his wife's fraudulent conduct, it was respondent's burden to prove such mitigation, and review department gave great weight to hearing judge's contrary finding based on evaluation of credibility of respondent and his wife. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[2]**

Review department did not need to reach respondent's challenges to hearing judge's evidentiary rulings in order to uphold hearing judge's ultimate findings, where all essential elements of charged violation were established by evidence to which respondent did not object, and any evidentiary errors did not result in denial of a fair hearing. Where factual findings based on challenged evidence were not necessary to decision, remand for new hearing was not necessary even if evidentiary errors underlay some non-essential findings. (Rule 556, Trans. Rules Proc. of State Bar.) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[1]**

Where aggravating factor of bad faith found by hearing judge rested entirely on inadmissible hearsay evidence, review department declined to adopt such finding. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[10]**

Written report from respondent's probation monitor was inadmissible as hearsay where it did not establish that respondent had notice of anything unless probation monitor's recitals of what he told respondent were accepted as true. However, where such evidence was merely cumulative on question of notice, any reliance thereon by hearing judge was harmless error. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[14]**

In matter where record lacked any evidence of impropriety of respondent or respondent's staff in dealing with clients, case law requiring all reasonable inferences to be resolved in respondent's favor supported attribution of no base motives to respondent. Thus, in deciding to dismiss charges, hearing judge properly saw case as one involving a dispute between two attorneys over clients, files, and the first attorney's fee, and did not improperly fail to consider totality of respondent's conduct. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[4]**

In order to find an attorney culpable of a rule violation, the attorney's misconduct must be found to have been wilful. Where no such finding was expressly set forth in hearing judge's decision, review department deemed it to have been made based on hearing judge's conclusions. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[3]**

Where, in weighing conflicting evidence, hearing judge gave greater credence to complaining witness than to respondent based on witness's better record keeping and trustworthiness and on lack of documents to support respondent's decisions, review department was required to accord great weight to hearing judge's credibility assessments, and would not disregard hearing judge's findings without sufficient reason. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[4]**

Where two or more acts of professional misconduct are found, the discipline should be the most severe of the several applicable sanctions, not the sum of the applicable standards. Accordingly, it was not appropriate to recommend 18-month actual suspension based on conclusion that one-year actual suspension was appropriate for misappropriation and six-month actual suspension was appropriate for writing insufficiently funded checks. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[20]**

Testimony disregarded by the hearing judge which provides a plausible explanation of the respondent's conduct may be considered on de novo review as evidence that the hearing judge's fact findings were not supported by clear and convincing evidence. On independent review of the record, both the Supreme Court and

the review department resolve all reasonable doubts and inferences in favor of the respondent. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[4]**

Where State Bar's chief witness exhibited poor memory, repeatedly testified inconsistently on key issues, admittedly had misrepresented facts to insurance company and State Bar, and admittedly was motivated by anger and economic stress at time of complaint to State Bar, hearing judge's findings based solely on selected portions of such witness's inconsistent testimony were not supported by clear and convincing evidence in light of the record as a whole. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[11]**

No deference was due to hearing judge's reliance on letters from complaining witness to State Bar, since such letters were not testimony but documentary evidence. Findings based on selected portions of the witness's testimony, which were contradicted in other portions of such testimony, and on the witness's demonstrably untrustworthy hearsay statements in the letters to the State Bar, were not supported by clear and convincing evidence in the record as a whole. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[12]**

Assuming hearing judge disbelieved testimony of all witnesses as to facts exculpating respondent, this was not a basis to find culpability. Testimony not worthy of belief does not reveal the truth itself or warrant an inference that the truth is the converse of the rejected testimony. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[13]**

The State Bar must prove aggravating factors as well as culpability by clear and convincing evidence to a reasonable certainty. Accordingly, finding in aggravation of bad faith could not be predicated on selected portions of complaining witness's unreliable correspondence and inconsistent testimony. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[20]**

Where the evidence concerning an attorney's authority to apply client trust funds to attorney's fees consisted largely of conflicting testimony, the hearing judge's finding that the attorney did not have the authority to use the funds, coupled with the documentary evidence supporting culpability, constituted clear and convincing evidence supporting the judge's conclusion that the attorney improperly used and misappropriated client trust funds. Because the attorney's trust account balance repeatedly dropped below the necessary amount over a period of many months, and the attorney did not have an adequate explanation for the inadequate trust account balance, the attorney's misconduct, though not involving intentional dishonesty, constituted gross negligence amounting to moral turpitude. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[2]**

A hearing judge's announcement of tentative findings on culpability from the bench may be necessary due to the bifurcated nature of State Bar Court proceedings coupled with the desire to avoid an extra day of hearing. (Rules 1250, 1260, Provisional Rules of Practice.) *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[8]**

Where the hearing judge found the complaining witness worthy of belief on the crucial factual issues, and that witness's testimony was bolstered by other evidence in the record, and respondent's contrary contention that he had been discharged by his clients was not corroborated by documents that ordinarily would have been prepared by an attorney upon discharge, the hearing judge's conclusion that respondent abandoned his clients without notifying them was supported by the record, even though the complaining witness's testimony was not uniformly reliable regarding exact details. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[9]**

Where respondent's testimony was plausible and uncontradicted, it should have been regarded as proof of the fact testified to, especially where contrary evidence, if it existed, would be readily available, but was not offered. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[4]**

Evidence of respondent's extensive pro bono activities and community involvement was entitled to greater weight as mitigating evidence than given to it in the hearing judge's decision, in which it was not mentioned. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[16]**

Where hearing judge's decision was issued prior to relevant Supreme Court and review department opinions, and did not discuss whether gross negligence resulting in misappropriation should be subjected to same suggested minimum sanction of one year actual suspension as is applied for intentional misappropriation, but hearing judge's

recommendation of one-year minimum was justified by facts in record making suspension appropriate for public protection, review department concluded that hearing judge's discipline recommendation was based on an analysis of the record in light of the objectives of discipline rather than on a rigid application of the Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[8]**

Where there was no evidence in the record that a reinstatement petitioner had taken and passed a professional responsibility examination, and neither the parties nor the hearing judge focused on the issue when evaluating petitioner's request for reinstatement, the matter was remanded to give the petitioner an opportunity to take and pass the examination if he had not already done so, and for findings on the issue. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[7]**

Where neither respondent nor respondent's former client testified as to respondent's hourly fee, but respondent had sent one bill to client reflecting an hourly rate of $100, and respondent apparently acquiesced in hearing judge's finding that respondent's fee was $100 per hour, review department adopted such finding. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[1]**

A finding that the amount respondent withdrew from a client trust account was not an earned fee, even though the client did not dispute respondent's testimony that it was an earned fee, was consistent with the evidence that respondent had not performed any legal services during the period of time for which he withdrew the funds; that what work was done by the attorney occurred after the trust funds had been withdrawn; that no value had been placed on the attorney's services during that time, and that the attorney had otherwise been inattentive to the client's case. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[3]**

Where hearing judge accepted respondent's testimony that respondent's prolonged failure to file personal income tax returns resulted from problems with respondent's accountants, and examiner did not object to hearing judge's determination that there was no clear and convincing evidence of misconduct in connection with respondent's failure to file tax returns, review department adopted judge's findings and conclusion of non-culpability. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[3]**

Where there is a conflict in the evidence, the hearing judge is in a particularly appropriate position to resolve it, and the Rules of Procedure require the review department to afford great weight to the hearing judge's findings in such matters, absent a good reason for reaching a different result. Where the hearing judge accepted respondent's client's testimony regarding the timing of a request for a refund of advanced costs, and explained why the client's testimony was given greater weight than respondent's contrary testimony, the review department adopted the hearing judge's findings and conclusions on that issue. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[7]**

Where hearing referee's decision contained virtually no findings of fact and did not relate the conclusions of law either to the facts or to specific counts of the notice to show cause, review department was compelled to exercise its authority to make its own findings and conclusions based on independent review of the record, as authorized by rule 453 of the Transitional Rules of Procedure. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[1]**

Where hearing referee failed to determine whether respondent's default was properly entered, review department was required to do so, and for that purpose it took judicial notice of respondent's membership records address under Evidence Code section 459; evidence of membership records address is essential in a default case to assess the propriety of the default procedures. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[3]**

A complete charge in the notice to show cause does not necessitate a lengthy pleading but does necessitate particularity to provide sufficient notice. As a result of specific charging the State Bar Court hearing judge is then provided with a proper framework within which to decide the issues raised. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[5]**

The hearing department should have made clear its reasons for recommending a lower level of discipline than that called for by an applicable standard. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[19]**

Given the deference to be accorded to the referee's findings on issues of fact and credibility, the party requesting review does not advance his or her cause very effectively by ignoring those findings, especially when no contention is advanced that the findings are not supported by the evidence. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[9]**

Although hearing referee did not specifically find that client had expressly authorized attorney to endorse settlement check on client's behalf, review department interpreted decision to have resolved this issue on the basis of express rather than implied authorization. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[8]**

Where hearing referee's findings and conclusions were incomplete and in some instances irreconcilable with each other, and referee failed to make critical determinations regarding credibility of respondent's testimony asserting his innocence, which testimony conflicted with determinations of civil courts in related litigation, review department could not make its own findings and conclusions based on documentary evidence, but found it necessary to remand for new trial, including reassessment of witness credibility and weight of documentary evidence in light of such assessment. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[1]**

Where court in civil action related to disciplinary proceeding had concluded (applying preponderance of evidence standard) that there was substantial evidence that purported transfer of partnership interest to respondent was fraudulent, and it was undisputed that respondent had prepared partnership transfer document, referee's conclusion in disciplinary proceeding that there was no evidence that respondent actively participated in fraud in preparation of document could only be consistent with civil court finding if referee's conclusion was based on difference in applicable standard of proof, in that culpability in disciplinary cases must be proven by clear and convincing evidence. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[7]**

Where the record includes extensive documentary as well as testimonial evidence, it is incumbent on the hearing department to weigh all of the evidence and identify for the litigants and further reviewing bodies the way in which credibility assessments led to the court's ultimate conclusions regarding respondent's culpability or innocence. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[8]**

Where hearing referee concluded that respondent did not act dishonestly, but failed to exercise due diligence in learning the true facts before filing a declaration in a civil court, this conclusion was inconsistent with the conclusion that respondent's declaration violated the rule against seeking to mislead a judge by a false statement of fact. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[9]**

If respondent's only breach, in relation to a charge of filing a false declaration, was a lack of care in ascertaining the truth of the facts presented in the declaration, then it was incumbent on the hearing referee to determine whether that lack of care or diligence was culpable within the charges and fell below the level of conduct required of members of the State Bar. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[10]**

Although referee indicated that he had not reached a final decision despite preparation of draft findings, he appeared to have placed a greater burden of proof on the respondent than permitted by law. If a trier of fact imposes the wrong burden of proof, that itself can constitute reversible error. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[6]**

It is the duty of the review department to conduct an independent review of the record. The review department is therefore able to make its own findings on issues that turn on documentary evidence or are undisputed. However, as to issues where conflicting testimony requires credibility determinations which were not made by the hearing department, such issues must be remanded for resolution. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[8]**

The Supreme Court has expressed concern with assuring that the record in disciplinary proceedings reflects the correct evidence and finding of prior discipline or lack thereof. Accordingly, where only one of respondent's two prior disciplinary proceedings was made a part of the record and weighed by the hearing judge, it was necessary for the review department to remand the matter to the hearing judge to take evidence on the other prior discipline and consider its effect on the recommended discipline. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[5]**

Where attorney testified to involvement in pro bono activities, but hearing referee's findings did not specify extent of such involvement and evidence in record was sketchy, review department accorded such evidence little weight as mitigation. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[8]**

Where referee made no finding that respondent misled clients' doctor about status of clients' case, and evidence in record was unclear, review department declined to find such misrepresentation as an aggravating factor. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[9]**

The hearing department may properly give greater credence to a witness's testimony on some issues than on others. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[3]**

In default matter, hearing referee erred in basing findings of culpability partly on facts deemed admitted by failure to respond to improper post-default discovery, and in finding culpability on charges broader than those set forth in notice to show cause. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[12]**

General rule is that where record is silent, all intendments and presumptions are indulged to support a lower court order; moreover, inadvertent misuse of terms in an order does not require reversal. Review department therefore presumed that referee considered and denied alternate ground for relief from default which was addressed in moving papers of both parties but not listed in referee's order denying motion. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[4]**

It is important for decisions of the State Bar Court to identify with specificity both the rule or statutory provision that underlies each charge and the manner in which the conduct allegedly violated that rule or statutory provision. This specificity is essential to the respondent's due process right to adequate notice, as well as to meaningful Supreme Court review of the recommendation of the State Bar Court. The notice to show cause must be sufficient to support the charges relied upon in the decision, because the findings of the State Bar Court must rest on the charges filed. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[6]**

Increased specificity in articulating the charged misconduct in the notice to show cause will enable the respondent to prepare to meet the charges; provide the hearing judge with a proper framework for findings and conclusions; and make it easier for the review department and the Supreme Court to conduct meaningful de novo review of the hearing judge's decision. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[22]**

The State Bar Court must make appropriate findings as to the manner in which an attorney's conduct violated charged rules and statutes. Conclusory language in an examiner's papers indicating that the factual findings supported a conclusion of culpability under a given statute or rule was inadequate and did not promote meaningful review. The conduct proved under each count which supports culpability of particular charged violations must be identified. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[3]**

Hearing referee's failure to make express findings specifying aggravating factors was not interpreted as evidence that he ignored those factors that were obvious from the record. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[13]**

Respondent's failure to substantiate with documentary evidence his claim that he had earned funds which he claimed were advanced legal fees was properly considered by hearing panel in determining that respondent was not credible on this issue, even though burden of proof was not respondent's. Giving great weight to hearing panel's credibility determination and resolution of conflicting facts against respondent, review department found no basis to reject panel's finding that funds were advanced costs which respondent misappropriated. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[5]**

Probation conditions which were not set forth in language of standard conditions of probation utilized in disciplinary proceedings were inadequate. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[20]**

Where the hearing department's findings are incomplete, the review department, because its review of the record is independent, is empowered to reweigh the evidence and make its own findings and conclusions flowing appropriately from the record. *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[1]**

Review department's review of reinstatement matter was made more difficult by hearing referee's failure to make findings on many of the specific issues in dispute, but review department's independent review of the record permitted it to make the necessary findings. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[8]**

Upon its independent review of the record, the review department found that circumstances of reinstatement petitioner's omission of two lawsuits from reinstatement petition demonstrated that petitioner had not met his heavy burden of showing clearly and convincingly his rehabilitation and present moral fitness. While review department was reluctant to differ with referee who weighed the credibility of witnesses, including petitioner, and who concluded that petitioner met reinstatement standards, it was review department's duty to independently examine record, reweigh evidence and pass on its sufficiency. Doing so, review department concluded that hearing referee had not given sufficient care to analyzing petitioner's evidence about his non-disclosure of two lawsuits as it bore on the qualities needed for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[9]**

Where entry of attorney's default for failure to appear at disciplinary hearing resulted in the admission of all allegations in the notice to show cause, but certain of those allegations were in conflict with evidence adduced at hearing, examiner properly requested reconsideration of hearing decision to delete findings contrary to evidence adduced at hearing, and hearing referee properly deleted such findings from the decision, based on their conflict with the evidence. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[1]**

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A member in default has various opportunities to seek relief from default. (Rules Proc. of State Bar, rules 5.83(A), (C), (D), and 5.85(E).) Because the effects of a default may deny a disposition of the case on the merits irrespective of the charges or potential mitigation, the review department closely scrutinizes orders denying relief from default and any doubts must be resolved in favor of the member. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[3]**

Under rule 9.12 of California Rules of Court, and rule 5.152(C) of Rules of Procedure of State Bar, Review Department independently reviews record, but considering only specific factual findings raised by parties; factual errors not raised on review are waived by parties. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[1]**

Review Department gives great deference to hearing judge's credibility findings. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[2 a,b]**

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do

too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

In view of the review department's duty to independently review the record and make findings of fact and conclusions of law, any alleged denial of due process by the hearing judge's failure to clearly identify respondent's misconduct in the hearing judge's decision was remedied by the review department's issuance of an opinion that superseded the hearing judge's decision. Therefore, respondent's due process contention was rendered moot and was not addressed on the merits.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[2]**

Regardless of whether respondent had the right on review to challenge the conclusions of culpability to which she stipulated to in the hearing department, the review department still had an affirmative duty to determine if the culpability findings were supported by the record.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[2]**

Even though the hearing judge properly admitted and judicially noticed the record in a prior civil proceeding in which respondent was a party, the hearing judge erred in making factual findings regarding the nature and extent of respondent's violations of the moral turpitude statute based upon the evidence in the civil record independent of the application of collateral estoppel because he did not first give respondent a fair opportunity to attempt to contradict, temper, or explain the evidence in it with other evidence. That error required the reversal of the hearing judge's findings as to the nature and extent of respondent's statutory violations and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the nature and extent of respondent's violations.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[7]**

In making his factual findings with respect to charged violations of the former rule of professional conduct governing business transactions with clients, the hearing judge erred in reweighing and relying upon the evidence in a prior civil proceeding in which respondent was a party without first giving respondent a fair opportunity to attempt to contradict, temper, or explain that evidence. That error required the reversal of the hearing judge's findings that respondent committed multiple violations of the former rule governing business transactions with clients and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the charged violations of that former rule.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[9 a, b]**

Rule 219 of the Rules of Procedure of the State Bar provides that, after the party with the burden of proof has rested, the opposing party may move for a determination that the party with the burden of proof has failed to meet that burden. In deciding the motion, the hearing judge is required to consider all the evidence introduced, weigh that evidence and make determinations of credibility. The review department held that the hearing judge's ruling on a motion made pursuant to rule 219 is reviewable on plenary review under rule 301 of the Rules of Procedure of the State Bar and that such review is de novo. The review department must determine, based upon its independent review of the evidence before the hearing judge at the time the motion was made, whether clear and convincing evidence was presented of each element of the charged offenses. In deciding these issues, the review department must give great weight to the hearing judge's credibility determinations. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166.**[1 a-c]**

The review department's duty to independently review the record is settled. At the same time, the review department must give great weight to the hearing judge's determination that turns on credibility to be assigned to witness testimony. The department was reluctant, therefore, to ascribe to respondent a specific intent to deceive when the hearing judge who considered respondent's testimony and that of other witnesses found none. This does not exonerate respondent from moral turpitude charges as to his false statement in his motion to disqualify

a superior court judge. The hearing judge's conclusion that respondent violated statute and rule of professional conduct requiring attorneys to use only means consistent with truth must be read to find culpability by respondent's gross negligence, as simple neglect would not be sufficient for a statutory violation. Gross negligence is a well-established basis for finding an act of moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[1]**

Without, at least, a factual stipulation establishing aggravation and mitigation, neither the review department nor the Supreme Court have a complete record upon which to evaluate the appropriate discipline for the misconduct that occurred. Where the record consisted of the parties' partial stipulation to facts which did not address any aggravating or mitigating circumstances and two character letters proffered by respondent, the review department determined that the sparse record precluded it from fulfilling its duty to independently review the record and remanded the case for a trial de novo at which an adequate record was made. *In the Matter of Rodriguez* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 884. **[2]**

The rule requiring the review department to give great weight to the hearing judge's findings of fact that resolve issues pertaining to the credibility of the witnesses, which rule is premised on the hearing judge's ability to see the witnesses' demeanor and conduct during trial, is not applicable when a witness's testimony is present only through a written transcript of the witness's deposition. Thus, in such a case, the review department may independently evaluate the credibility of the witness's deposition testimony without giving great weight to the hearing judge's findings. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[3]**

Regardless of who seeks review, the review department has the authority and obligation to conduct de novo review and to increase the discipline, if appropriate. *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390. **[3]**

Hearing judge's credibility findings based on respondent's demeanor while testifying are entitled to great weight. Where hearing judge found that respondent did not mislead court about applicability of statutory fee limitation because respondent had honest but unreasonable belief that statute did not apply, but review department concluded that respondent's failure to disclose fee limitation was unreasonable under circumstances, review department found that respondent violated duty not to mislead courts and committed act of dishonesty, but that such misconduct occurred through gross negligence rather than intentional dishonesty. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[14]**

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

Even where State Bar did not contest on review hearing judge's finding that respondent had not violated Rules of Professional Conduct, review department's obligation was to review record independently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[2]**

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

Review department's review of record is independent, and it may draw its own conclusions from record whether or not a party has requested it to do so. Where hearing judge's conclusion that respondent had committed act of moral turpitude was difficult to reconcile with judge's conclusion as to appropriate discipline, it was appropriate for review department to give particular scrutiny to culpability conclusion as well as degree of discipline, even though respondent had not requested review of moral turpitude conclusion. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[8]**

Although review department's review of record is independent, it must give great weight to hearing judge's credibility determinations and it is reluctant to deviate from hearing judge's credibility-based factual findings in absence of specific showing of error. Where respondent argued that his version of events was more credible because State Bar's witnesses had reason to be less than truthful, this argument ignored respondent's own obvious similar motive, and was not grounds to depart from hearing judge's credibility determinations. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[2]**

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

Even though primary focus of respondent's arguments on review was degree of discipline, review department's review of the record was independent and therefore, review department was required to determine whether hearing judge's findings of fact and conclusions of law were supported by record. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[1]**

Where parties to a disciplinary proceeding reached a stipulation but agreed to preserve right to seek review as to one contested culpability issue, review department construed order approving stipulation and hearing judge's partial decision as together constituting a decision for the purpose of review. However, review department was obligated to review entire record independently and had authority to make findings, conclusions, and a disciplinary recommendation at variance with those of hearing department. (Trans. Rules Proc. of State Bar, rule 453(a).) Agreement between parties could not restrict review department's obligation of independent review. Accordingly, review department declined to limit its review to contested culpability decision, and was not bound by stipulated discipline recommendation. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[1]**

The State Bar must prove culpability by clear and convincing evidence. Where respondent requested review department to make supplementary finding concerning culpability, but record clearly and convincingly established a fact inconsistent with such proposed finding, review department declined to adopt proposed finding. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[4]**

Respondent must establish mitigating circumstances by clear and convincing evidence. Where respondent requested review department to make supplementary findings pertaining to mitigating circumstances, but did not present clear and convincing evidence in support of such proposed findings, review department declined to adopt them. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[5]**

Where parties agreed to highly unusual stipulation expressly preserving right to seek review, but did not contemplate that review department would recommend discipline more severe than that set forth in order approving stipulation, parties' expectation that review department would be bound by stipulated discipline was unjustified. However, it was appropriate to relieve parties from stipulation due to their mutual mistake. Accordingly, review department vacated order approving stipulation and remanded proceeding for new stipulation or trial. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[11]**

Because the review department must review the record independently and is not bound by the hearing judge's findings or recommendation (Trans. Rules Proc. of State Bar, rule 453(a)), the issue of appropriate discipline in a matter involving violation of rule 955, California Rules of Court and other misconduct did not turn on the one narrow issue argued on review by the parties regarding the appropriateness of a retroactive suspension. The review department therefore considered whether any form of suspension was adequate discipline given Supreme Court precedent generally ordering disbarment for rule 955 violations. Although the State Bar's declination to recommend disbarment was accorded considerable weight, it could not be reconciled with the precedent making disbarment the appropriate discipline. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[1]**

Due to the requirement that the review department undertake an independent review of the record, the review department cannot be bound by a stipulation by the parties attempting to limit the scope of review. Also, the review department has the authority to adopt findings, conclusions, and a decision or recommendation at variance with those of the hearing judge. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[3]**

Orders for inactive enrollment under section 6007(b)(1), like those under section 6007(b)(3), are subject to independent review pursuant to rule 450 of the Transitional Rules of Procedure. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[2]**

In probation revocation matter, where notice to show cause informed respondent who was subject to stayed suspension that he could be enrolled inactive upon finding of probation violation and recommendation of actual suspension therefor, it would have been appropriate for hearing judge to order such inactive enrollment with or without request from Office of Trial Counsel, and where hearing judge had not done so, review department made

such order. Under statute providing that inactive enrollment for probation violation shall be credited against ensuing actual suspension, review department recommended that respondent's one-year actual suspension commence as of the date of his inactive enrollment. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[7]**

Where Office of Trials argued that recommended discipline was too low in light of existing findings, and also suggested supplemental findings, and on de novo review, review department agreed that discipline was insufficient in light of findings made by hearing judge, review department did not need to address issue of supplemental findings. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[1]**

In the Matter of Miller (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423.

The review department will not consider disputed, extrinsic evidence on review. Where respondent's counsel referred at oral argument to respondent's current activity, the review department permitted the parties an opportunity to file a stipulation regarding this subject, but when no stipulation was reached, the review department declined to consider the parties' separate declarations setting forth their individual views of the facts. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[2]**

The standard of review on the issue of exclusion of evidence depends on the basis for the hearing judge's action. If the proffered evidence was inadmissible as a matter of law, then the standard is independent de novo review. If not, the review department must consider whether the hearing judge had discretion to exclude the evidence, and if so, whether that discretion was properly exercised. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[8]**

The law of the case doctrine does not preclude the current review department from reviewing the former review department's decision de novo. If review is sought in a proceeding which had been previously decided by the former review department, the entire matter is before the review department for independent de novo review, and it may act on an issue regardless of whether the parties have raised it. (Rule 453(a), Trans. Rules Proc. of State Bar.) Accordingly, review department could reopen a charge dismissed by the former review department. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[1]**

Former review department's alleged lack of quorum was moot where all issues in proceeding were before current review department for independent de novo review. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[3]**

Where two unrelated matters were consolidated in the hearing department, and a party requested review in order to challenge the result in one of the matters, the entire matter was placed before the review department and reviewed by it even though in the other matter neither party challenged the findings and conclusions of the hearing judge. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[1]**

The hearing judge's determinations of testimonial credibility must receive great weight because the hearing judge observed the witnesses' demeanor. However, the review department, examining the record independently, must reweigh the evidence and pass upon its sufficiency. Where testimonial credibility was not an issue and the determination to be made was whether the quality and quantity of a party's evidence met the applicable burden of proof, the issue was a question of law. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[6]**

In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234.

Review by review department is not the same as civil or criminal appeal. Even where neither party addressed issue of culpability on review, review department was not limited by issues raised by parties, and was required to analyze record independently, to determine whether clear and convincing evidence supported hearing judge's findings and conclusions regarding culpability, and to determine appropriate degree of discipline to recommend. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[7]**

Where review is sought, the review department must independently review the entire record. Accordingly, the review department reviewed propriety of hearing judge's dismissal of one count even though examiner did not request such review. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[1]**

Where, in weighing conflicting evidence, hearing judge gave greater credence to complaining witness than to respondent based on witness's better record keeping and trustworthiness and on lack of documents to support respondent's decisions, review department was required to accord great weight to hearing judge's credibility assessments, and would not disregard hearing judge's findings without sufficient reason. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[4]**

The standard of review applied by the Supreme Court and the review department is independent review of the record, giving deference to the credibility determinations of the hearing judge. Unlike in the Supreme Court, in the review department the respondent does not have the burden of demonstrating that the hearing decision is erroneous. The review department makes its own independent determination whether there is clear and convincing evidence to support culpability, giving great weight to the hearing judge's findings resolving issues pertaining to testimony, but also taking into account the hearing judge's evaluation of the believed witness's general credibility. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[3]**

Testimony disregarded by the hearing judge which provides a plausible explanation of the respondent's conduct may be considered on de novo review as evidence that the hearing judge's fact findings were not supported by clear and convincing evidence. On independent review of the record, both the Supreme Court and the review department resolve all reasonable doubts and inferences in favor of the respondent. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[4]**

No deference was due to hearing judge's reliance on letters from complaining witness to State Bar, since such letters were not testimony but documentary evidence. Findings based on selected portions of the witness's testimony, which were contradicted in other portions of such testimony, and on the witness's demonstrably untrustworthy hearsay statements in the letters to the State Bar, were not supported by clear and convincing evidence in the record as a whole. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[12]**

Given conflicting documentary evidence and unreliable and inconsistent testimony by complaining witness, review department may conclude on independent review, without attempting to resolve such evidentiary conflicts, that State Bar did not meet its burden to show culpability by clear and convincing evidence to a reasonable certainty. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[16]**

On review of a facial challenge to the legal sufficiency of charges in the notice to show cause, the sole issue presented is whether the facts alleged in the notice, if proven, would constitute a disciplinable offense. For the purpose of such review, the review department treats the factual allegations of the notice as true, but draws independent conclusions regarding the legal import of those facts. (Trans. Rules Proc. of State Bar, rule 554.1.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[1]**

Where respondent failed to brief a contention raised on review, addressing it for the first time at oral argument, the review department was reluctant to consider it. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[9]**

Even where the examiner does not seek review of the dismissal of a count of the notice to show cause, the review department is obligated to conduct a de novo review of the hearing judge's disposition of that count, and may reach a different conclusion based on the record. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[2]**

A hearing judge's interpretation of a written exhibit is not a determination on the credibility of a witness. The review department is free to make its own findings on issues that turn on documentary evidence, and to disagree with the hearing judge's resolution of such issues. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[4]**

Factual findings made by a hearing judge and resolving issues concerning testimony deserve great weight, but may be supplemented by the review department's own findings interpreting documentary evidence. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[10]**

Even where the record at the hearing level consists of stipulated facts and conclusions, the review department's review is nevertheless independent, and it may adopt findings, conclusions, and a disciplinary

recommendation different from those of the hearing judge. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[2]**

The review department's inquiry into a matter does not end when it determines that the arguments of the party seeking review are unpersuasive. In all cases brought before it, the review department must independently review the record. In so doing, the review department accords great weight to findings of fact made by the hearing department which resolve testimonial issues. However, the review department has the authority to make findings, conclusions and recommendations that differ from those made by the hearing department. Moreover, the issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department. (Rule 453, Trans. Rules Proc. of State Bar.) *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[3]**

Credibility findings by the finder of fact are to be accorded great weight by the review department and it should be reluctant to deviate from them. Nonetheless, the findings must be supported by the record. Where the review department found insufficient evidence to support challenged findings, it declined to adopt them. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[9]**

Abuse of discretion is the standard generally applied to review of rulings on motions at the hearing level, but has never been the standard of review applied by the Supreme Court to findings of culpability. The review department must independently review the record as a whole. Great weight is given to credibility determinations based on testimony at the hearing, but none of the findings at the hearing level is binding upon the reviewing court. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[2]**

Where respondent's client denied having had a certain conversation with respondent, and the hearing judge credited the client on that point, but the record as a whole showed that respondent lacked a motive to lie in testifying about the conversation, the evidence suggested that the client might have forgotten the conversation, and the client exaggerated in other testimony and was very bitter toward respondent, the review department, while not rejecting the credence given to the client's testimony by the hearing judge, did find that the client's testimony failed to constitute clear and convincing evidence of intentional misrepresentation by respondent. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[4]**

Where the hearing judge accepted as true the testimony of two State Bar witnesses, but such testimony did not contradict respondent's own plausible version of events, the review department found that State Bar had failed to prove by clear and convincing evidence that respondent had testified falsely. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[5]**

The review department gives great weight to credibility determinations by hearing judges. (Trans. Rules Proc. of State Bar, rule 453.) *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[3]**

Where respondent's client's testimony contradicted respondent's testimony, and the hearing judge found the client's testimony to be more credible on the disputed point, but other circumstances revealed by the record nonetheless limited the effect of the client's testimony, the review department held that the record did not establish

Belated restitution is not an appropriate basis for a finding in mitigation, and review department declined to adopt such finding even though not challenged by the parties. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[5]**

Where the testimony of the State Bar's witnesses was in conflict with that of respondent, and the referee resolved those conflicts against respondent, respondent could not show error in the findings merely by repeating his own version of the facts, and respondent's generalized challenge to the complainant's credibility was not sufficient to persuade the review department to reject the referee's findings. In the absence of a strong showing that the referee was mistaken, the review department is required to defer to the referee's determinations as to credibility, and it is reluctant to deviate from the referee's credibility-based findings in the absence of a specific showing that they were in error. (Rule 453, Trans. Rules Proc. of State Bar.) *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[1]**

Where there is a conflict in the evidence, the hearing judge is in a particularly appropriate position to resolve it, and the Rules of Procedure require the review department to afford great weight to the hearing judge's findings

in such matters, absent a good reason for reaching a different result. Where the hearing judge accepted respondent's client's testimony regarding the timing of a request for a refund of advanced costs, and explained why the client's testimony was given greater weight than respondent's contrary testimony, the review department adopted the hearing judge's findings and conclusions on that issue. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[7]**

Pursuant to Transitional Rules of Procedure 453(a), review department's independent fact finding authority permits it to delete erroneous finding from hearing department's decision. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[2]**

Where hearing referee's decision contained virtually no findings of fact and did not relate the conclusions of law either to the facts or to specific counts of the notice to show cause, review department was compelled to exercise its authority to make its own findings and conclusions based on independent review of the record, as authorized by rule 453 of the Transitional Rules of Procedure. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[1]**

In proceeding to determine whether criminal convictions involved moral turpitude, the arresting officer's testimony describing a victim's retelling of the incident was hearsay, but was properly admitted because respondent waived hearsay objection by failing to appear at the hearing. The review department independently reviewed the hearsay evidence, found sufficient trustworthiness, and concluded it was properly relied on by the referee. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[5]**

The review department is obligated to afford great weight to the assessments of credibility made by the hearing referee, for the referee is in the best position to see witnesses and judge, by their demeanor and address, the truthfulness of each. Respondent's repeating his version of the events does not demonstrate that the referee's findings were unfounded. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[6]**

The review department may appropriately exercise its independent review authority to reach an issue which is otherwise moot as a result of the hearing judge's disposition of the matter below, where the issue comes before the State Bar Court on a regular basis or is an issue of public importance likely to recur. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[3]**

Where neither party sought review of the dismissal of misrepresentation charges, and the testimony at the hearing was in conflict on the matter, then in light of the weight accorded to credibility findings of the trier of fact and in view of the record as a whole, the review department adopted the hearing department's findings regarding the misrepresentation charge. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[9]**

Rule 453, Trans. Rules Proc. of State Bar, requires review department, in all cases brought before it, to independently review record. Review department accords great weight to findings of fact by hearing department resolving testimonial issues. However, it may make findings, conclusions and recommendations differing from those of the hearing department. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[3]**

Issues raised or addressed by parties on review do not limit scope of issues to be resolved by review department. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[4]**

In analyzing disputed facts in a matter on review, the review department defers to the hearing department's explicit credibility findings premised on personal observation of the demeanor of the witnesses. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[1]**

Even though party requesting review did not challenge certain of hearing department's conclusions as to culpability, review department reviewed these determinations as part of its independent de novo review of the record. (Rule 453(a), Trans. Rules Proc. of State Bar.) *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[3]**

The review department's review of hearing decisions is independent; it may make findings of fact or adopt conclusions at variance with those of the hearing department. Nevertheless, the review department accords great

weight to the hearing department's findings resolving issues pertaining to testimony. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[2]**

Review department gave deference to hearing referee's findings and conclusions regarding reinstatement petitioner's showing of rehabilitation, since they rested largely on referee's superior position to evaluate testimony of witnesses. However, petitioner's two post-disbarment criminal convictions, and failure to establish that restitution had been made in disciplinary proceeding pending at time of disbarment, raised serious questions regarding rehabilitation. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[8]**

In all cases brought before it, the review department must independently review the trial record just as the Supreme Court does upon review of the review department recommendation. (Rule 453(a), Trans. Rules Proc. of State Bar.) In doing so, the review department accords great weight to findings of fact made by the hearing department which resolve testimonial issues. However, the review department also has the authority to make findings, conclusions and recommendations that differ from those made by the hearing department. Moreover, the issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department; despite a party's initial failure to request review on one count which was addressed in the party's brief, the review department would address the propriety of the findings on that count. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[1]**

Where hearing referee found respondent's testimony credible and candid, and client's testimony confusing and inconsistent, argument that review department should disbelieve attorney and believe client was unavailing in light of deference review department must give to referee's findings based on credibility of witnesses. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[7]**

Although party requesting review raised only one issue regarding a legal conclusion drawn by the hearing judge, review department had duty to conduct independent, de novo review of record. (Trans. Rules Proc. of State Bar, rule 453(a).) Review department therefore undertook to determine whether remainder of hearing judge's findings and conclusions were supported by record, and whether recommended discipline was appropriate. In so doing, review department held that hearing judge erred in rejecting culpability on one charge. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[1]**

Rule 453 of the Transitional Rules of Procedure provides that in all cases brought before it, the review department, like the Supreme Court, must independently review the record. The review department accords great weight to findings of fact made by the hearing judge which resolve issues pertaining to testimony, but the review department may make findings, conclusions and recommendations that differ from those made by the hearing judge. The issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[2]**

Where hearing referee's findings and conclusions were incomplete and in some instances irreconcilable with each other, and referee failed to make critical determinations regarding credibility of respondent's testimony asserting his innocence, which testimony conflicted with determinations of civil courts in related litigation, review department could not make its own findings and conclusions based on documentary evidence, but found it necessary to remand for new trial, including reassessment of witness credibility and weight of documentary evidence in light of such assessment. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[1]**

On its independent review of the record, the review department may reweigh all evidence and adopt findings and a recommendation of discipline at odds with the referee on all issues. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[4]**

The Rules of Procedure of the State Bar require that the review department give great weight to the hearing department's findings of fact resolving issues pertaining to testimony. This rule rests on the sound policy that when evidence turns on the assessment of credibility, the evaluation of such evidence should be made by a judicial officer who sees and hears the witnesses and can translate the credibility accorded witnesses into the weight to be given their testimony as it relates to other evidence in the case. Before disregarding any such credibility assessments, the review department must have a very good reason for doing so. (Trans. Rules Proc. of State Bar, rule 453.) *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[6]**

It is the duty of the review department to conduct an independent review of the record. The review department is therefore able to make its own findings on issues that turn on documentary evidence or are undisputed. However, as to issues where conflicting testimony requires credibility determinations which were not made by the hearing department, such issues must be remanded for resolution. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[8]**

Although the review department conducts independent review, it accords great weight to factual findings of the hearing department which turn on evaluations of credibility. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[1]**

Because the hearing department is in the best position to view witnesses and evaluate their truthfulness, the review department is reluctant to deviate from the hearing department's credibility findings. Reevaluation of witness credibility is limited by the nature of the review process, due to the effect of witness demeanor on credibility findings. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[2]**

In administrative mandamus proceedings where the court is authorized to exercise independent judgment on the evidence, abuse of discretion by the lower tribunal is established if the court determines that the findings are not supported by the weight of the evidence. Where the court is not authorized to exercise independent judgment, then it must determine whether the findings are supported by substantial evidence in the light of the whole record. In such cases, due process requires that the body deciding the case must at least review a transcript of the evidence. The argument that this standard had been violated on earlier review by the former review department was mooted by the full-time review department's de novo review of the record on a second review after the former review department's remand for further hearing. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[1]**

The doctrine of law of the case did not preclude the full-time review department from reconsidering a decision of the former, volunteer review department. Due to the non-finality of recommendations of the former State Bar Court review department, law of the case did not apply to them. Upon its independent de novo review, review department was not bound to follow earlier factual determinations made prior to remand. Review department was also free to reconsider prior review department's legal interpretation of rule of professional conduct, given flexibility of law of the case doctrine in California appellate courts. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[3]**

In evaluating the record on review, the review department is bound to give great deference to the referee's evaluation of the credibility of the witnesses. There is a strong presumption in favor of the referee's findings of fact regarding such credibility. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[4]**

The review department must independently review all matters coming before it, and may adopt findings of fact, conclusions of law and recommendations at variance to those of hearing department. (Rule 453, Trans. Rules Proc. of State Bar.) *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[1]**

Review department conducts de novo review of hearing department decisions, similar to that conducted by Supreme Court, based on the record established in the hearing department. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[1]**

Issues must be addressed on de novo review despite lack of appropriate briefing. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[3]**

The review department gives great weight to the findings of the hearing judge, who saw and heard the witnesses and resolved matters of testimonial credibility. Nevertheless, under rule 453(a), Trans. Rules Proc. of State Bar, the hearing judge's decision serves as a recommendation to the review department, which undertakes an independent review and may make findings of fact or draw conclusions of law at variance with those of the judge. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[3]**

In order to reach merits on review of decision recommending discipline following default hearing, review department first had to be satisfied with the propriety of the entry of the respondent's default and the order denying

respondent's motion for relief from default. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[1]**

General rule is that where record is silent, all intendments and presumptions are indulged to support a lower court order; moreover, inadvertent misuse of terms in an order does not require reversal. Review department therefore presumed that referee considered and denied alternate ground for relief from default which was addressed in moving papers of both parties but not listed in referee's order denying motion. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[4]**

Where record showed that respondent cured defects in otherwise timely answer within six days of mailing of notice to do so by clerk's office, review department's duty of independent record review precluded it from ignoring those facts in determining just disposition of motion for relief from default, despite weakness of respondent's moving papers. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[12]**

The review department has an obligation to conduct an independent review of the entire record and make its own determinations of fact and conclusions of law; its findings are not limited to issues raised by the parties, and it has the power to correct errors in the hearing department's decision even when not requested to do so by the parties. (Rule 453, Trans. Rules Proc. of State Bar.) *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[1]**

Rule 453 of the Transitional Rules of Procedure of the State Bar requires the review department to independently review the record as to all matters brought before it. The review department accords great weight to findings of fact by the hearing department resolving testimonial issues. However, the review department has the authority to adopt findings, conclusions and recommendations that differ from those of the hearing department. Moreover, the scope of review is not limited to the issues raised by the parties. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[3]**

In reviewing hearing department's findings, conclusions, and recommendation, review department undertakes an independent examination of the record, but gives great deference to the referee's findings of fact and substantial weight to the referee's recommendation as to discipline. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[2]**

On review, the burden remains on the State Bar to prove its case by clear and convincing evidence. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[3]**

Court of appeal opinion on direct appeal from attorney's criminal conviction is conclusive with respect to attorney's guilt of underlying crime, but for discipline purposes, State Bar Court must independently determine, through careful review of criminal record, whether clients were victims of misconduct or misconduct was committed in attorney's capacity as attorney. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[8]**

Where the hearing department's findings are incomplete, the review department, because its review of the record is independent, is empowered to reweigh the evidence and make its own findings and conclusions flowing appropriately from the record. *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[1]**

Ambiguity in the record, created when hearing referee took judicial notice of respondent's prior record of discipline but failed to admit it into evidence, was removed when review department admitted in evidence the prior record of discipline that was previously offered at trial and judicially noticed. *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[6]**

Under rule 453(a) of the Transitional Rules of Procedure, the review department independently reviews the record; that is, the review department treats the findings of the hearing referee as recommendations to it and may make findings or draw conclusions at variance with those of the referee. This type of review requires the review department to examine the record independently and reweigh the evidence and pass upon its sufficiency. As to any matter resolving issues concerning testimony, the review department gives great weight to the hearing referee who saw and heard the witness. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[2]**

The review department must independently review the record in all cases brought before the court. (Trans. Rules Proc. of State Bar, rule 453.) Since the review department does not have the opportunity to observe the demeanor of witnesses, it accords great weight to findings of fact made by the hearing department which involve

resolving testimony and issues relating to testimony. However, the review department has the authority to make findings, conclusions and recommendations that differ from those made by the hearing department. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[1]**

The issues raised or addressed by the parties on review do not limit the scope of issues in a case that can be considered and resolved by the review department. (Trans. Rules Proc. of State Bar, rule 453(a).) *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[2]**

Although the examiner sought review on the issue of degree of discipline, once the review department had jurisdiction over the proceeding, all issues were subject to its independent review. (Trans. Rules Proc. of State Bar, rule 453(a).) The review department's review of the record is an independent one and not limited by the examiner's position. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[1]**

It is the duty of any accused member of the bar to present at the evidentiary hearing in the disciplinary proceeding all evidence favorable to him or her. The respondent cannot necessarily rely on the State Bar examiner's position conceding an issue in the case. The review department's review of the record is independent and not limited by the examiner's position, and the Supreme Court, in turn, is not limited by the recommendation of the review department or that of the hearing department in assessing the record. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[4]**

As to matters of testimonial credibility, the review department properly gives great weight to the hearing referee who saw and heard the witnesses and who resolved those issues. The review department should ordinarily be reluctant to deviate from the factual findings of the referee resolving testimonial matters. (Rule 453(a), Trans. Rules Proc. of State Bar.) *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[4]**

Under rule 453, Trans. Rules Proc. of State Bar, review by the review department is not an appeal from the hearing panel decision. The hearing panel's findings serve as a recommendation to the review department, which may make findings or draw conclusions at variance with those of the hearing referee. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[5]**

The independent review conducted by the review department requires that it independently examine the record, and reweigh the evidence and pass upon its sufficiency. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[6]**

Review department's review of reinstatement matter was made more difficult by hearing referee's failure to make findings on many of the specific issues in dispute, but review department's independent review of the record permitted it to make the necessary findings. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[8]**

Upon its independent review of the record, the review department found that circumstances of reinstatement petitioner's omission of two lawsuits from reinstatement petition demonstrated that petitioner had not met his heavy burden of showing clearly and convincingly his rehabilitation and present moral fitness. While review department was reluctant to differ with referee who weighed the credibility of witnesses, including petitioner, and who concluded that petitioner met reinstatement standards, it was review department's duty to independently examine record, reweigh evidence and pass on its sufficiency. Doing so, review department concluded that hearing referee had not given sufficient care to analyzing petitioner's evidence about his non-disclosure of two lawsuits as it bore on the qualities needed for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[9]**

Government Code section 68081 does not apply to the review department of the State Bar Court, which has a different standard of review than that of a court of appeal. However, opportunities are afforded to the parties under State Bar Court procedure which parallel those provided by Government Code section 68081. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[6]**

Proceedings before the review department are governed by rule 453 of the [Transitional] Rules of Procedure, which provides that the review department shall independently review the record and may adopt findings, conclusions and a decision or recommendation at variance with the hearing department and may take action as to an issue whether or not that issue was raised in the request for review or briefs of any party. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[7]**

Pursuant to rule 453 of the Transitional Rules of Procedure, the review department independently reviews the record and may adopt findings, conclusions and a decision or recommendation at variance with the hearing department. Its decisions are in turn subject to review by the Supreme Court which likewise conducts independent review of the record below and is not bound by the factual findings of the State Bar Court. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[2]**

167 Abuse of Discretion

Where respondent filed opposition to petition for disbarment after default, and sought review of hearing judge's order granting petition, and Review Department remanded to permit hearing judge to exercise discretion regarding what relief was appropriate, hearing judge did not abuse discretion on remand by declining to set aside default except for limited purpose of conducting hearing on culpability, aggravation, and level of discipline, in which respondent was not permitted to participate. Hearing judge also properly deemed allegations in notice of disciplinary charges to be admitted. By allowing his default to be entered, respondent waived right to participate in proceedings, to make evidentiary objections, and to present evidence in mitigation. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[4 a-c]**

Hearing judge did not abuse discretion in denying respondent's motion to abate, filed one month before disciplinary trial, in order to protect public, where respondent's grounds for seeking abatement were not persuasive. Pending civil proceeding involving same client as disciplinary matter dealt with recovery of dam0ages based on breach of contract and fraud, while issue in discipline matter was whether respondent performed with competence. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[3]**

Trial judge did not prejudicially err in exercising discretion to excuse witness where respondent failed to either request that the witness be recalled or to make an offer of proof as to the testimony respondent expected to elicit from the witness. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[1]**

Where respondent neither identified an exhibit for the record nor made an offer of proof demonstrating what the exhibit would have established, respondent failed to perfect his right to claim on appeal the that hearing judge improperly excluded the exhibit from evidence. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[2]**

In reviewing a hearing judge's decision not to terminate an attorney from the Alternative Discipline Program, the review department's examination of the issue is limited to deciding whether the hearing judge committed legal error or abused his discretion. *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74 **[1]**

To determine if an abuse of discretion occurred, the review department is required to conclude that the judge contravened the uncontradicted evidence. *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74 **[2]**

Where a hearing judge failed to terminate respondent from participating in the Alternative Discipline Program despite uncontroverted and overwhelming evidence demonstrating the respondent's repeated failure to comply with court orders and to cooperate in seven pending investigations involving serious misconduct, the hearing judge abused his discretion. *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74 **[3]**

The scope of interlocutory review is limited to deciding whether the hearing judge committed legal error or abused his or her discretion. Under this standard, review is not undertaken with the intention of substituting the view of the review department for that of the hearing judge, but rather with the intention of employing the equivalent of the substantial evidence test by accepting the trial court's resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[1]**

A judge has broad discretion to impose discovery sanctions and is subject to reversal only for arbitrary, capricious, or whimsical action. The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[2]**

Where respondent elected not to attend a properly–noticed deposition which resulted in a court order to compel his deposition, where respondent was given the opportunity to comply with that order but willfully failed to do so, and where the hearing judge barred respondent from introducing any documentary or testimonial evidence, except for his own testimony, the sanction imposed was wholly inappropriate to respondent's disobedience, and the hearing judge abused her discretion by imposing an insufficient sanction that failed to protect the interests of the party entitled to but denied discovery. This discovery sanction was ineffective to induce respondent to provide the discovery sought. Moreover, this lesser sanction hindered the State Bar's ability to proceed at trial and would allow respondent to testify without affording the State Bar the opportunity to impeach his testimony or credibility or even to adequately prepare for trial, opening the trial to surprise and delay. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[4 a–d]**

Discovery sanctions should be appropriate to the dereliction and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. A court will generally impose lesser sanctions regarding a discovery request unless the lesser sanctions will not bring about the compliance of the offending party. A court's exercise of discretion should not reward the disobedient party, let alone at the expense of the fundamental reasons supporting the discovery process. *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19 **[5 a–c]**

Hearing judge did not abuse her discretion in ordering the dismissal of proceeding without prejudice in furtherance of justice on her own motion under Rule of Procedure of State Bar 262 as an appropriate remedy for the deprivation of the opportunities (1) for respondent to meet and attempt to resolve the matter with the State Bar prosecuting attorney 20 days before any disciplinary charges were filed and (2) for respondent to request an early neutral evaluation conference with a State Bar Court judge before disciplinary charges were filed because the deprivation of the opportunities occurred when, as a consequence of respondent's prior incorrect change of address submission to the State Bar, respondent did not receive State Bar's letter notice of intent to file notice of disciplinary charges informing him of these pre-filing opportunities. Once the hearing judge contemplated dismissal under rule 262 and once the uncontroverted evidence emerged as to how respondent's change of address was mistakenly composed on the change of address form and mistakenly approved by respondent (essentially a typographical error), the hearing judge was justified in considering the mistake to come within the ambit of rule 262 and did not abuse her discretion in ordering dismissal. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721. **[3 a-e]**

The hearing judge did not abuse his discretion or make an error of law in denying respondent's motion to modify his probation on the ground that respondent was dilatory in bringing the motion where respondent was aware or should have been aware of both the factual and legal need to modify the probation long before the motion was filed. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[1]**

In reviewing a hearing judge's decision on a standard 1.4(c)(ii) petition for relief from actual suspension, the standards of review are abuse of discretion and error of law. (Rules Proc. of State Bar, rules 300(k), 639.) Under abuse of discretion standard, review department does not review hearing judge's decision with the intention of substituting its view for that of hearing judge, but rather with the intention of employing the equivalent of the substantial evidence test by accepting hearing judge's resolution of credibility and conflicting evidence and hearing judge's choice of possible reasonable inferences. Review department reviews the record to determine if hearing judge's findings are supported by substantial evidence and whether any errors of law were committed. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[2]**

In standard 1.4(c)(ii) proceeding for relief from actual suspension, hearing judge did not abuse his discretion in determining that State Bar's evidence establishing that Client Security Fund had previously paid one of petitioner's former clients more than $3,400 based on the client's claim that petitioner improperly failed to pay that sum to the client's medical care providers did not prevent petitioner from showing his rehabilitation because hearing judge based that determination on his findings that petitioner did not know (1) of the client's claim or (2) of Client Security Fund's actions until petitioner's deposition was taken in standard 1.4(c)(ii) proceeding and because those two findings are supported by substantial evidence consisting of petitioner's own testimony, which was supported with a number of letters from the client's file demonstrating that medical providers had been paid. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[4]**

The sole issue raised is whether the requirement set forth in Business and Professions Code section 6140.5, subdivision (c), that an attorney who resigns with disciplinary charges pending reimburse the Client Security Fund (CSF) for all sums paid out as a result of the former attorney's misconduct together with interest and costs, is a condition precedent to the former attorney's filing of a petition for reinstatement. The issue is not whether, at the time he filed his petition, petitioner was eligible for reinstatement, but rather whether he had a right to file his petition for reinstatement. Section 6140.5, subdivision (c) mandates that the amount paid out by CSF because of the dishonest conduct of a lawyer, plus applicable interest and costs, shall be paid as a condition of reinstatement of membership. There is no language in that section that precludes or purports to preclude the filing of a petition for reinstatement without including a showing of repayment to the CSF. And the review department was unaware of any law, rule of court, or rule of procedure that required an affirmative showing that reimbursement has been made to CSF before or at the time of filing a petition for reinstatement. Moreover, there was no dispute that reinstatement occurs only when the Supreme Court so directs after State Bar Court proceedings, not when a petition for reinstatement is filed. Accordingly, the State Bar failed to establish either an abuse of discretion or error of law. *In the Matter of Jaurequi* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.56. **[1 a-c]**

Even though plenary review is sought, the issue of whether a hearing judge erred in setting aside a default as to the limited issue of the degree of discipline is reviewed under the limited scope of review customarily used for procedural questions, testing whether the hearing judge committed legal error or abuse of discretion. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831. **[1]**

On review of a discovery order on appeal of a hearing judge's decision that fully disposes of an entire proceeding, not only must an abuse of discretion be shown, but also the erroneous ruling must be shown to have been so prejudicial that it constituted a miscarriage of justice. No abuse of discretion was found where respondent presented no competent evidence that the place of the depositions he sought to compel was within the 150-mile range; and no showing of a miscarriage of justice was made where the apparent reason for seeking the depositions was to show that the complaining clients had repudiated their State Bar complaint, a fact not relevant to the disciplinary charges. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[3]**

A hearing judge's determination to dismiss specified charges in the furtherance of justice with prejudice over the State Bar's objection that the dismissals should be without prejudice is reviewed under an abuse of discretion standard. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[1]**

Even though equitable estoppel does not control a hearing judge's determination whether to dismiss specified charges in the furtherance of justice with or without prejudice, the considerations in making such a determination are not dissimilar. Thus, in determining that the dismissals should be with prejudice in the present case, the hearing judge properly considered the positions of the parties and its effect on each side. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[2]**

A hearing judge erroneously relied on an unpublished hearing department decision and a Supreme Court order in another case. The unpublished decision of the hearing department in another proceeding, involving another respondent, may not be relied on either as precedent or as evidence. While the hearing department could take judicial notice of the Supreme Court order, that order provided no information that would make it relevant as either evidence or precedent in the matter before the court. It merely recited the discipline ordered, without discussion of the relevant facts or law and therefore should not have been relied on in this proceeding. *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639. **[3]**

In its opinion remanding a petition for reinstatement for further proceeding not inconsistent with the opinion, the review department held, on the record then before it, that the petitioner had demonstrated his moral reform from the acts which lead him to resign from the Bar with disciplinary charges pending. Accordingly, under law of the case, it would be improper for hearing department to reconsider petitioner's moral reform on remand in the absence of additional evidence. As to events that predated the petition, and were disclosed on the petition, it is clear that reopening would be impermissible. The same would be true of events about which the State Bar had a reasonable opportunity to investigate and present at a hearing. However, one of the underlying purpose of reinstatement proceedings is to insure that only persons of present good moral character are reinstated to the practice of law in this state. Accordingly, with the exceptions noted, the State Bar Court may consider any act or conduct that is relevant to a petitioner's moral character regardless of when or where the act or conduct occurred. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[1]**

Petitioner failed to establish that the hearing judge abused his discretion in denying petitioner's post-decision motion to reopen the record to present additional evidence because petitioner did not establish that the evidence he sought to proffer was newly discovered or that it could not have been presented at trial with the exercise of reasonable diligence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[6]**

The standard of review in a proceeding for relief from actual suspension under standard 1.4(c)(ii) is abuse of discretion or error of law. (Rules Proc. of State Bar, title II, State Bar Court Proceedings, rules 300(b), 639.) The review department determines abuse of discretion by using the equivalent of the substantial evidence test. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[1]**

The State Bar Court determines whether a petitioner seeking relief from actual suspension has met the requirements of standard 1.4(c)(ii) without reevaluating the petitioner's prior discipline, whether perceived as lenient or harsh. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[2]**

Neither the law nor the facts supported respondent's contention that by denying two continuance requests during the six days of trial, the hearing judge deprived him of a reasonable opportunity to be represented by counsel. An attorney in a disciplinary hearing has no constitutional right to the assistance of counsel. Further, continuances of State Bar Court hearings are disfavored. (State Bar Court Rules of Practice, rule 1131.) To prevail on a procedural argument in a disciplinary matter, an attorney must show both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged procedural error. Respondent proved neither where respondent's counsel set a murder trial for the day before the scheduled start of the disciplinary hearings and failed to provide timely information about this conflict to the State Bar Court, where respondent failed to show that his counsel could not have anticipated or avoided the conflict, and where respondent failed to show that the only proper means of handling the conflict was to grant a continuance. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[1]**

A party may not recall a witness who has been excused from giving further testimony without leave of court, which may be granted or withheld in the court's discretion. Hearing judge did not deny due process to respondent by denying respondent's motion to recall State Bar witness who had been excused from giving further testimony. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[6]**

Where State Bar witness had not been excused from giving further testimony, hearing judge erred in not permitting respondent to recall such witness for questioning about document respondent did not possess at time witness first testified. However, where such additional testimony was relevant only to refute factual contention later abandoned by State Bar, hearing judge's error did not result in prejudice to respondent. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[7]**

Review Department had jurisdiction under rule 113 of Transitional Rules of Procedure to review portion of order by hearing judge which, in dismissing disciplinary proceeding pursuant to agreement in lieu of discipline, placed conditions on reopening of underlying disciplinary matter. Scope of such review was to determine whether hearing judge abused discretion in including condition in agreement in lieu of discipline which had not been agreed to by parties. *In the Matter of Respondent R* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227. **[1]**

An agreement in lieu of discipline is an agreement between the Office of the Chief Trial Counsel and the respondent to substitute terms and conditions in place of the disciplinary process, at least provisionally. Hearing judges have authority to dismiss or not dismiss disciplinary proceedings in light of such agreements, and may include conditions in dismissal order which are not contained in agreement if they are accepted by both parties, but judges do not have authority to modify such agreements without parties' consent or to append binding conditions or duties not agreed to by parties. *In the Matter of Respondent R* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227. **[2]**

State Bar Court is reluctant to interfere with reasonable exercise of prosecutorial discretion. When presented with a complaint, State Bar can legitimately charge attorney based on facts as they appear from investigation. Where large number of counts filed against respondent resulted primarily from size and volume of respondent's practice and his chronic problem with handling medical liens, fact that State Bar could not establish factual or legal basis for some counts and charges was not sufficient to establish that charges were brought without reasonable basis or that respondent was victim of prosecutorial misconduct. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[13]**

Where respondent was repeatedly warned by hearing judge concerning consequences of continued inaction regarding seeking relief from default, but respondent failed to seek such relief for over a year after his first default was entered and more than six months after he had actual notice of the proceedings, and where respondent made no sufficient showing justifying such extraordinary delay, hearing judge was well within her discretion in denying relief from default, and review department denied respondent's request for review of such ruling. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[3]**

Where respondent had missed a court appearance on behalf of a client shortly after stipulating to discipline based in part on similar past conduct; had brought an illegal drug to court, attempted to visit an incarcerated client with the drug in his possession, and thrown the drug on the floor after refusing to be searched; had been stopped on another occasion with the drug in his car; and had been observed to be under the influence of a controlled substance while with a client, there was a clear likelihood of harm to both respondent's clients and the public if respondent were allowed to practice law pending adjudication of criminal and State Bar proceedings, and hearing judge erred in focusing exclusively on threat of harm to clients and finding insufficient evidence thereof to justify inactive enrollment. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[5]**

Where there was uncontroverted evidence of repeated client harm and other violations of law by respondent, and no evidence of recognition by respondent of substance abuse problem, hearing judge erred in denying involuntary inactive enrollment of respondent without considering substantial harm which public was likely to suffer from such denial. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[8]**

The standard for review of rulings on chargeable costs is abuse of discretion. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[3]**

No decision denying specialist certification is permissible unless the applicant for certification receives some meaningful opportunity to be heard in his or her own defense. Where an attorney in good standing applied for certification as a legal specialist 14 years after committing misconduct, 11 years after the resulting suspension order, and 8 years after the completion of the suspension, the Board of Legal Specialization was required to allow the attorney an opportunity to be heard on the attorney's current qualifications. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[8]**

Where the Board of Legal Specialization summarily denied an application for legal specialist certification solely on the basis of applicant's prior serious discipline, without considering any evidence or permitting a hearing on applicant's recent conduct and present qualifications, the Board violated its own rules and applicant's common law right to fair procedure. The Board's indication that it might reconsider the denial at a later date, without any enumerated criteria as to when it would do so, underscored the arbitrariness of its position. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[10]**

Within due process limits, the Board of Legal Specialization has broad discretion in certifying specialists. It may consider any competent evidence rebutting an applicant's showing and may weigh and balance evidence in an appropriate manner. An applicant's prior discipline for very serious misconduct is clearly evidence that should be considered in this process. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[12]**

A member of the State Bar is required by statute to be enrolled inactive upon the assertion of a claim of insanity or mental incompetence made in any pending proceeding, alleging inability to understand the proceeding's nature or to assist counsel. Where the member intentionally asserts such a claim, no further showing is required and the State Bar Court has no discretion not to enroll the member inactive. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[3]**

An abatement order is a procedural matter, for which the standard of review is one of abuse of discretion. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[5]**

Where it was unclear what evidence hearing judge considered in deciding to abate disciplinary proceeding due to respondent's claimed inability to assist counsel, and where respondent's medical evidence lacked important elements and was conclusory, and respondent's counsel's declaration was undermined by contrast with earlier declaration regarding respondent's superior performance of paralegal tasks, review department concluded that hearing judge failed to exercise her discretion properly in abating proceeding without holding hearing to allow presentation and resolution of conflicting evidence. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[11]**

The standard of review on the issue of exclusion of evidence depends on the basis for the hearing judge's action. If the proffered evidence was inadmissible as a matter of law, then the standard is independent de novo review. If not, the review department must consider whether the hearing judge had discretion to exclude the evidence, and if so, whether that discretion was properly exercised. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[8]**

Where hearing judge determined that proffered evidence of additional uncharged misconduct was of marginal relevance; that it could be fully examined and made the basis of separate discipline, if appropriate, in a separate proceeding, and that its admission would involve a delay to permit respondent time to address the issues it raised, the exclusion of the evidence was not an abuse of discretion. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[11]**

It was not an abuse of discretion for the hearing judge to conclude that partial relief from costs was justified, even in the absence of evidence of bad faith on the part of counsel for the State Bar, based on the State Bar's lack of responsiveness to respondent's extraordinary efforts to provide information and good faith offers to settle the matter prior to the filing of formal charges. Elimination of all costs assessed for the stage after filing formal charges, and of half of the State Bar's costs for the pre-filing stage, was within the hearing judge's discretion. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[3]**

The appropriate standard of review for an order granting relief from costs is abuse of discretion, which is the standard of review for orders taxing costs in civil cases and is also the standard of review generally applied to procedural motions in the State Bar Court. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[5]**

Where the standard of review is abuse of discretion, it is inappropriate for the review department to reconsider the evidence below as if it were deciding the matter de novo. The exercise of discretion will not be disturbed unless it is abused, and while an appellate court may have ruled differently on the motion, it cannot substitute its own view as to the proper decision. To find an abuse of discretion, it must clearly appear that the result was a manifest miscarriage of justice. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[6]**

A hearing judge's denial of respondent's request to remove and copy exhibits already admitted into evidence, due to concern for the integrity of the record, was not improper, and did not show bias. Moreover, by failing to seek relief before the hearing judge after being denied access to the exhibits by the State Bar Court clerk's office, respondent waived his right to raise the issue before the review department. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[5]**

Abuse of discretion is the standard generally applied to review of rulings on motions at the hearing level, but has never been the standard of review applied by the Supreme Court to findings of culpability. The review department must independently review the record as a whole. Great weight is given to credibility determinations based on testimony at the hearing, but none of the findings at the hearing level is binding upon the reviewing court. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[2]**

The length of pendency of matters before the State Bar Court is a matter of great concern and continuances have long been disfavored by the court. A judge's denial of a motion for a continuance to prepare for the mitigation portion of a hearing was not an abuse of discretion where respondent had notice one month before trial of how the evidence would be presented, and respondent failed to take any steps to contact potential character witnesses. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[2]**

Even if the procedure for a motion for judgment at the close of the moving party's case, as set forth in Code of Civil Procedure section 631.8, does apply in State Bar proceedings, it was not error for the hearing referee to take respondent's motion under submission and rule on it after respondent had presented the defense case, and the motion was impliedly ruled on when the referee made initial rulings as to culpability. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[20]**

In administrative mandamus proceedings where the court is authorized to exercise independent judgment on the evidence, abuse of discretion by the lower tribunal is established if the court determines that the findings are not supported by the weight of the evidence. Where the court is not authorized to exercise independent judgment, then it must determine whether the findings are supported by substantial evidence in the light of the whole record. In such cases, due process requires that the body deciding the case must at least review a transcript of the evidence.

The argument that this standard had been violated on earlier review by the former review department was mooted by the full-time review department's de novo review of the record on a second review after the former review department's remand for further hearing. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[1]**

In a reinstatement proceeding, the hearing judge acted within his discretion in excluding a second affidavit from a character witness. Like a character reference letter in a disciplinary proceeding, the character reference, even though in affidavit rather than letter form, was excludable as hearsay absent a stipulation to the contrary. Further, the second affidavit was cumulative, and the hearing judge carefully considered the more detailed first affidavit, which he admitted into evidence as part of the reinstatement application. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[6]**

Trial judge has discretion to refuse to admit evidence which is cumulative; hearing judge who carefully considered detailed affidavit from witness did not err in excluding second, less detailed affidavit from same witness. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[8]**

In reviewing an order on a motion to set aside default, the standard of review is abuse of discretion. However, because law strongly favors resolution of matters on the merits, doubts are to be resolved in favor of the defaulted party, and orders denying relief are scrutinized more closely than orders permitting trial on the merits. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[5]**

Respondent's fear, panic, or aversion to formal charges alone would not show abuse of discretion in failure to grant relief from default, but specific showing regarding preoccupation with mother's serious illness raised doubts as to proper exercise of discretion, which review department resolved in respondent's favor. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[8]**

Review department declined to decide whether clerk's entry of default prior to expiration of reasonable time to respond to clerk's notice, which rejected answer due to technical defects, was void, or erroneous and voidable. Instead, review department determined that the denial of respondent's motion to set aside default was an abuse of discretion. An attorney's neglect in untimely filing papers must be evaluated in light of the reasonableness of the attorney's conduct; respondent acted reasonably in timely submitting answer to notice to show cause, and promptly resubmitting corrected answer after receiving clerk's rejection notice. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[7]**

Appellate review under section 473 of the Code of Civil Procedure is for abuse of discretion, the test being whether the trial court exceeded the bounds of reason. The Supreme Court has applied a similar abuse of discretion standard in reviewing procedural motions in State Bar proceedings. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[10]**

It would be an abuse of discretion to deny relief from default solely on the basis of the lack of a verification of respondent's proposed answer, without giving respondent a chance to cure the defect. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[15]**

169 Miscellaneous Issues re Standard of Proof/Standard of Review

Review Department will not grant relief on the basis of evidentiary errors without a showing of prejudice. Hearing judge properly permitted State Bar to call respondent as first witness, even though respondent had not yet decided whether to testify on his own behalf. State Bar also properly called witnesses without prior disclosure of their statements, where witnesses had made no written or recorded statements, and respondent could not show prejudice because he knew witnesses' identities, and had a summary of their testimony, in advance of trial. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[5]**

After a review department opinion remanding a case to the hearing department for a new trial had become final, respondent could not, on a subsequent review following the new trial, continue to attack the findings and conclusions set forth in that opinion. *In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615. **[1 a-c]**

To the extent that the grade of a crime, i.e., felony or misdemeanor, would influence the most significant actions following criminal conviction - eligibility for interim suspension, or summary disbarment - those issues are reserved to the review department rather than the hearing department.*In the Matter of Jackson* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610. **[2]**

A disciplinary proceeding arising from conviction of a crime is fundamentally different from and a complete alternative to an original proceeding brought under Business and Professions Code section 6075 et seq. The streamlined procedures following an attorney's conviction of a crime rest on proceedings in the criminal courts in which the burden is proof beyond a reasonable doubt. These procedures recognize that the basis for attorney discipline is not the provable violation of a rule of professional conduct but the mere existence of a certified copy of an attorney's record of conviction. Only convictions which do not inherently involve moral turpitude are referred for an evidentiary hearing to determine whether there is a legal basis for imposing discipline, but even in these cases guilt is conclusively established by the record of conviction and is not subject to collateral attack. Thus, where a conviction proceeding was commenced in the State Bar Court, which proceeding arose from the same underlying facts as an earlier original proceeding in the State Bar Court, neither res judicata nor collateral estoppel acted as a bar to the conviction proceeding, since neither the issues nor the causes of action in the two types of proceedings are the same.*In the Matter of Curtis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.**[2 a-g]**

Standards governing an attorney's ethical duties do not vary according to the many areas of practice, even in specialized areas such as immigration law. Nor do those standards vary according to whether the attorney practices alone or in a partnership, small law firm, large law firm, or corporate law department.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[2]**

In attorney discipline, ethical standards for attorneys are primarily established by State Bar Rules of Professional Conduct and State Bar Act. But, when an attorney practices in a specific area or jurisdiction, those standards may be measured by reference to other relevant state and federal statutes, rules of court, regulations, and administrative rules.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[3]**

Facts clients referred to respondent by nonattorney immigration services providers might have had a cultural bias in favor the referring nonattorney immigration services providers or that those clients might have viewed immigration attorneys, like respondent, as less important to their immigration cases than the referring nonattorney immigration services providers did not reduce or limit nature and scope of respondent's professional duties to his immigration clients.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[7]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted

nonattorney immigration services providers to engage in the unauthorized practice of law.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

Even if an attorney of record did not have actual knowledge of a trial setting, if a notice of trial setting was properly served on him, his failure to appear at trial will not be excused for State Bar disciplinary purposes unless he establishes that he had office procedures in place that, at a minimum, required his staff (1) to promptly inform him each time a notice of court or administrative trial or hearing is delivered to office, (2) to promptly record date of the trial or hearing in attorney's court calendaring system and in client's file, and (3) to promptly give client actual notice of date, time, and location of the trial or hearing. Respondent did not have any such proper office procedures in place. Thus, where record established that a notice of a hearing was properly served on him in an immigration court case in which he was attorney of record for the alien, respondent's failures to inform client of hearing, to prepare himself for the hearing, and to counsel and prepare client for the hearing could not be excused even if respondent did not learn of the hearing until the day of the hearing.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[23 a-d]**

Principle that, in the normal course of operation of a law office, an attorney should not be at risk of discipline for failure to have knowledge of every item of information that comes in his office is based on presumptions that the attorney has adequate office procedures in place for the proper operation of his office, trains his staff on those procedures; employs safeguards to insure that procedures are followed, and supervises staff to insure they perform their jobs.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[24]**

Even if respondent failed to appear at an immigration court hearing because he simply forgot to record the date of the hearing in his calendar, his failure to appear must be viewed in light of the record as a whole because, even if an attorney does not act intentionally or recklessly, he violates the rule of professional conduct regarding attorneys' duty to competently perform legal services if he repeatedly fails to competently perform. Respondent's failure to appear at the hearing could not be excused for disciplinary purposes because, under record as a whole, his failure to appear was not isolated, but one of many such failures.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[25]**

Regardless of whether respondent had the right on review to challenge the conclusions of culpability to which she stipulated to in the hearing department, the review department still had an affirmative duty to determine if the culpability findings were supported by the record.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[2]**

Because respondent allowed herself to be disconnected from management of her law office over extended period of time and did not undertake any effort to fulfill her personal and nondelegable duty to monitor client funds and her trust account, hearing judge properly accepted parties' stipulation and correctly found, on respondent's plea of nolo contendere, that respondent was culpable of violating trust account rules even though respondent relied on her husband and law partner to manage the trust account.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[6]**

There is clear distinction between credibility and candor. The determination of a witness's credibility (i.e., believability) is primarily within province of the hearing judge who saw and heard the witness testify, while the determination that a witness's testimony lacked candor (i.e., that the witness lied) must be found by clear and convincing evidence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[10]**

Even though a witness's candor must ordinarily be shown by clear and convincing evidence, great weight is still give to the hearing judge's findings on candor. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[11]**

Because bankruptcy court's findings that attorney engaged in actual fraud when attorney incurred credit card debts were made under preponderance of the evidence standard and not clear and convincing standard applicable in disciplinary proceedings, hearing judge correctly (1) declined to apply principles of collateral estoppel to bind attorney with bankruptcy court's findings that attorney engaged in actual fraud; (2) reweighed evidence from bankruptcy court proceedings under clear and convincing standard after giving attorney fair opportunity to contradict, temper, and explain that evidence; and (3) permitted State Bar to present additional evidence regarding attorney's culpability. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[3]**

The application of collateral estoppel with respect to prior civil findings does not modify the fundamental requirement that the State Bar must establish each element of a disciplinary violation and aggravating circumstance by clear and convincing evidence. The State Bar may rely upon collateral estoppel to establish an element of a disciplinary violation or aggravating circumstance only if that same element was found against the attorney in the civil proceeding by clear and convincing evidence. If the same element was not found against the attorney in the civil proceeding by clear and convincing evidence, the State Bar must established that element in the State Bar Court with clear and convincing evidence.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[1 a-c]**

Collateral estoppel may be applied in the State Bar Court to deny an attorney the right to relitigate an issue that was litigated and resolved against him or her in a prior civil proceeding only if (1) the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, (2) the civil finding was made under the same burden of proof applicable to the same issue in the State Bar Court, (3) the attorney was a party to civil proceeding, (4) there is final judgment on the merits in the civil proceeding, (5) the attorney fails to demonstrate any unfairness in precluding the relitigation of the issue, and (6) the civil finding was necessary to the judgment in the civil proceeding. The requirement that the civil finding be necessary to the judgment in the civil proceeding is required by procedural fairness to insure that preclusive effect is not given to nonessential prior findings.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[2 a, b]**

Whenever the State Bar relies upon all or part of the record in prior civil proceeding to prove an element of a disciplinary violation or aggravating circumstance independent of the application of collateral estoppel, neither the evidence nor any factual findings in the civil proceeding may be judicially noticed as conclusive or otherwise given preclusive effect in the State Bar Court, but must be independently assessed under the clear and convincing standard of proof. In addition, the attorney must be given a fair opportunity to contradict, temper, or explain the evidence and findings in the civil proceeding with other evidence, including the live testimony of the same witnesses who testified in the civil proceeding. The attorney need not be given free reign to completely retry the civil suit in the State Bar Court. The hearing judge retains the sound discretion to restrict or excluded cumulative evidence and otherwise control the introduction of evidence as in any other case.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[4 a, b]**

Independent of the application collateral estoppel, admissions made by an attorney in a prior civil proceeding are not conclusive and cannot be given preclusive effect in the State Bar Court even if they are admissible in the State Bar Court as party admissions. Such admissions must be independently assessed under the clear and convincing standard of proof.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[5]**

In its answers to the special findings in a prior civil proceeding against respondent, the jury found that respondent was liable to the plaintiff on the plaintiff's claims for, among other things, breach of fiduciary duty and fraud. In a separate special finding on the issues of malice, oppression, and fraud, the jury found by clear and convincing evidence that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of liability for either breach of fiduciary duty or fraud." The use of the disjunctive conjunction "or" in the phrase "malice, oppression or fraud," precluded the review department from determining whether the jury found that respondent was guilty of malice, oppression, fraud, or some combination thereof. And the use of the disjunctive correlative conjunction "either . . . or" in the phrase "finding of liability for either breach of fiduciary duty or fraud" precluded the Review Department from determining whether the jury found that respondent was guilty of "malice, oppression or fraud" when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both. Nonetheless, regardless of whether the jury based its answer against respondent on the malice, oppression, and fraud special finding on a finding that respondent was guilty of malice, oppression, fraud, or some combination thereof when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both, the jury's answer against him on the malice, oppression, and fraud special finding established, under collateral estoppel principles, that he committed acts involving moral turpitude in violation of statute proscribing acts of moral turpitude, but did not establish the nature and extent of those acts. An attorney who breaches a fiduciary duty (whether to a client or non-client) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law. Similarly, an attorney who commits an act of fraud (whether in the capacity as of an attorney or not) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[6 a-f]**

Even though the hearing judge properly admitted and judicially noticed the record in a prior civil proceeding in which respondent was a party, the hearing judge erred in making factual findings regarding the nature and extent of respondent's violations of the moral turpitude statute based upon the evidence in the civil record independent of the application of collateral estoppel because he did not first give respondent a fair opportunity to attempt to contradict, temper, or explain the evidence in it with other evidence. That error required the reversal of the hearing judge's findings as to the nature and extent of respondent's statutory violations and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the nature and extent of respondent's violations. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[7]**

The requisite elements of a violation of the first subdivision of the former rule of professional conduct governing business transactions with clients (i.e., subdivision (A) of former rule 3-300) were that the transaction was unfair to the client or that the terms of the transaction were not disclosed and transmitted to the client in writing in a manner that the client should have been able to understand. The requisite elements of a violation of the second subdivision of that former rule (i.e., subdivision B of former rule 3-300) were that the client was not advised, in writing, of the right to seek advice from an independent attorney of the client's choice or that the client was not given a reasonable opportunity to exercise that right. None of these elements are addressed in the special finding under which the jury in a prior civil proceeding in which respondent was a party found, by clear and convincing evidence, that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of [respondent's] liability for either breach of fiduciary duty or fraud." Thus, collateral estoppel does not establish that respondent violated the former rule governing business transactions with clients. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[8]**

In making his factual findings with respect to charged violations of the former rule of professional conduct governing business transactions with clients, the hearing judge erred in reweighing and relying upon the evidence in a prior civil proceeding in which respondent was a party without first giving respondent a fair opportunity to attempt to contradict, temper, or explain that evidence. That error required the reversal of the hearing judge's findings that respondent committed multiple violations of the former rule governing business transactions with clients and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the charged violations of that former rule. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[9 a, b]**

Principles of collateral estoppel may be applied to preclude a respondent from relitigating an issue that was actually litigated and resolved against him in a prior civil proceeding. In State Bar Court proceedings, principles of collateral estoppel may be applied with respect to an adverse prior civil finding if (1) the issue resulting in the civil finding is substantially identical to that in the State Bar Court proceeding, (2) the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, (3) the respondent was a party to the civil proceeding, (4) there is a final judgment on the merits in the civil proceeding, and (5) the respondent does not establish that it would be unfair to bind him to the prior adverse civil finding. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[1]**

Where the only evidence presented in the hearing department to support the contention that it would be unfair to prohibit relitigation of harassment and emotional distress claims was respondent's own testimony without corroborating evidence, respondent's reiteration of his testimony on review does not provide a basis to disturb the hearing judge's rejection of respondent 's testimony. The review department gives great weight to hearing judges' factual findings resolving issues pertaining to credibility of witnesses. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[2 a, b, c]**

Introducing into evidence the pleadings and exhibits from a civil matter without also introducing the trial transcript from the civil proceeding provides little evidence as to the nature and extent of respondent's conduct underlying the adverse civil findings of harassment and intentional infliction of emotional distress on a client or the resulting harm to the client. Such evidence may have had a material effect on the measure of the appropriate level of discipline. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[3]**

The hearing judge erred when he held that the record lacked clear and convincing evidence that respondent filed a frivolous appeal. The general rule is that civil findings are not, by themselves, dispositive of the issues in

a disciplinary case. Often the issues in the civil case may be either broader or narrower than the operative issues in a disciplinary proceeding. However, civil findings made under a preponderance of the evidence standard are entitled to a strong presumption of validity in the State Bar Court if supported by substantial evidence. In order to hold that an appeal is frivolous, the law requires an extremely high showing, so that zealous but good faith appeals having any merit are neither deterred nor sanctioned. Accordingly, the court of appeal's decision finding that respondent's appeal of a case was frivolous and pursued in bad faith was, at the very least, a prima facie determination of such. Respondent failed to adduce evidence that overcame that determination. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[1 a-d]**

Unless civil sanctions issues arising under section 128.5 of the Code of Civil Procedure are adequately litigated before the sanctioning court, it would appear inappropriate to apply collateral estoppel in the State Bar Court to the sanction order. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[2]**

Issues raised in State Bar's petition for interlocutory review as to (1) whether Rules of Procedure required petitioner for reinstatement to provide proof, at time he presented his petition for filing, that he had passed a professional responsibility examination within last year (i.e., one before filing of petition) and (2) whether hearing judge erred in finding that petitioner had not previously resigned from State Bar with disciplinary charges pending were proper for interlocutory review because they could determine outcome of proceeding and determine whether petitioner's rehabilitation was an issue in proceeding. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[1 a-e]**

Hearing judge erred as a matter of law in finding that petitioner for reinstatement had not previously resigned from State Bar with disciplinary charges pending where petitioner's resignation was entitled "resignation with charges pending;" stated that charges were pending against him; was in form prescribed by California Rule of Court 960; was accepted by Supreme Court without prejudice to further proceedings; and where petitioner stated in his petition for reinstatement that, at time he resigned from State Bar, no formal charges were filed against him by State Bar, but only a number of minor client complaints that he had responded to, taken adequate measures to deal with, and answered State Bar in writing denying any misconduct. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[3]**

Even though respondent was not entitled to any mitigating credit for five years of discipline free practice under standard 1.2(e)(i) and case law, there was no error in hearing judge's giving respondent mitigating credit for discipline free practice because weight assigned to such mitigation by hearing judge was nominal (i.e., "exists in name only;" not real or substantial). *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. **[2]**

The review department's duty to independently review the record is settled. At the same time, the review department must give great weight to the hearing judge's determination that turns on credibility to be assigned to witness testimony. The department was reluctant, therefore, to ascribe to respondent a specific intent to deceive when the hearing judge who considered respondent's testimony and that of other witnesses found none. This does not exonerate respondent from moral turpitude charges as to his false statement in his motion to disqualify a superior court judge. The hearing judge's conclusion that respondent violated statute and rule of professional conduct requiring attorneys to use only means consistent with truth must be read to find culpability by respondent's gross negligence, as simple neglect would not be sufficient for a statutory violation. Gross negligence is a well-established basis for finding an act of moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[1]**

Even though hearing judge is required to give respondent the benefit of all reasonable doubts, she was not required to devalue evidence she found stronger than that of respondent. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[3]**

A petitioner for reinstatement must show by clear and convincing evidence that he or she has met the requirements for readmission. OCTC need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence. Instead, OCTC need only proffer sufficient adverse evidence to lower the persuasiveness of a petitioner's evidence so that he or she does not meet the burden to prove his or her case by clear and convincing evidence. Nor is a petitioner entitled to the benefit of the doubt if equally reasonable inferences may be drawn from a proven fact. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[3]**

An attorney may be disciplined for making a false statement that attacks the honesty, motivation, integrity, or competence of a judicial officer without violating the attorney's First Amendment guarantee of free speech so long as the attorney knew the statement was false when he made it or made it with a reckless disregard for its truth or falsity. Truth is an absolute defense. The State Bar has the burden of proving the falsity of the statement. The issue of whether a false statement was made with reckless disregard for its truth or falsity is governed by an objective standard under which the court must determine what a reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[2]**

An essential element to establishing an attorney's violation of his statutory duty to maintain the respect due the courts and judicial officers by making a statement that impugns the honesty or integrity of a court or judicial officer is the falsity of the disparaging statement. Even though the State Bar has the burden of proving the essential element of falsity, it did not proffer any evidence to establish the falsity of the respondent's disparaging statements regarding various judicial officers because the hearing judge made a erroneous pre-trial ruling relieving the State Bar of its burden to prove falsity. Therefore, the review department remanded the matter to the hearing department to allow the State Bar an opportunity to prove that respondent's statements were false. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[3]**

The rule requiring the review department to give great weight to the hearing judge's findings of fact that resolve issues pertaining to the credibility of the witnesses, which rule is premised on the hearing judge's ability to see the witnesses' demeanor and conduct during trial, is not applicable when a witness's testimony is present only through a written transcript of the witness's deposition. Thus, in such a case, the review department may independently evaluate the credibility of the witness's deposition testimony without giving great weight to the hearing judge's findings. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[3]**

In a conviction referral proceeding involving respondent's misdemeanor conviction of being an accessory after the fact in connection with the submission of false information to a federally insured bank for the purpose of inducing it to loan money to respondent for the purchase of a farm (18 U.S.C. §1014), respondent's contention that, at the time she obtained the loan, she fully expected the farm to succeed and to repay the loan in full might avoid a finding in aggravation, but did not entitle her to any mitigating credit. Respondent was not entitled to any credit for merely intending to do that which she contracted to do. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[4]**

A hearing judge properly applied collateral estoppel and denied respondent the right to relitigate the issue of dishonest billing in a disciplinary proceeding where respondent had fully litigated the issue in a superior court action; where the jury in the prior action had determined by clear and convincing evidence that respondent had acted with oppression, fraud, and malice; and where no unfairness resulted from precluding the relitigation of the issue. *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. **[1]**

The complaining clients' settlement of their civil matter against respondent and the clients' release of all claims against him does not preclude the State Bar from proceeding with the disciplinary matter. A disciplinary proceeding is not a controversy between two individuals, the complainant and the accused attorney, but is an adverse proceeding against the accused attorney and may be instituted and prosecuted upon the complaint of any person knowing the facts upon which the proceeding is based. The complaining person or client is not a party to the disciplinary proceeding, and need not appear and testify at trial. Thus, the disciplinary case was not a right, claim, or cause of action that accrued to the complaining clients; and therefore it was not a claim that they could release or otherwise compromise. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[1]**

On review of a discovery order on appeal of a hearing judge's decision that fully disposes of an entire proceeding, not only must an abuse of discretion be shown, but also the erroneous ruling must be shown to have been so prejudicial that it constituted a miscarriage of justice. No abuse of discretion was found where respondent presented no competent evidence that the place of the depositions he sought to compel was within the 150-mile range; and no showing of a miscarriage of justice was made where the apparent reason for seeking the depositions was to show that the complaining clients had repudiated their State Bar complaint, a fact not relevant to the disciplinary charges. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[3]**

In summary review proceedings, the full record was not before the review department therefore it could not consider any issues other than those raised by the parties, absent the conversion of the matter into a plenary review proceeding. Accordingly, where the review department did not modify the hearing judge's decision as a result of the summary review proceeding, the hearing judge's decision remained the final decision of the State Bar Court. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[5]**

In its opinion remanding a petition for reinstatement for further proceeding not inconsistent with the opinion, the review department held, on the record then before it, that the petitioner had demonstrated his moral reform from the acts which lead him to resign from the Bar with disciplinary charges pending. Accordingly, under law of the case, it would be improper for hearing department to reconsider petitioner's moral reform on remand in the absence of additional evidence. As to events that predated the petition, and were disclosed on the petition, it is clear that reopening would be impermissible. The same would be true of events about which the State Bar had a reasonable opportunity to investigate and present at a hearing. However, one of the underlying purpose of reinstatement proceedings is to insure that only persons of present good moral character are reinstated to the practice of law in this state. Accordingly, with the exceptions noted, the State Bar Court may consider any act or conduct that is relevant to a petitioner's moral character regardless of when or where the act or conduct occurred. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[1]**

A petitioner establishes that he possesses the requisite present moral qualifications for reinstatement by presenting clear and convincing evidence that he possesses good moral character and has been rehabilitated. Any act or conduct bearing on the petitioner's qualities of honest, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and nation, and respect for the rights of others and the judicial process is relevant in a reinstatement proceeding. Unlike a petitioner's rehabilitation from prior bad acts, a petitioner's present moral qualifications for reinstatement is not capable of being conclusively determined for all time and is subject to re-evaluation on the State Bar's motion at least until the effective date of the Supreme Court's reinstatement order. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[2]**

Because jurisdiction vests in only one court at a time, once a review department opinion remanding the proceeding to hearing department for further proceedings becomes final, only the hearing department had jurisdiction to rule on State Bar's motion to expand the issues to be addressed at the trial on remand. Because the review department did not adjudicate the issue of petitioner's present moral fitness in its opinion remanding the proceeding to hearing department, the hearing judge's consideration of that issue on remand was not inconsistent with the review department's remanding opinion, and the hearing judge therefore did not error in admitting additional relevant evidence on the issue. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[3]**

Because the State Bar does not have the burden of proof in reinstatement proceedings, it need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence to prevail. Instead, the State Bar need only proffer sufficient adverse evidence to lower the persuasiveness of the petitioner's evidence so that he does not meet his burden to prove his case by clear and convincing evidence. Of course, the State Bar may elect not to present any adverse evidence if it concludes that petitioner's showing is insufficient to establish his case by clear and convincing evidence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[5]**

Neither the law nor the facts supported respondent's contention that by denying two continuance requests during the six days of trial, the hearing judge deprived him of a reasonable opportunity to be represented by counsel. An attorney in a disciplinary hearing has no constitutional right to the assistance of counsel. Further, continuances of State Bar Court hearings are disfavored. (State Bar Court Rules of Practice, rule 1131.) To prevail on a procedural argument in a disciplinary matter, an attorney must show both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged procedural error. Respondent proved neither where respondent's counsel set a murder trial for the day before the scheduled start of the disciplinary hearings and failed to provide timely information about this conflict to the State Bar Court, where respondent failed to show that his counsel could not have anticipated or avoided the conflict, and where respondent failed to show that the only proper means of handling the conflict was to grant a continuance. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[1]**

Prior civil court findings made under the preponderance of the evidence standard of proof are entitled to a strong presumption of validity in State Bar Court proceedings if they are supported by substantial evidence. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[7]**

Neither the Supreme Court nor the State Bar Court is bound by civil findings that exculpate a respondent of charged misconduct, or by an attorney's acquittal in a criminal case, or by the dismissal of criminal charges against an attorney. The reasons the State Bar is not bound by exculpatory civil findings or criminal acquittals in disciplinary proceedings are that the parties are different, the quantum of proof required in each proceeding is virtually always different, and the purposes of each proceeding are vastly different. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[10]**

Neither the Supreme Court nor the State Bar Court will bind an applicant or a respondent to an adverse civil finding made upon the usual civil standard of proof of a preponderance of the evidence when the standard of proof in the State Bar proceeding is clear and convincing evidence. When civil findings are made under a preponderance of the evidence standard, they must be independently assessed under the more stringent standard of proof applicable to disciplinary proceedings of clear and convincing evidence. It is only in this context that civil findings have no disciplinary significance apart from the underlying facts. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[11]**

The State Bar Court may apply collateral estoppel principles to preclude an applicant from relitigating an issue that was actually litigated and resolved adversely to him or her in a prior civil proceeding, provided that the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, that the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, that the applicant was a party to the civil proceeding, that there is a final judgment on the merits in the civil proceeding, and that no unfairness in precluding relitigation of the issue is demonstrated by the applicant. An applicant may demonstrate that it would be unfair to bind him or her to an adverse civil finding by showing, among other things, that he or she had less incentive or motive to litigate the issue in the civil proceeding, that the civil finding or judgment is itself inconsistent with some other finding or judgment, or that he or she was required to litigate under different and less advantageous procedures in the civil proceeding. Where applicant's fraud judgment met the above criteria and no unfairness was demonstrated, the hearing judge appropriately applied the doctrine of collateral estoppel to the underlying fraud issue in this moral character proceeding. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[12]**

Even though Evidence Code permits legal experts to testify regarding ultimate legal issues, such issues are ultimately for independent decision-making of State Bar Court and Supreme Court. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[6]**

Clients may not waive statutory limit on contingent fees in medical negligence cases, and superior court award of such fees in excess of statutory limits is erroneous. Where attorney did not reveal material issue of potential applicability of such statutory fee limit to superior court in connection with approval of settlement and award of fees, such award did not constitute res judicata, because attorney and client were not adversaries in proceeding. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[9]**

Where the reason for each charged violation was specified by the State Bar in its pretrial statement and where respondent was not prejudiced at trial, the inadequate specification of the reasons for the charges in the notice to show cause was not grounds for reversal. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[3]**

Where hearing judge concluded that certain alleged rule violations were duplicative and inconsequential in considering level of discipline, and State Bar did not take issue with such conclusion, and review department determined that respondent should be disbarred based on other findings, review department did not address allegations found to be duplicative. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[10]**

Respondent's conviction of grand theft and forgery was conclusive evidence of his guilt of all elements of those crimes. The grand theft conviction necessarily carried with it the specific intent to deprive the victim permanently of his funds. The forgery conviction necessarily showed that respondent acted without authority and with an intent to defraud. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[3]**

On the issue of whether a respondent acted in good faith, the credibility determinations of the hearing judge deserve great weight. (Trans. Rules Proc. of State Bar, rule 453(a).) In addition, the State Bar Court must resolve all reasonable doubts about culpability in favor of the accused attorney and must choose the inference leading to innocence if equally reasonable inferences may be drawn from the facts. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[6]**

In a disciplinary proceeding, a culpability determination must not be debatable. Accordingly, where the applicable rule of professional conduct did not expressly require written consent to joint representation of clients with potentially conflicting interests, the issue for the court was whether the case law at the time of an attorney's alleged violation of the rule made it clear that such consent was required in civil litigation. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[7]**

Where a party did not seek review of that portion of an order on a motion for relief from costs with which it disagreed, but stated its disagreement in its brief on review without seeking affirmative relief, that party's challenge to the order was not properly before the review department in a proceeding resulting from the opposing party's petition for review of a different portion of the same order. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[2]**

Pretrial statements are an important tool in conducting an efficient multi-count trial. Unexcused failure to comply with an order requiring a pretrial statement (see rule 1222, Prov. Rules of Practice) should not be treated lightly. However, where counsel failed to make appropriate motions during trial resulting from the other party's failure to file a pretrial statement, no issue was preserved for appeal. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[1]**

The law of the case doctrine is one of policy and does not preclude the relitigation of issues already determined in a prior appeal. However, strong reasons should be put forward for seeking to relitigate an issue already fully litigated and decided on a prior appeal. Where a party sought reconsideration, on a second appeal, of the review department's determination of an issue on an earlier appeal in the same proceeding, without offering any justification for its failure to seek reconsideration earlier, and relying on no new case law or statute, the review department had no cognizable reason to reconsider its prior conclusion. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[2]**

The Office of Trial Counsel waived its right to argue on review that certain evidence should not have been admitted when it withdrew its opposition to a post-trial motion before the hearing judge for introduction of the evidence. Accordingly, the review department did not address in detail the Office of Trial Counsel's objections to the evidence. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[5]**

An administrative determination by the Board of Legal Specialization regarding an application for certification must comport with due process, and review by the State Bar Court exists in part to test whether due process was afforded. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[5]**

Although review department gives great deference to credibility findings by hearing judge in favor of petitioner for reinstatement, petitioner continues to bear a heavy burden of proof on review. Petitioner must present overwhelming proof of reform and must show by the most clear and convincing evidence that efforts toward rehabilitation have been successful. Such evidence must demonstrate sustained exemplary conduct over an extended period of time. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[2]**

Where a hearing judge's decision in one matter indicated that if the respondent filed a post-decision declaration in that matter, this would be taken into account in assessing discipline in a second pending matter, the examiner's objections on review to this aspect of the decision were rendered moot by the respondent's failure to file any such declaration, by the State Bar's apparent satisfaction with the result in the second matter, and by the review department's recommendation of disbarment in the first matter based on other grounds. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[6]**

In addressing the constitutionality of imposing professional discipline for criminal conduct not involving moral turpitude, the State Bar Court must endeavor to interpret the "other misconduct warranting discipline" standard to render its application in the particular case constitutional. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[6]**

Review department did not need to reach respondent's challenges to hearing judge's evidentiary rulings in order to uphold hearing judge's ultimate findings, where all essential elements of charged violation were established by evidence to which respondent did not object, and any evidentiary errors did not result in denial of a fair hearing. Where factual findings based on challenged evidence were not necessary to decision, remand for new hearing was not necessary even if evidentiary errors underlay some non-essential findings. (Rule 556, Trans. Rules Proc. of State Bar.) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[1]**

The question of how a court order should be interpreted is a question of law for the court, not a question of fact, and the parties' subjective beliefs as to its meaning are not relevant to the court's interpretation. Whether language of respondent's probation reports complied with requirements of probation conditions was a legal issue, not a factual one. Moreover, probation order was a Supreme Court order, not a contract, and rules of contract interpretation did not apply. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[4]**

A respondent seeking review by the review department of a hearing department decision does not have the burden of showing that the hearing judge's findings are not supported by substantial evidence. That is a statutory burden applicable only to a respondent appearing before the Supreme Court. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[3]**

On review of a facial challenge to the legal sufficiency of charges in the notice to show cause, the sole issue presented is whether the facts alleged in the notice, if proven, would constitute a disciplinable offense. For the purpose of such review, the review department treats the factual allegations of the notice as true, but draws independent conclusions regarding the legal import of those facts. (Trans. Rules Proc. of State Bar, rule 554.1.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[1]**

Where there is no precedent regarding the standard of review to be applied in a matter coming before the review department in a certain procedural posture, the review department proceeds by analogy to the closest civil and criminal rules. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[2]**

The Transitional Rules of Procedure of the State Bar, unlike equivalent California and federal rules, provide for review as of right following the denial of a motion to dismiss, as well as the grant of such a motion. However, this does not affect the type of review to be afforded on the merits. (Trans. Rules Proc. of State Bar, rule 554.1.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[3]**

Both at hearing and on review, the court considering a motion to dismiss a notice to show cause for failure to state a disciplinable offense should disregard all factual matters outside the ambit of the notice, except for judicially noticeable facts. Accordingly, the review department considered respondent's uncontroverted statement that the alleged client referred to in the notice to show cause was respondent's spouse, and also considered respondent's date of admission to the bar and lack of any prior disciplinary record. However, respondent's other factual assertions in support of his motion to dismiss were not suited for judicial notice and were not considered on review. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[4]**

Hearing department findings that were based on evidence admitted in discipline phase of trial were considered by review department solely with respect to discipline and not culpability. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[3]**

The party making a claim of judicial bias must show that a person in possession of all the relevant facts would reasonably conclude that the hearing judge was biased or prejudiced against that party. The standard is an objective one and the partisan views of the litigants do not control. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[3]**

Review department adopted parties' stipulated facts, noting that the Supreme Court ordinarily will hold an accused attorney to stipulated facts even in a matter arising from a stipulation as to facts and disposition. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[3]**

Whether or not review department adopted parties' stipulated legal conclusions, the Supreme Court would not be bound by them in its independent review. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[5]**

Although an arbitrator's testimony is admissible on the question of what issues were tried in the arbitration, the arbitrator's expression of his own belief does not bind the State Bar Court in adjudicating the effect of the arbitration award. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[14]**

Party claiming judicial bias has burden to clearly establish such bias and to show specific prejudice; disagreement with how referee weighed issues, and showing of immaterial factual errors, did not establish bias on part of referee who acted in patient, fair, and commendable manner during hearing. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[1]**

Charging a violation of section 6068(a) without specifically identifying the underlying provision of law allegedly violated not only fails to put the attorney on sufficient notice of the alleged violation, but also undermines meaningful review of any decision based on such general charging allegation. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[14]**

Review department's overriding concern is same as that of Supreme Court: preservation of public confidence in profession and maintenance of high professional standards. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[5]**

The probable cause determination necessary for the initiation of an involuntary inactive enrollment proceeding pursuant to section 6007(b)(3) does not suffice to order a mental examination pursuant to section 6053. Such an order necessitates the much stronger procedural and constitutional safeguards afforded by showings from the State Bar of "good cause" and "least intrusive means." *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[9]**

Although rule 644 of the Transitional Rules of Procedure purports to allow a presumption affecting the burden of proof if an attorney fails without good cause to undergo an ordered mental examination, rule 644 must be interpreted as merely allowing a permissive inference of mental infirmity, in order to ensure due process. Rule 644 would not be valid if it operated to relieve the examiner of the burden of proving mental incompetence by clear and convincing evidence. The presumption authorized by rule 644, if applied, would conflict with the appropriate presumption that an attorney remains mentally competent to practice law in the absence of proof to the contrary, and would be tantamount to the imposition of a default judgment for failure to obey a discovery order, in violation of rule 321 of the Transitional Rules of Procedure. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[11]**

In administrative mandamus proceedings where the court is authorized to exercise independent judgment on the evidence, abuse of discretion by the lower tribunal is established if the court determines that the findings are not supported by the weight of the evidence. Where the court is not authorized to exercise independent judgment, then it must determine whether the findings are supported by substantial evidence in the light of the whole record. In such cases, due process requires that the body deciding the case must at least review a transcript of the evidence. The argument that this standard had been violated on earlier review by the former review department was mooted by the full-time review department's de novo review of the record on a second review after the former review department's remand for further hearing. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[1]**

The doctrine of law of the case did not preclude the full-time review department from reconsidering a decision of the former, volunteer review department. Due to the non-finality of recommendations of the former State Bar Court review department, law of the case did not apply to them. Upon its independent de novo review, review department was not bound to follow earlier factual determinations made prior to remand. Review department was also free to reconsider prior review department's legal interpretation of rule of professional conduct, given flexibility of law of the case doctrine in California appellate courts. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[3]**

As a rule, constitutional questions will not be reached if a decision can rest on a different ground. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[9]**

Party seeking review is expected to set forth challenged finding, conclusion, or ruling below and point out wherein error lies. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[2]**

Issues must be addressed on de novo review despite lack of appropriate briefing. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[3]**

In ruling on a motion to set aside default under Rule of Procedure 555.1(a), State Bar Court interprets and applies terms "mistake, inadvertence, surprise or excusable neglect" in same manner as in civil cases under section 473 of the Code of Civil Procedure. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[4]**

It is the policy of the law under section 473 of the Code of Civil Procedure to favor a hearing on the merits; any doubts in applying section 473 must be resolved in favor of the party seeking relief from default. A trial court order denying relief is scrutinized more carefully than an order permitting trial on the merits. Nonetheless, it is the moving party's responsibility to recite facts that meet the burden of proving mistake, inadvertence, surprise or excusable neglect. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[11]**

Whether an attorney's misconduct involved moral turpitude is a question of law ultimately decided by the Supreme Court. The test is the same whether or not the act was a criminal offense. Where respondent failed to pay payroll taxes due to financial difficulty, such conduct did not constitute moral turpitude, because Supreme Court did not find moral turpitude in case involving similar but more egregious misconduct. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[9]**

In determining whether nature of attorney's crimes warranted summary disbarment, review department gave great weight to decision of court of appeal issued on direct appeal from respondent's criminal conviction. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[7]**

Court of appeal opinion on direct appeal from attorney's criminal conviction is conclusive with respect to attorney's guilt of underlying crime, but for discipline purposes, State Bar Court must independently determine, through careful review of criminal record, whether clients were victims of misconduct or misconduct was committed in attorney's capacity as attorney. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[8]**

Where examiner stipulated to admissibility of character reference letters at hearing, and thus chose not to require the declarants to be cross-examined, examiner's attempt to discount letters before review department was without foundation. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[21]**

170 Issues re Conditions Imposed as Part of Discipline

Note: See also topic number 802.50 (Standard 1.4)

171 Restitution Requirements (rule 5.136; Standard 1.4(a))

Where the hearing judge recommended for a defaulting attorney, among other things, an actual suspension of 60 days and until the attorney made restitution of unearned fees and until the State Bar Court granted the attorney's motion to terminate her actual suspension under Rules of Procedure of the State Bar, rule 205, the hearing judge should also have recommended compliance with paragraphs (a) and (c) of California Rules of Court, rule 955 if the actual suspension exceeded 90 days. *In the Matter of Copren* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861. **[2a, b]**

Although the review department was sympathetic with respondent's claim that if he was actually suspended from practice for an extended period he would be unable to make timely restitution payments, it could not excuse a degree of discipline that was otherwise warranted. If avoidance of actual suspension were a prerequisite for respondent's continued restitution payments, it would have been more appropriate for respondent to have resolved his restitution obligation, thereby obviating this very proceeding. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678. **[3]**

Protection of the public and rehabilitation of the attorney are the primary aims of disciplinary probation. It is for this reason that discipline imposed for the wilful violation of probation often calls for substantial discipline as a reflection of the seriousness with which compliance with probationary duties is held. An attorney who wilfully violates a significant condition of probation, such as restitution, can anticipate actual suspension as the expected result, absent compelling mitigating circumstances. Here, respondent should have recognized the serious consequences of his failures to timely pay restitution and file quarterly reports because of his previous encounters

with the State Bar disciplinary system. Furthermore, when, as here, an attorney commits multiple violations of the same probation condition, the gravity of each successive violation increases, resulting in more severe discipline. Balancing all relevant facts and circumstances, the review department determined that the 90-day actual suspension recommended by the hearing judge was sufficient to achieve the goals of attorney disciplinary probation, but that an additional condition should be added that requires respondent's continued actual suspension until restitution was fully paid to his client. This was intended as an incentive to respondent to be pro-active in his efforts to satisfy his restitution obligations and bring to a conclusion this 10-year saga with the State Bar, and was necessary to ensure respondent's timely and full compliance. In reaching this conclusion, the review department took into account respondent's belated but complete satisfaction of his restitution and reporting conditions in the face of ongoing financial difficulties, the fact that all of the violations related to one client matter, and that the client testified that respondent had shown concern about his inability to pay and exhibited courteousness towards her. The need to protect the public by imposing a significantly longer period of stayed suspension was therefore diminished. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678. **[4 a,b]**

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

Attorneys cannot recover for services rendered if services are rendered in contradiction of attorney professional responsibility. And where attorney improperly withdraws fees from a trust account, restitution to client or client's estate is appropriate. Thus, where respondent withdrew $29,875 from his client trust account as his attorney's fees without his corporate client's authorization, respondent should make restitution of $29,875 plus interest to either corporate client, its successor, appropriate recipient of its assets after its dissolution, or if such successor or recipient of assets after dissolution cannot be identified, the Client Security Fund. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[10 a,b]**

Although respondent's conduct in the sale of residential real property to his client involved moral turpitude, it was not shown by clear and convincing evidence to have been either intentionally dishonest or venal; there was potential for benefits to the client; and it was impossible to allocate responsibility for the client's loss between respondent, who acted at least partially for his own benefit, and the client, who failed to act responsibly. Under these circumstances, restitution to the client was not recommended. *In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[8a,b]**

Respondent's contention that revoking his probation was a violation of due process and equal protection, and was discriminatory based upon financial status was rejected. The premise upon which it was based, that respondent's probation was being revoked because of his financial condition, was flawed. The revocation was based on his wilful failure to pay the restitution coupled with his failure to make reasonable efforts to acquire the resources to pay or to make other good faith efforts to satisfy the restitution obligation. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[5]**

In probation revocation proceedings the greatest amount of discipline is warranted for violations which show a breach of a condition of probation significantly related to the misconduct for which probation was given, especially in circumstances raising a serious concern about the need for public protection or showing the probationer's failure to undertake rehabilitative steps. The significance of restitution is its probative value as an indicator of rehabilitation, not the repayment of the underlying indebtedness. Requiring restitution serves the rehabilitative and public protection goals of disciplinary probation by forcing attorneys to confront in concrete terms the consequences of the attorney's misconduct. Thus, a probationer's attitude toward the restitution is a significant factor to be weighed. In the stipulation to facts and disposition in the underlying disciplinary case, respondent asserted that he was financially unable to pay the sanctions. Yet, he agreed to pay restitution as a condition of probation. After the Supreme Court's order was filed and four days before its effective date, respondent sought to discharge the restitution in bankruptcy. Having received the benefit of the bargain provided by the stipulation, respondent promptly sought to relieve himself of one of the obligations of that bargain. In addition, even though respondent has asserted continued financial hardship since before the filing of the stipulation in underlying discipline case, he did not seek a modification of the restitution condition of probation until after he was charged with violating that probation. Further, respondent apparently made no attempt to inform himself of the effect of the bankruptcy discharge on his duty to comply with the Supreme Court's disciplinary order. Respondent's stated belief that the restitution issue was moot because the recipient of the money forgave the debt

was also problematic. The important state interests accomplished by restitution are not rendered moot because the underlying indebtedness is forgiven by a private party. The goal is prophylactic, not pecuniary. Respondent's demonstrated failure to recognize these most fundamental concepts causes concern and increases the risk that future similar misconduct may occur. Respondent's attitude toward the restitution shows indifference and warrants increasing the recommended discipline and requiring that the restitution be paid prior to respondent's resumption of active practice. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[7]**

Even if credit card cash advances that attorney obtained and lost while gambling in Nevada casinos were "gambling debts" and therefore not enforceable debts in California, hearing judge's recommendation that attorney be required to make restitution to credit card company was not only legal, but appropriate and necessary to respondent's rehabilitation and for protection of public in light of hearing judge's findings that attorney obtained the cash advances without intending to repay them. Requiring attorney to make restitution will force attorney to confront his misconduct in concrete terms. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[11]**

It is inappropriate to use restitution as a means of awarding tort damages for harassment and intentional infliction of emotional distress. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[8]**

There is nothing in rule 205 of the Rules of Procedure that expressly precludes the State Bar Court from recommending appropriate preconditions to a defaulting and disciplined attorney bringing a motion to terminate his or her actual suspension under rule 205, such as recommended in this matter by the hearing judge, requiring respondent to make restitution and attend Ethics School. However, the requirement that respondent take and pass the Professional Responsibility Examination prior to bringing a motion for relief from suspension is in conflict with Supreme Court case law requiring that a disciplined attorney be given a minimum of one year within which to pass the examination. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[5 a, b]**

A condition attached to respondent's private reproval requiring respondent to pay the $1000 sanctions ordered by the superior court was necessary. To conclude otherwise would terminate respondent's professional obligation under Business and Professions Code section 6103 to obey the order and pay the sanctions. Such a result would be inconsistent with the purposes of attorney discipline. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[9]**

The review department rejected the argument that respondent should be required to make restitution before being relieved of his actual suspension because he intended to leave the United States. If ordered by the Supreme Court, respondent will be required to make restitution regardless of his place of residence. If he fails to comply with the Supreme Court order, his failure will result in further disciplinary action, again regardless of his place of residence. In short, respondent's place of residence was not relevant to the restitution requirement. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[4]**

Even if an attorney returns money that he or she misappropriates, the attorney is still be culpable of the original misappropriation. Thus, restitution is not a defense to a misappropriation charge. Rather, it is a mitigating circumstance that could possibly support a reduction in the discipline. Respondent had the burden of proving mitigating circumstances, including restitution. Where there was no evidence that respondent paid the money back, he did not meet his burden of proving that restitution had been paid. Under these circumstances, restitution was an appropriate component of the discipline. *In the Matter of Elliott* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541. **[1]**

Where an attorney retained unearned advanced fees for years and failed to prove factors justifying relief from actual suspension before the completion of restitution, the hearing judge erred in not requiring the attorney to make restitution forthwith. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. **[6]**

Sanction orders based upon specific out-of-pocket losses directly resulting from respondent's misconduct are proper subjects of restitution order. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[7]**

Bankruptcy laws do not prohibit State Bar Court from recommending or Supreme Court from ordering a respondent to make restitution for an indebtedness arising from misconduct related to his practice of law even though the indebtedness has been discharged in bankruptcy. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[8]**

Generally, restitution should be made in an amount consistent with the loss attributable to the respondent's misconduct. Thus, restitution for theft, misappropriation, or embezzlement should include interest. Where the debt which gave rise to the restitution did not provide for interest, the review department recommended that the restitution include interest at the legal rate (10 percent per annum) from the effective date of the Supreme Court disciplinary order. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[9]**

Where respondent on disciplinary probation made no required restitution payments to former clients, but made some payments to State Bar in belief that probation monitor or other authority had so instructed, and where respondent had insufficient reason for such belief, respondent was grossly negligent in failing to make such payments to clients, and thereby violated probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[4]**

Where respondent's failure to make restitution payments required by disciplinary probation was due to lack of income, but respondent did not attempt to have restitution requirement modified, and did not demonstrate that he made sufficient good faith efforts to acquire resources to pay restitution, respondent was culpable of gross negligence which violated conditions of probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[5]**

Requirements for quarterly probation reports and monthly restitution payments as conditions of disciplinary probation were important steps toward rehabilitation, and were appropriate from effective date of Supreme Court discipline order, rather than being delayed until after respondent resumed active law practice. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[14]**

Where disciplinary probation conditions specified minimum amount for monthly restitution payment, and amount was such that restitution would not be completed within period of probation if only minimum payments were made, fact that probation conditions specified minimum monthly amount did not relieve respondent from paying full required amount of restitution within term of probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[15]**

Where respondent had stipulated to discipline requiring restitution payments to be made by certain dates, and respondent did not set aside funds to make such restitution as soon as his own stipulation required first payment to be made, and where respondent had no credible excuse for failing to make at least first required payment at a time when respondent had significant income, respondent's failure to make at least partial restitution was a wilful violation of his probation. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[4]**

Where respondent's probation violations (failure to file quarterly report and to pay restitution) and balance of aggravating and mitigating circumstances were comparable to those in another reported probation revocation matter, review department adopted hearing judge's essential discipline recommendation, based on discipline in comparable matter, of imposition of entire previously stayed one-year actual suspension, with suspension to continue until payment of restitution, and showing of rehabilitation and fitness to practice to be required if suspension lasted two years or more. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[9]**

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

Doing equity is not the principal purpose of restitution in disciplinary proceedings; rather, it is to force disciplined attorneys to confront the consequences of their misconduct in a concrete way, thus serving goals of rehabilitation and public protection. It would not be consistent with purposes of attorney discipline to decline to order an attorney to make restitution of funds which were clearly wrongfully taken, simply on basis of speculation that victim of misconduct might thereby be unjustly enriched. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[14]**

Where hearing judge declined to order restitution but offered to reconsider if State Bar could show that misconduct victim had not already been compensated for funds taken by respondent, this ruling misallocated the burden of proof. Once State Bar met its burden to prove initial trust account violation, it was respondent's burden to prove that restitution had in effect already been made by a third party. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[15]**

Where respondent withdrew $2,500 for attorney's fees from a client's bank account at a time when his representation of the client was improper due to a conflict of interest, restitution of the funds to the client's estate was an appropriate condition of probation. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[13]**

Where bankruptcy court order which was not already part of record showed that restitution payments had been made to victim of respondent's misconduct, review department granted request to take judicial notice of such order. Undisputed evidence bearing on issue of restitution is important, if for no other purpose than to create an accurate record on the status of restitution. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[2]**

Restitution payments made under pressure of disciplinary proceedings are entitled to little or no weight in mitigation of discipline. However, whether restitution has been completed is important to deciding whether it should be required as a condition of probation, or, if disbarment is recommended, to whether respondent must make restitution as an issue bearing on rehabilitation for reinstatement. Thus, evidence of restitution payments made by respondent's father was relevant and properly admissible, even though not constituting mitigation, and review department granted motion to admit such evidence on review where hearing judge had declined to accept it. However, other evidence offered by respondent on review regarding Client Security Fund claim filed by respondent's client was not admitted by review department where it was not relevant to issues in proceeding. (See rule 570, Trans. Rules Proc. of State Bar.) *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[12]**

Where respondent violated conditions of disciplinary probation by failing to turn over former client's files and records, precluding accountant from assessing losses incurred due to respondent's misconduct so that determination could be made regarding restitution, such probation violations were serious and warranted lengthy actual suspension and requirement to prove rehabilitation, learning in the law, and fitness to practice before returning to law practice. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[4]**

Restitution is fundamental to the goal of rehabilitation. It forces attorneys to confront in concrete terms the harm caused by their misconduct. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[4]**

In hearing to establish fitness to return to practice after suspension, respondent could either show that restitution had been completed or that restitution had been made to the best of respondent's financial ability. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[14]**

Where respondent had wrongfully retained client's personal property, review department recommended condition of probation requiring respondent to provide proof of return of such property to client. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[11]**

It is common in State Bar matters involving failure to perform services to require as a rehabilitative condition, restitution of unearned fees kept by the attorney and to deem as unearned the entire fee when only preliminary services were performed which did not result in benefit to the client. It is also common to recommend the payment of interest incident to such restitution. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[12]**

If identity of party entitled to restitution of unearned attorney fees proved not to be ascertainable with reasonable diligence, review department recommended that, upon approval of probation monitor, such restitution be paid to Client Security Fund. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[13]**

Most Supreme Court cases requiring restitution have involved misuse of client funds or unearned fees. Nevertheless, where client owed interest on inheritance taxes which were not timely paid due to attorney's failure to perform services competently, and attorney offered to make restitution in amount of such interest as condition of discipline, restitution requirement was appropriate in light of the rehabilitative purposes that it would serve. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175. **[3]**

It was appropriate to order respondent to make restitution to client of client's funds which were applied to respondent's fees without client's authorization, even though respondent performed substantial legal services for client, because restitution would effectuate respondent's rehabilitation and protect public from similar future misconduct. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[22]**

Requirement that attorney who abandoned clients make restitution of amount paid by clients to successor counsel was imposed in furtherance of attorney's rehabilitation. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[15]**

The State Bar Court, as an arm of the Supreme Court in attorney disciplinary matters, does not sit as a collection board for clients aggrieved over fee matters, nor is its jurisdiction derivative of fee arbitration proceedings. The administration of attorney discipline, including such remedial orders as restitution, is independent of any remedy that an aggrieved client may pursue. In a disciplinary proceeding to protect the public, the alleged flaws in a fee arbitration proceeding and resulting judgment have little relevance. Accordingly, the State Bar Court has jurisdiction over a disciplinary matter even though there has already been a factually related fee arbitration. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[4]**

Where restitution was appropriate, but record reflected that client might have filed Client Security Fund claim, review department recommended that respondent be ordered to pay restitution either to client, or to Client Security Fund if client's claim had been paid. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[32]**

It is inappropriate to use restitution as a means of awarding unliquidated tort damages for malpractice. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[33]**

Attorney who rendered services to client before committing misconduct was entitled to collect fee earned prior to commencement of misconduct. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[3]**

For the purpose of determining culpability for violation of restitution requirement imposed as condition of disciplinary probation, it is inappropriate to distinguish between "substantial" and "insubstantial" or "technical" violations. Restitution conditions are as significant as the notification requirements in rule 955, Cal. Rules of Court, as to which the Supreme Court has declined to draw such a distinction. The importance of the goals of restitution makes distinctions between "substantial" and "insubstantial" or "technical" failures to make restitution inappropriate. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[9]**

Requiring restitution forces errant attorneys to confront the consequences of their misconduct in a concrete way and thereby serves the state's interest in rehabilitating such attorneys and protecting the public. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[10]**

As with the treatment of failure to pay restitution in reinstatement and criminal probation cases, in a disciplinary proceeding for failure to make timely restitution as a condition of attorney disciplinary probation, due process requires an examination of the probationer's ability to make restitution and the sufficiency and good faith of the probationer's efforts to acquire the resources to pay. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[11]**

A wilful breach of respondent's restitution duty was established where respondent: (1) had the financial ability to make some restitution payments during the period when he had not done so; (2) repeatedly chose to pursue professional goals which foreseeably rendered him financially unable to make timely restitution; (3) failed to protect his funds from attachment by creditors; and (4) failed to seek an extension of time to make his restitution payments. His conduct showed a conscious disregard of his restitution obligations and a failure to make sufficient good faith efforts to acquire the resources to pay. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[12]**

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

Typically, Supreme Court orders actual suspension for an appropriate period and until restitution is made, rather than ordering suspension until restitution is made and then for an additional fixed term. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[2]**

Requirement that respondent return unearned fees to client was consistent with finding that respondent did little if any of the work he agreed to perform for client. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[17]**

Where evidence showed that another attorney, not respondent, was apparently responsible for certain thefts of trust funds, review department did not recommend requiring restitution as to those matters. *In the Matter of*

Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[11]**

172 Monitoring, Treatment and Testing Requirements (Standard 1.4(e))

172.10 Probation Monitor

172.11 Appointed

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

The Standards for Attorney Sanctions for Professional Misconduct provide that the appropriate discipline for culpability for professional misconduct where the member has a record of two prior impositions of discipline is disbarment unless the most compelling circumstances clearly predominate. Application of this standard was not appropriate where the attorney's criminal convictions and prior discipline, which were caused by an extensive history of drug and alcohol abuse, did not directly involve clients or the practice of law, and did not cause specific harm to the public or courts, and where the attorney had taken steps to address the underlying substance abuse problem, and had already been under suspension for five years as a result of previous discipline. Continued probation monitoring with substance abuse conditions, and a requirement that the attorney demonstrate rehabilitation and fitness to practice, would ensure that the substance abuse was controlled prior to the attorney's resuming the practice of law. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[9]**

Chaotic state of respondent's records and business practices, and lack of written fee agreements and client correspondence, warranted imposition of requirement to submit law office management plan and of State Bar supervision in order to protect the public and prevent any future misconduct. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[16]**

172.15 Not appointed

Disciplinary probation furthers the fundamental purposes of attorney discipline only when attorney probationers are effectively monitored to ensure that they do not engage in further misconduct and are conforming their conduct to the ethical strictures of the profession. Historically, attorney probationers have been monitored to ensure their compliance with these requirements through appointed voluntary probation monitors or through court-ordered self-reporting by the attorney or both. Even though probation monitors have played an important role in monitoring attorneys on probation and were, at one time, appointed in most instances, the use of a probation monitor may not be necessary where only routine, simple, periodic reporting conditions are recommended or are coupled with a rule 955 requirement and/or passage of the Professional Responsibility Examination. Appointment of a probation monitor was not warranted in this case in light of the simple probation conditions recommended and the found misconduct, mitigation, and aggravation. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[3]**

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

Where the only active steps required by the recommended conditions of probation were the submission of approximately four quarterly reports directly to the probation department, the review department revised the hearing judge's recommended conditions of probation, which included assignment of a probation monitor, because it did not consider a probation monitor necessary. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[11]**

Appointment of probation monitor may not be necessary where only routine, simple periodic reporting conditions are recommended, or are coupled with a rule 955 requirement and/or passage of the Professional Responsibility Examination. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[12]**

Compliance with rule 955 is customary for suspensions of two years, but is discretionary, and neither rule 955 order nor probation were necessary where respondent had not lived in California for several years, did not practice law, and had not committed any misconduct for over six years. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[21]**

172.17 Powers and duties

It was unreasonable for respondent to believe that he had been excused by his probation monitor referee from filing one of the quarterly reports clearly required by his probation conditions, where respondent knew of his duty to file the quarterly reports timely and knew the exact dates on which those reports were due. Respondent therefore breached his probation duties by failing to file the report. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[14]**

172.19 Other issues re probation and/or probation monitors

Disciplinary probation furthers the fundamental purposes of attorney discipline only when attorney probationers are effectively monitored to ensure that they do not engage in further misconduct and are conforming their conduct to the ethical strictures of the profession. Historically, attorney probationers have been monitored to ensure their compliance with these requirements through appointed voluntary probation monitors or through court-ordered self-reporting by the attorney or both. Even though probation monitors have played an important role in monitoring attorneys on probation and were, at one time, appointed in most instances, the use of a probation monitor may not be necessary where only routine, simple, periodic reporting conditions are recommended or are coupled with a rule 955 requirement and/or passage of the Professional Responsibility Examination. Appointment of a probation monitor was not warranted in this case in light of the simple probation conditions recommended and the found misconduct, mitigation, and aggravation. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[3]**

Quarterly probation reporting is important because it requires attorney probationers, four times a year, to reflect upon their prior misconduct and to review their current conduct to ensure that it complies with all of the conditions of their probation. However, quarterly probation reporting is not mandated in all cases in which probation is recommended. When the circumstances in a case establish that quarterly probation reporting is not necessary, the circumstances should be set forth in the court's decision. In this case involving attorney-client misconduct with a recent priorreproval, however, the appropriateness of a quarterly-reporting condition of probation was clear. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[4]**

Reproval conditions attached to respondent's two prior reprovals requiring him to file quarterly probation reports were important steps towards respondent's rehabilitation and important means of protecting the public because they permitted the State Bar to monitor respondent's compliance with ethical standards. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[9]**

In respondent's second disciplinary proceeding for his failure to comply with the quarterly reporting requirements imposed on him under two prior reprovals, it was inappropriate to include, in the discipline recommendation, a reporting condition with a lower frequency of reporting than that previously imposed on respondent, which he had been unable or unwilling to comply. Absent extraordinary and enunciated circumstances, the reporting condition should have at least required that respondent demonstrate that he can now comply with the reporting requirements previously imposed on him under his two reprovals by imposing the same reporting requirements on him prospectively. Recommending a lower reporting requirement would "reward" respondent for his noncompliance. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[9]**

Where respondent seriously abused the judicial system for a dozen years despite heavy sanctions, showed no remorse, and refused to mend his ways, no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession. Because of respondent's total lack of repentance, a lengthy suspension coupled with probation terms was inappropriate; there was a great danger that respondent would fail to comply with any probation terms imposed. Respondent's repeated acts of moral turpitude demonstrated that he was no longer worthy of membership in the bar. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[14]**

Where respondent on disciplinary probation made no required restitution payments to former clients, but made some payments to State Bar in belief that probation monitor or other authority had so instructed, and where respondent had insufficient reason for such belief, respondent was grossly negligent in failing to make such payments to clients, and thereby violated probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[4]**

Protection of public and rehabilitation of attorney are chief aims of disciplinary probation. Violation of probation condition significantly related to attorney's prior misconduct merits greatest discipline, especially if such violation raises serious concern for public protection or shows attorney's failure to undertake rehabilitation. Where respondent was culpable of multiple probation violations reflecting adversely on his rehabilitation efforts, but showed substantial mitigating circumstances, appropriate discipline was three years stayed suspension and four years probation, conditioned on one year of actual suspension. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[12]**

Requirements for quarterly probation reports and monthly restitution payments as conditions of disciplinary probation were important steps toward rehabilitation, and were appropriate from effective date of Supreme Court discipline order, rather than being delayed until after respondent resumed active law practice. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[14]**

Where respondent's probation monitor placed calls to respondent and respondent did attempt to reply to such calls, and hearing judge found that although respondent did not respond promptly, he could not be said to have failed to comply with his duty, respondent was not culpable of violating condition of probation requiring him to meet with monitor to review probation terms. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[3]**

Primary aims of attorney disciplinary probation are protection of public and rehabilitation of attorney. Greatest amount of discipline for violating probation conditions is merited for breaches of probation conditions significantly related to misconduct for which probation was given, especially when circumstances raise serious concern about public protection or show probationer's failure to undertake rehabilitative steps. Where misconduct for which respondent was placed on probation included practicing law in violation of court order, and respondent's current misconduct also involved violating numerous court orders and was aggravated by failure to participate in disciplinary proceeding, and where respondent's probation violations involved two of very first steps required by probation conditions, these factors indicated that respondent had a persistent problem with conforming his conduct to requirements of law, raised serious concerns for need to protect public, and showed that respondent had failed to even begin to take steps to rehabilitate himself. Accordingly, imposition of entire period of stayed suspension was appropriate discipline for respondent's violation of probation. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[12]**

It is the responsibility of an attorney on probation to comply with a probation condition requiring the attorney to meet with an assigned probation monitor referee. Even if respondent encountered difficulty in setting up such a meeting, where respondent did not seek the assistance of the State Bar Court's clerk's office, and instead permitted a substantial delay to pass before the required meeting occurred, respondent's neglect constituted a wilful breach of his probation duties. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[13]**

It was unreasonable for respondent to believe that he had been excused by his probation monitor referee from filing one of the quarterly reports clearly required by his probation conditions, where respondent knew of his duty to file the quarterly reports timely and knew the exact dates on which those reports were due. Respondent therefore breached his probation duties by failing to file the report. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[14]**

The primary goal of disciplinary probation is the protection of the public and rehabilitation of the attorney. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[3]**

In attorney disciplinary matters, a period of stayed suspension subject to probation conditions is applied primarily as an additional measure to protect the public, courts and legal profession. However, where one-year actual suspension, coupled with requirement that attorney demonstrate rehabilitation, present fitness to practice and present learning in the law before being relieved of his actual suspension, would protect public, courts and profession, review department concluded that stayed suspension and probation were not necessary. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[6]**

As a matter of law, probation condition requiring respondent to include statement regarding abstinence from alcohol and drugs in any report required under probation conditions required respondent to include such statement in all required reports, including quarterly reports. Statement in quarterly reports that respondent had complied

with all "valid, legally reasonable and enforceable" probation conditions did not comply with such requirement, because it was not a clear and unequivocal statement of respondent's compliance with the abstinence condition. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[3]**

The question of how a court order should be interpreted is a question of law for the court, not a question of fact, and the parties' subjective beliefs as to its meaning are not relevant to the court's interpretation. Whether language of respondent's probation reports complied with requirements of probation conditions was a legal issue, not a factual one. Moreover, probation order was a Supreme Court order, not a contract, and rules of contract interpretation did not apply. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[4]**

Where probation conditions required that respondent abstain from intoxicants and non-prescribed drugs, and respondent stated under penalty of perjury that respondent had complied with all "valid, legally reasonable and enforceable" probation conditions, then even if State Bar proved respondent had consumed alcohol, respondent could have avoided perjury conviction by contending he did not consider abstinence condition to be valid, legally reasonable, and/or enforceable. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[5]**

The goals of the State Bar's probation program are: (1) public protection; (2) rehabilitation of the respondent; (3) maintaining integrity of the legal profession; (4) enforcement of restitution orders; (5) aiding future enforcement and (6) partially alleviating discipline. These goals are to be realized by use of probation conditions which are innovative, individualized, rehabilitative and flexible and which are implemented using the efforts of volunteer probation monitor referees. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[6]**

As a matter of policy, not all attorneys who fail to participate in disciplinary proceedings should be precluded from receiving discipline containing probation conditions. Defaulting attorneys do present a problem for the hearing department in that the cause of their misconduct is not always evident on the record, thus making it difficult to determine which probation conditions or duties would further the goals of discipline. Nonetheless, the view that an attorney's default is prima facie evidence that the attorney is not amenable to probation runs contrary to the duty to consider each case on its own merits to determine appropriate discipline, and also precludes the use of probation monitoring as an effective means of public protection. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[8]**

Probation is not mandated in all cases where an actual suspension is imposed. When a lengthy period of actual suspension is recommended, imposing the provisions of standard 1.4(c)(ii) in lieu of a probation grant may serve adequately to protect the public and test the attorney's rehabilitation. Probation may not be indicated by virtue of the nature of the misconduct, the passage of time since the misconduct or clear evidence of the attorney's rehabilitation. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[11]**

A respondent should not be admitted to disciplinary probation when there is clear evidence that the respondent will not comply with its conditions. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[13]**

Where delay in commencement of disciplinary probation until end of actual suspension would not further rehabilitation objective of probation, review department recommended that probation commence on finality of Supreme Court's discipline order. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[21]**

Review department recognized that respondent's default raised concerns regarding respondent's suitability for probation, but concluded that respondent should not be denied opportunity to comply with probation terms which would appear to have rehabilitative benefit. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[7]**

172.20 Drug Testing/Treatment (Standard 1.4(c))

Absence of evidence of rehabilitation from drug and alcohol problems was significant where respondent's probation violation involved failure to give adequate assurance of compliance with probation requirement of abstention from alcohol and drugs. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[21]**

The Standards for Attorney Sanctions for Professional Misconduct provide that the appropriate discipline for culpability for professional misconduct where the member has a record of two prior impositions of discipline is disbarment unless the most compelling circumstances clearly predominate. Application of this standard was not

appropriate where the attorney's criminal convictions and prior discipline, which were caused by an extensive history of drug and alcohol abuse, did not directly involve clients or the practice of law, and did not cause specific harm to the public or courts, and where the attorney had taken steps to address the underlying substance abuse problem, and had already been under suspension for five years as a result of previous discipline. Continued probation monitoring with substance abuse conditions, and a requirement that the attorney demonstrate rehabilitation and fitness to practice, would ensure that the substance abuse was controlled prior to the attorney's resuming the practice of law. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[9]**

A requirement that a respondent with a drug and alcohol abuse history submit to warrantless searches by police and to blood, breath or urine testing was not an appropriate condition of probation, and the review department replaced it with the State Bar Court's standard substance abuse probation conditions. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[12]**

Probation conditions which included regular substance screening were well directed to maintain respondent's program of rehabilitation from drug use and alcohol abuse and to offer appropriate protection to the public. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[9]**

172.30 Alcohol Testing/Treatment (Standard 1.4(c))

Absence of evidence of rehabilitation from drug and alcohol problems was significant where respondent's probation violation involved failure to give adequate assurance of compliance with probation requirement of abstention from alcohol and drugs. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[21]**

A requirement that a respondent with a drug and alcohol abuse history submit to warrantless searches by police and to blood, breath or urine testing was not an appropriate condition of probation, and the review department replaced it with the State Bar Court's standard substance abuse probation conditions. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[12]**

Probation conditions which included regular substance screening were well directed to maintain respondent's program of rehabilitation from drug use and alcohol abuse and to offer appropriate protection to the public. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[9]**

172.40 Prescribed Medication Testing/Treatment (Standard 1.4(c))

Blood testing and continuing psychological treatment were appropriate probation conditions where mitigating evidence included showing that mental condition responsible for attorney's misconduct had been successfully alleviated by ongoing medication and treatment. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[16]**

172.50 Psychological Treatment (Standard 1.4(c))

It is proper to recommend a probation condition requiring appropriate mental health treatment even though no expert testimony was proffered that respondent suffered from a mental or other problem requiring psychiatric treatment where the record contains other clear evidence that respondent suffers from a mental or other problem requiring medical treatment. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[9]**

Where respondent was charged with violating disciplinary probation conditions by failing to submit evidence of having obtained assistance from a licensed psychologist or psychiatrist, respondent could be found culpable only of failing to comply with requirement that he submit such evidence, and not of failing to comply with requirement that he obtain such assistance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[8]**

Substantial compliance with a disciplinary probation requirement is not a defense to violation of the requirement. Where respondent's probation conditions required that he obtain therapy from licensed practitioner, and where respondent made efforts to obtain therapy but did not seek to have probation conditions modified to include therapy provided by unlicensed practitioner, respondent's uncharged probation violation of failing to comply with therapy requirement was aggravating circumstance in probation revocation proceeding. However, respondent's efforts to comply constituted significant mitigating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[9]**

Where hearing judge had confidence in respondent's unlicensed therapist and the therapeutic relationship which respondent had established with such therapist, it was appropriate to allow respondent to satisfy therapy requirement of probation conditions by continuing to see that specific therapist; otherwise, therapist would have to be duly licensed psychiatrist or clinical psychologist. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[16]**

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

Where no clear or expert evidence was presented that respondent had a specific mental or other problem requiring psychiatric treatment, the review department declined to adopt the hearing judge's recommendation of such treatment as a condition of respondent's disciplinary probation. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[14]**

Blood testing and continuing psychological treatment were appropriate probation conditions where mitigating evidence included showing that mental condition responsible for attorney's misconduct had been successfully alleviated by ongoing medication and treatment. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[16]**

Where attorney's expert witness testified that attorney still had personality traits that needed working on, protection of public required imposition of psychological treatment requirement as condition of probation. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[20]**

172.90 Other Testing/Treatment (Standard 1.4(g))

173 Requirements to Take and Pass Ethics Exam/Ethics School (rule 5.135; Standard 1.4(d))

Despite the mandate in State Bar Rule of Procedure, rule 290(a) that every imposition of discipline (other than reprovals) include a requirement that attorney attend State Bar Ethics School, the appropriate time to consider imposing State Bar Ethics School as a condition of probation in default proceeding in which attorney's actual suspension will continue until the attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205, is at the time of ruling on the rule 205 motion to terminate the actual suspension. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[7]**

Disciplinary recommendation in a default proceeding in which attorney's actual suspension will continue until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205 may, in appropriate cases, require that attorney's actual suspension continue until attorney attends State Bar Ethics School. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[8]**

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

There is nothing in rule 205 of the Rules of Procedure that expressly precludes the State Bar Court from recommending appropriate preconditions to a defaulting and disciplined attorney bringing a motion to terminate his or her actual suspension under rule 205, such as recommended in this matter by the hearing judge, requiring respondent to make restitution and attend Ethics School. However, the requirement that respondent take and pass the Professional Responsibility Examination prior to bringing a motion for relief from suspension is in conflict with Supreme Court case law requiring that a disciplined attorney be given a minimum of one year within which to pass the examination. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[5 a, b]**

The State Bar is correct that a private reproval is a sanction that constitutes discipline. And the State Bar is also correct that the plain and unambiguous language of rule 290(a), Rules of Procedure mandates that except as provided by order of the Supreme Court, a member shall be required to satisfactorily complete the State Bar Ethics School in all dispositions or decisions involving the imposition of discipline, unless the member previously completed the course within the prior two years. However, rule 956(a) of the California Rules of Court authorizes the attachment of conditions to reprovals. And that rule expressly requires that conditions attached to reprovals be based upon a finding that the protection of the public and the interests of the attorney will be served thereby. In fact, it is error to attach a condition to a reproval in the absence of such an express finding. Moreover, rule 271, Rules of Procedure, explicitly directs that any conditions attached to reprovals must be attached in the manner

authorized by California Rules of Court rule 956. Accordingly, the review department held that the mandatory directive in rule 290 to impose ethics school is not applicable in proceedings in which the discipline imposed is a reproval. To conclude otherwise would strip all meaning from the requirement in rule 956(a) that conditions attached shall be based on a finding that the interests of the public and attorney will be served thereby. In addition, to conclude otherwise would render a portion of rule 271 surplusage. *In the Matter of Respondent Z* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 85. **[1 a-d]**

As the reproval imposed on respondent in the prior disciplinary proceeding is final, it and the conditions attached to it are presumed valid and enforceable. The reproval decision is subject to collateral attack only on the grounds that the judge (1) lacked jurisdiction of the subject matter, (2) lacked personal jurisdiction over respondent, or (3) acted in excess of jurisdiction. The burden of proof is on the party who attacks the judgment to show lack of jurisdiction. Furthermore, to succeed on collateral attack, the jurisdictional defect must be proven from the face of the record in the prior proceeding. Respondent's contention that the conditions attached to his prior private reproval are subject to collateral attack because the hearing judge failed to explicitly recite in her decision two findings required by rule 956 of the California Rules of Court, that the reproval conditions would serve to protect the public and to serve respondent's interests, is an allegation that the hearing judge acted in excess of her jurisdiction. Respondent failed to prove from the face of the record in the prior reproval that the conditions attached to it would not serve to protect the public or serve respondent's interest. In any event, the unchallenged factual findings in the hearing judge's decision in the prior case establish that the hearing judge acted within her jurisdiction in attaching the conditions. Without question, the reproval conditions that he take and pass a professional responsibility examination and attend the State Bar's Ethics School will serve to protect the public and serve respondent's interests. The hearing judge's error is not a jurisdictional error that can subject the hearing judge's decision to collateral attack. At most, the error was a procedural defect that respondent waived by failing to appear in the prior proceeding and object to the hearing judge's decision on that ground. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929. **[1]**

In the absence of any direct precedent construing rule 956 of the California Rules of Court, the review department held that the purpose of the rule's findings is to aid in ensuring that any duties attached to a reproval are reasonably related to its purposes. Although rule 956 prescribes a salutary requirement, it cannot be said that it is jurisdictional. The findings themselves do not go to the essential fairness of the underlying disciplinary proceeding or even a subsequent enforcement proceeding. If findings are omitted from a reproval decision to which rule 956 applies, the error can be called to the State Bar Court's attention in a timely manner. If not done timely, the objection is waived, absent a showing that respondent was clearly prejudiced by the omitted findings. No showing of prejudice was made in this proceeding and such a claim would be hard to envision regarding the two duties that respondent was charged with violating in this proceeding: passage of a professional responsibility examination and attendance at the State Bar's Ethics School. These are requirements imposed in almost every disciplinary probation. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929. **[4]**

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

Where the record demonstrated that the conduct of respondent was not venal, but rather totally oblivious to his obligations as a lawyer, the review department had great concern that respondent's lack of understanding of his obligations as an attorney posed a risk to the public. Under these circumstances the review department recommend that respondent not return to practice until such time as he completed certain educational requirements imposed as conditions of probation. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[11]**

California Rules of Court, rule 951, which explicitly authorizes the State Bar Court to extend the time within which an attorney must take and pass a professional responsibility examination, applies only when the Supreme Court orders the attorney take and pass such an examination. It does not apply when the State Bar Court orders an attorney to take and pass the examination as a condition attached to a reproval. When the State Bar Court imposes such a condition, its authority to extend the time for the attorney to comply is derived from California Rules of Court, rule 956, which authorizes the State Bar Court to attach conditions to the reprovals that it imposes. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[1]**

Even after respondent's private reproval became final, the State Bar Court retained jurisdiction over the conditions attached to it under the Former Transitional Rules of Procedure of the State Bar (now the Rules of

Procedure of the State Bar, title II, State Bar Court Proceedings). Thus, when the hearing judge extended the time for respondent to comply with the conditions attached to the reproval after the time to comply had expired, the hearing judge did not act without jurisdiction; but in excess of jurisdiction. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[2]**

When a party seeks or consents to a court's action that is in excess of the court's jurisdiction, the party may be estopped to complain of the court's action as long as the court had subject matter jurisdiction. Respondent was estopped from collaterally attacking a final order extending the time in which he was required to comply with conditions attached to a reproval where he consented to the order and where the court had jurisdiction of the subject. The review department concluded that the application of estoppel was in harmony with the primary goals of attorney discipline. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[3]**

The greatest amount of discipline is warranted for violations of probation which show a breach of a condition of probation significantly related to the misconduct for which probation was given, especially in circumstances raising a serious concern about the need for public protection. Where the misconduct which gave rise to the probation involved failure to perform and communicate, the law office management plan, ethics school, and law office management course conditions of probation directly addressed the misconduct and were therefore significantly related to the underlying misconduct. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[4]**

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr.430.

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

Where respondent had been ordered in prior disciplinary matter to take and pass professional responsibility examination, and remained suspended for failure to do so at time review department decided subsequent disciplinary matters, review department did not recommend imposing additional professional responsibility examination requirement in subsequent matters. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[13]**

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

Where respondent had been directed in first disciplinary matter to take Multistate Professional Responsibility Examination rather than usually-imposed California Professional Responsibility Examination, and respondent had passed such examination, review department did not recommend in subsequent probation revocation matter that respondent be required to pass another professional responsibility examination. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[1]**

In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

Where there was no evidence that respondent's trust account practices were generally deficient, and respondent's essential ethical shortcoming involved misattributing ownership of funds, not failing to handle them properly as entrusted funds, it was not necessary to require respondent to attend special trust accounting class portion of Ethics School. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[16]**

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

Where probation conditions requiring office organization plan and completion of Ethics School would amply address respondent's misconduct, review department deleted recommended probation condition requiring respondent to join and maintain membership in State Bar's Law Practice Management Section. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[6]**

Where respondent's failure to adhere to statutory requirement of written attorney-client fee agreements was at heart of both matters in which he had been charged with misconduct, and respondent's attention needed to be directed to written fee agreements and also to his obligations upon withdrawal from employment, public reproval was properly conditioned on completion of State Bar Ethics School. Its format of classroom instruction, followed by a test, would better remedy these problems than the more passive experience of the California Professional Responsibility Examination. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[14]**

Where State Bar Court did not recommend respondent's suspension from law practice, it was not required to include, as condition of public reproval, requirement that respondent pass a professional responsibility examination. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[16]**

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In probation revocation matter, where order imposing probation had also required that respondent pass professional responsibility examination and respondent had not yet done so, review department recommended that this provision of original discipline order remain in effect notwithstanding revocation of probation. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[8]**

Review department, in recommending respondent's disbarment for failure to comply with rule 955, California Rules of Court, was not required to address issue whether time respondent had already spent on inactive enrollment due to probation violation, or on suspension due to failure to pass professional responsibility examination, should be counted toward required waiting period to apply for reinstatement. (Trans. Rules Proc. of State Bar, rule 662.) Respondent could raise those issues before a hearing judge at the time he wished to file a reinstatement petition. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[5]**

Where respondent had passed professional responsibility examination 10 years earlier, but seemed to have learned nothing from that experience which would have helped him avoid disciplinary proceeding arising out of his abdicating responsibility for his law practice to a non-lawyer, it was appropriate to require respondent to take and pass California Professional Responsibility Examination prior to expiration of his actual suspension. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[8]**

Normally, a respondent who has recently been ordered to take a professional responsibility examination is not required to do so in connection with subsequent discipline. Where respondent had not been ordered to take any professional responsibility examination in connection with prior discipline, review department recommended that respondent be ordered to take the California Professional Responsibility Examination, focusing on the California Rules of Professional Conduct, which is now routinely ordered in discipline cases involving suspension in lieu of the national Professional Responsibility Examination, which focuses on the ABA rules. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[18]**

Where time period between effective date of discipline and eligibility to apply to return to active practice would not necessarily be long enough for respondent to take and pass professional responsibility examination before hearing on fitness to practice, review department did not recommend that respondent be given less than the normal one-year period to pass such examination. Passage of the examination would be relevant evidence at fitness hearing but was not a condition precedent to return to practice. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[15]**

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244.

The California Professional Responsibility Examination, when appropriately ordered, does assist in the rehabilitation of an errant attorney and, as a general proposition, the examination is an effective tool to measure an attorney's understanding and appreciation of the rules and statutes which are designed to protect the public and the best interests of the profession. However, when imposed as a condition of a reproval, the examination may only be required based on a finding that the protection of the public and the interests of the attorney will be served thereby. (Cal. Rules of Court, rule 956(a).) *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181. **[2]**

No decisional law requires automatic imposition of a requirement to take and pass a professional responsibility examination as a condition of a reproval. Routinely requiring the examination should be limited to cases in which the attorney's behavior has so far deviated from ethical norms as to warrant the serious step of either actual or wholly stayed suspension from practice. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181. **[3]**

Where the primary problem which caused respondent's misconduct was inadequate law office management, and respondent had already taken appropriate steps to ensure that future office management practices would greatly reduce the risk of a similar violation, ordering respondent to pass the California Professional Responsibility

Examination as a condition of respondent's private reproval would not be appropriate for public protection or have rehabilitative value. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181. **[4]**

Since 1976 the Supreme Court has required that all attorneys who are suspended from the practice of law in a disciplinary proceeding take and pass the Professional Responsibility Examination. In the case of reprovals, however, an order that the reproved attorney take and pass the examination should not be imposed automatically. Conditions attached to a reproval may only be imposed based on a finding that protection of the public and the interests of the attorney will be served thereby. Where a reproved respondent had already taken steps to insure that his misdeeds would not reoccur, and taking the examination would not further assist him in recognizing his failings and preventing future misconduct, the examination requirement was not an appropriate condition of the reproval. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175. **[4]**

Review department declined to recommend that respondent take California Professional Responsibility Examination where respondent had recently taken and passed Professional Responsibility Examination in compliance with earlier public reproval. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[27]**

Where respondent had timely complied with the requirement in a previous disciplinary matter that respondent take and pass the Professional Responsibility Examination, by passing the exam less than three years earlier, the review department declined to recommend that respondent be required to take and pass the exam again in connection with subsequent discipline. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[14]**

Respondent who did not fully appreciate fundamental office practices which would alleviate any future misunderstanding with a client concerning crucial decisions, status of litigation, fee disputes or withdrawal from representation was required to attend State Bar ethics school and complete a law office management course. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[16]**

Where California Professional Responsibility Examination ("CPRE") had not yet been available when case was decided by hearing judge, review department modified hearing judge's discipline recommendation to substitute CPRE requirement for requirement to take and pass national professional responsibility examination. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[12]**

Passage of the Professional Responsibility Examination would be relevant evidence in a hearing pursuant to standard 1.4(c)(ii), but is not a condition precedent. Accordingly, respondent ordered to take PRE was given the standard period of one year to do so even though respondent's standard 1.4(c)(ii) hearing might occur sooner. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[15]**

There was no reason to recommend that respondent be ordered to take and pass the professional responsibility examination when he had recently been ordered to do so in a prior disciplinary matter; instead, the review department recommended that respondent be required to attend the State Bar's Ethics School program. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[20]**

Ordinarily, a requirement that a disciplined attorney take and pass the Professional Responsibility Examination is set forth as a separate requirement and not as a condition of probation. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[19]**

Where respondent had been ordered to pass Professional Responsibility Examination in connection with recently-imposed prior discipline, review department deemed it unnecessary to require such passage in subsequent disciplinary matter. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[16]**

Requirement to take and pass professional responsibility examination was not appropriate where attorney had successfully completed examination in connection with previous discipline. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[19]**

Where respondent in criminal conviction matter had initially misrepresented his occupation in the course of his arrest, it was appropriate to impose requirement to take and pass professional responsibility examination as condition of public reproval. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[6]**

When a requirement to take and pass the professional responsibility examination is attached as a condition to a reproval, wilful failure to comply may be cause for a separate disciplinary proceeding. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[7]**

174 Law Office Management/Trust Account Auditing Requirements (Standard 1.4(d))

Where the record demonstrated that the conduct of respondent was not venal, but rather totally oblivious to his obligations as a lawyer, the review department had great concern that respondent's lack of understanding of his obligations as an attorney posed a risk to the public. Under these circumstances the review department recommend that respondent not return to practice until such time as he completed certain educational requirements imposed as conditions of probation. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[11]**

The greatest amount of discipline is warranted for violations of probation which show a breach of a condition of probation significantly related to the misconduct for which probation was given, especially in circumstances raising a serious concern about the need for public protection. Where the misconduct which gave rise to the probation involved failure to perform and communicate, the law office management plan, ethics school, and law office management course conditions of probation directly addressed the misconduct and were therefore significantly related to the underlying misconduct. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[4]**

Greatest degree of discipline for violating probation conditions is merited for violation significantly related to attorney's prior misconduct, especially where violation raises serious concern about need for public protection or shows probationer's failure to undertake rehabilitative steps. Violation of probation which involved failing to comply with trust account audit condition was substantially related to respondent's underlying misconduct involving failure to keep accurate records of entrusted funds, failure to maintain sufficient funds in trust, and failure to account to clients and other persons to whom respondent had fiduciary duty. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[12]**

Where there was no evidence that respondent's trust account practices were generally deficient, and respondent's essential ethical shortcoming involved misattributing ownership of funds, not failing to handle them properly as entrusted funds, it was not necessary to require respondent to attend special trust accounting class portion of Ethics School. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[16]**

Where probation conditions requiring office organization plan and completion of Ethics School would amply address respondent's misconduct, review department deleted recommended probation condition requiring respondent to join and maintain membership in State Bar's Law Practice Management Section. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[6]**

Where respondent's misconduct involved negligent law office management over an extended period of time, resulting in delay and disservice to a number of clients but no act of moral turpitude or serious misconduct in any individual matter, and respondent had since changed his office practices, a one-year actual suspension was excessive in the absence of serious aggravation. However, where no persuasive reason had been offered to go below the minimum three-month actual suspension called for by the standards, a one-year stayed suspension, two years probation, and a three-month actual suspension, with law office management requirements, constituted sufficient discipline. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[10]**

Where review department recommended actual suspension for two years and until respondent proved his rehabilitation, fitness to practice law, and learning and ability in the general law, probation conditions requiring respondent to submit list of open files to probation monitor, draw up law office plan, and take law office management courses were unnecessary. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[20]**

Where reproval would ordinarily have been appropriate for misconduct involving minor rule violations, but respondent had a prior public reproval and appeared to need to reorganize law practice, appropriate discipline was six months stayed suspension with probation conditions including trust accounting and completion of a law office management class. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[26]**

Respondent who did not fully appreciate fundamental office practices which would alleviate any future misunderstanding with a client concerning crucial decisions, status of litigation, fee disputes or withdrawal from

representation was required to attend State Bar ethics school and complete a law office management course. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[16]**

Where respondent had abruptly abandoned both his client and his office, a requirement that respondent complete a course in law office management was an appropriate probation condition. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[19]**

A trust account auditing requirement and a course on law office management were appropriate conditions of probation where respondent's misconduct included mishandling of client funds and stemmed from his failure to supervise his office staff properly. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[20]**

An attorney's lengthy delay in notifying his client of receipt of a check in partial settlement of her case, and his failure to render a timely and appropriate accounting upon his withdrawal, which was aggravated by unilateral payment to himself of his fees, merited more than a public reproval. The attorney's handling of trust account records was required to be reviewed by an accountant for some period of time to ensure protection of other clients. However, in view of mitigating circumstances, subsequent corrective measures, and lack of harm to the client or her doctor, no actual suspension was necessary to protect the public. The Review Department recommended two months' stayed suspension, with one year's probation, periodic auditing of the attorney's trust account, and a professional responsibility examination. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[28]**

Requirement of detailed trust account reporting as condition of probation was appropriate in matter involving misappropriation of entrusted funds. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[14]**

Chaotic state of respondent's records and business practices, and lack of written fee agreements and client correspondence, warranted imposition of requirement to submit law office management plan and of State Bar supervision in order to protect the public and prevent any future misconduct. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[16]**

Probation condition requiring detailed reporting on current client matters was excessively burdensome and not required for public protection in matter where respondent had not been found culpable of client neglect. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[17]**

Trust account auditing was required as condition of probation in order to ensure against recurrence of respondent's misconduct, i.e., misappropriation of funds held to pay medical liens. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[23]**

175 Required Notification re Imposition of Discipline (Cal. Rules of Court, rule 9.20; Standard 1.4(f))

For purposes of rule 9.20 of California Rules of Court, requiring attorneys to give advance notice of impending disciplinary suspension, notice is required for all cases pending as of filing date of suspension order, not effective date. Where respondent's declaration of compliance with rule 9.20 stated that respondent had given required notice in all cases pending as of suspension order's filing date, but State Bar alleged that respondent failed to do so in one client matter, respondent's having given informal notice of impending suspension and having substituted out of case prior to suspension order's effective date was not a defense. Notice of disciplinary charges thus properly alleged both violation of rule 9.20 and act of moral turpitude in filing false declaration. *In the Matter of Eldridge* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 413 **[2 a, b]**

California Rules of Court, rule 955 performs the critical prophylactic function of ensuring that all concerned parties learn about an attorney's discipline and keeps the disciplinary authorities apprised of the location of the attorney subject to discipline. While in isolated cases compliance with this rule has not been recommended for an attorney actually suspended for 90 days or more, the rule does not require a minimum actual suspension before recommending that an attorney comply with it, and it has on occasion been ordered by the Supreme Court in cases of 60 days' actual suspension; thus, judges have discretion to recommend compliance with the rule. *In the Matter of Copren* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861. **[1a, b]**

Where the hearing judge recommended for a defaulting attorney, among other things, an actual suspension of 60 days and until the attorney made restitution of unearned fees and until the State Bar Court granted the

attorney's motion to terminate her actual suspension under Rules of Procedure of the State Bar, rule 205, the hearing judge should also have recommended compliance with paragraphs (a) and (c) of California Rules of Court, rule 955 if the actual suspension exceeded 90 days. *In the Matter of Copren* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861. **[2a, b]**

Where respondent made appearances without authority, committed acts of moral turpitude, failed to communicate with his clients and failed to return their file upon request, where there was aggravation including multiple acts of misconduct, bad faith, significant client harm, and indifference towards atonement or rectification, and where there was mitigation for no prior record in over 17 years of practice, the appropriate discipline recommendation was two years' stayed suspension and two years' probation on conditions, which included 75 days' actual suspension and compliance with rule 955. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[10]**

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Weber (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

Where the recommended period of actual suspension was less than 90 days, State Bar's request for a recommendation that respondent be required to comply with rule 955 of the California Rules of Court as a means of forcing respondent to demonstrate submission to the disciplinary authority of the State Bar and the courts was rejected as no authority was found to support imposing a rule 955 requirement for this reason. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[5]**

Where the recommended period of actual suspension was less than 90 days and the respondent had continuously been on administrative suspension for failing to pay bar dues for more than five years and on involuntary inactive enrollment for more than a year, there was no identifiable preventative benefit sufficient to recommend that respondent be required to comply with rule 955 of the California Rules of Court. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[6]**

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr.430.

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

Even though respondent had no clients or opposing counsel to notify of his disciplinary suspension under rule 955(a), California Rules of Court, he was still required to file the affidavit required by subdivision (c) of that rule. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[2]**

Where respondent had been placed on inactive enrollment based on hearing judge's disbarment recommendation, review department recommended that if respondent provided proof of compliance with State Bar Court's notification rule (Trans. Rules Proc. of State Bar, rule 795.5) at time of inactive enrollment, respondent be excused from complying with Supreme Court's notification rule (rule 955, Cal. Rules of Court) upon disbarment, and also that respondent receive credit for time on inactive enrollment toward waiting period to apply for reinstatement. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[9]**

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

In the Matter of Salameh (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729.

In the Matter of Brazil (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

Any reasons for deviations from the standards or case law should be set forth clearly. A rigid application in rule 955 cases of the standard requiring that the degree of discipline should be greater than that imposed in any prior proceeding would result in a minimum actual suspension of 90 days in every rule 955 violation proceeding where there was prior discipline, since rule 955 obligations are not required for actual suspensions under 90 days. The standards should not be applied in such talismanic fashion, particularly where there is not a common thread or course of conduct through past and present misconduct to justify increased discipline. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[8]**

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

An attorney who is ordered to comply with rule 955 is required to file an affidavit under the rule whether or not the attorney has clients. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[3]**

Disbarment is generally ordered for wilful breach of rule 955, and is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[8]**

In the Matter of Babero (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.

Where respondent had been continuously suspended from the practice of law for several years as a result of previous discipline, it was not appropriate to recommend that respondent be required to comply with rule 955, California Rules of Court as part of the recommended discipline in a subsequent matter. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[13]**

Where respondent had been interimly suspended following a criminal conviction, and had been ordered at that time to comply with rule 955, California Rules of Court, the State Bar Court did not recommend that he be required to comply with rule 955 again upon his disbarment. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[10]**

Where the review department rejected the hearing judge's recommended discipline of three months actual suspension and imposed a private reproval, this rendered moot respondent's arguments against the hearing judge's recommended imposition of notification requirements pursuant to rule 955 of the California Rules of Court and the imposition of costs. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[23]**

Where respondent in conviction matter had been ordered to comply with rule 955, California Rules of Court, at the time of respondent's interim suspension, and that suspension had remained in effect continuously since

ordered, review department did not recommend that respondent be ordered to comply again in connection with final imposition of discipline. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[16]**

For the purpose of determining culpability for violation of restitution requirement imposed as condition of disciplinary probation, it is inappropriate to distinguish between "substantial" and "insubstantial" or "technical" violations. Restitution conditions are as significant as the notification requirements in rule 955, Cal. Rules of Court, as to which the Supreme Court has declined to draw such a distinction. The importance of the goals of restitution makes distinctions between "substantial" and "insubstantial" or "technical" failures to make restitution inappropriate. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[9]**

Where respondent in conviction matter had complied with rule 955, California Rules of Court at time of respondent's interim suspension, and had not practiced since, order to comply with rule 955 again upon imposition of final discipline was not necessary. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[16]**

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

Where respondent was already on actual suspension from prior matter and had been ordered to comply with rule 955 in that connection, review department recommended that Supreme Court again order compliance with rule 955 only if respondent's suspension in second matter was neither concurrent with nor immediately consecutive to suspension in first matter. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[15]**

Compliance with rule 955 of the California Rules of Court (requiring notification of clients and other interested parties of the attorney's suspension) is not usually ordered where the period of actual suspension is less than ninety days. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[12]**

Requirement to comply with rule 955 of the California Rules of Court became inappropriate where length of recommended actual suspension was reduced to thirty (30) days. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[18]**

Compliance with rule 955 is customary for suspensions of two years, but is discretionary, and neither rule 955 order nor probation were necessary where respondent had not lived in California for several years, did not practice law, and had not committed any misconduct for over six years. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[21]**

Where review department rejected examiner's contention that one-year actual suspension should be recommended, and instead recommended sixty-day actual suspension, requirement that respondent comply with rule 955, Cal. Rules of Ct., was rejected as unnecessary. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[22]**

176 Requirements to Show Rehabilitation (etc.) (Standard 1.2(c)(i)), 1986 Standard 1.4(c)(ii))

Although case was submitted for ruling prior to effective date of 2014 revision of Standards, amended version of standard 1.2(c)(1), requiring showing of rehabilitation before resumption of practice after suspension, would apply to respondent when he became eligible to petition to resume practice. *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. **[1]**

Respondent's medical problems over the years were severe and extensive. The compelling circumstances clearly predominate and compel a look beyond a strict application of standard 1.7(b). Viewed holistically, respondent's extreme physical disabilities lessen the moral culpability of his misconduct. Thus, the public will be adequately protected by a lengthy suspension that will continue until respondent proves his rehabilitation, fitness, and ability to practice. *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239. **[5 a,b]**

A showing under standard 1.4(c)(ii), Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, is normally required when an attorney is actually suspended for two or more years. Proof satisfactory to the State Bar Court of the member's rehabilitation, present fitness to practice and present learning and ability in the general law are required by a preponderance of the evidence before the member is to be relieved of actual suspension. The purpose of staying the execution of a suspension and ordering probation with an actual suspension and a required showing under standard 1.4(c)(ii) is for public protection and attorney rehabilitation. Although all forms of attorney discipline have the key purpose of protecting the public, the legal

community and the maintenance of high professional standards, a standard 1.4(c)(ii) requirement offers public protection in a formal, although expedited proceeding which ensures moral fitness and legal learning before an attorney, suspended for over two years, is permitted to return to the practice of law. *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737. **[1 a-b]**

In order to make a showing under standard 1.4(c)(ii), Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, and be relieved from suspension, an attorney can petition as early as six months before the earliest date that the actual suspension may terminate. Also, since these proceedings are expedited, an attorney could demonstrate rehabilitation, fitness to practice law and present learning and ability in the general law without necessarily extending his or her actual suspension period. In probation revocation proceedings, the rules of procedure limit the actual suspension that can be imposed to the total amount of stayed execution originally imposed. However, a standard 1.4(c)(ii) condition does not necessarily extend the actual suspension of a respondent where a showing can be made within the period of actual suspension. Therefore, the review department concluded that the State Bar Court was not prohibited from recommending such a condition in a probation revocation proceeding even though the condition could result in an actual suspension that exceeded the length of the originally imposed stayed suspension. To do otherwise would permit respondent to violate probation and resume the practice of law after being suspended for over five years, without ever making a showing of his rehabilitation, fitness to practice law or his learning and ability in the general law, thus defeating the important level of public protection regularly recommended in lengthy suspensions.*In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737. **[2 a-c]**

In the hearing judge's discipline recommendation that respondent "be suspended from the practice of law for three years and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) [of the Standard for Attorney Sanctions for Professional Misconduct], that said suspension be stayed; and that he be placed on probation for four years subject to the following conditions: . . ," the provision that respondent's three-year suspension continue until he proves his rehabilitation, fitness, learning, and ability in accordance with standard 1.4(c)(ii) is stayed along with the recommended three-year suspension so that, if the State Bar files a probation revocation proceeding against respondent seeking to have all, or a part, of the three-year stayed suspension imposed on him, a standard 1.4(c)(ii) would be an available condition. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[13]**

In default proceeding, period of stayed suspension and disciplinary provision authorizing probation conditions to be imposed on attorney in the future by State Bar Court ought not to be rejected by hearing judge merely because attorney's actual suspension will continue until attorney establishes rehabilitation under standard 1.4(c)(ii) or until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[3]**

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr.430.

The aggravating effect of prior discipline may be diminished if misconduct underlying prior discipline occurred contemporaneously with misconduct currently under consideration. However, where at time respondent committed current misconduct, he was either involved in disciplinary process or was actually on disciplinary probation, this indicated that respondent's prior discipline had very little impact on his behavior, and demonstrated respondent's inability to conform his conduct to ethical norms. In such circumstances, greater showing required in reinstatement would better protect public than showing required to return to practice after suspension under standard 1.4(c)(ii). Accordingly, application of standard calling for disbarment for third imposition of discipline was appropriate. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[15]**

Where respondent violated conditions of disciplinary probation by failing to turn over former client's files and records, precluding accountant from assessing losses incurred due to respondent's misconduct so that determination could be made regarding restitution, such probation violations were serious and warranted lengthy actual suspension and requirement to prove rehabilitation, learning in the law, and fitness to practice before returning to law practice. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[4]**

Normally, the requirement that a disciplined attorney show rehabilitation, fitness to practice, and learning in the law prior to returning to practice is imposed where the attorney's actual suspension is two years or greater. However, where period of time that attorney was enrolled inactive on account of failure to answer notice to show cause, coupled with one-year actual suspension recommended by review department, resulted in attorney being continuously ineligible to practice law for greater than two years, it was appropriate to recommend compliance with such requirement. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[5]**

In attorney disciplinary matters, a period of stayed suspension subject to probation conditions is applied primarily as an additional measure to protect the public, courts and legal profession. However, where one-year actual suspension, coupled with requirement that attorney demonstrate rehabilitation, present fitness to practice and present learning in the law before being relieved of his actual suspension, would protect public, courts and profession, review department concluded that stayed suspension and probation were not necessary. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[6]**

Where respondent had been found culpable of misconduct arising from his abdication of responsibility for his law practice to a non-lawyer, review department recommended that hearing regarding respondent's fitness to return to practice focus on adequate assurance that respondent could institute a law practice with appropriate ethical safeguards. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[9]**

Where review department recommended that respondent be required to establish entitlement to return to good standing under standard 1.4(c)(ii) before actual suspension could be terminated, continuing education requirement recommended by hearing judge as condition of probation was not adopted by review department, because standard 1.4(c)ii) inquiry would evaluate steps respondent had taken to establish fitness to practice and present learning. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[10]**

Where review department recommended actual suspension for two years and until respondent proved his rehabilitation, fitness to practice law, and learning and ability in the general law, probation conditions requiring respondent to submit list of open files to probation monitor, draw up law office plan, and take law office management courses were unnecessary. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[20]**

Requiring respondent to show rehabilitation and fitness to practice before termination of two-year actual suspension was particularly appropriate where respondent was placed on interim suspension shortly after admission to practice due to conviction for criminal conduct committed before admission, which, if conviction had occurred prior to admission, would likely have resulted in denial of admission and requirement to reapply after two years. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[13]**

In hearing to establish fitness to return to practice after suspension, respondent could either show that restitution had been completed or that restitution had been made to the best of respondent's financial ability. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[14]**

Where time period between effective date of discipline and eligibility to apply to return to active practice would not necessarily be long enough for respondent to take and pass professional responsibility examination before hearing on fitness to practice, review department did not recommend that respondent be given less than the normal one-year period to pass such examination. Passage of the examination would be relevant evidence at fitness hearing but was not a condition precedent to return to practice. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[15]**

Where respondent was still on suspension in prior matter due to failure to make showing under standard 1.4(c)(ii), hearing judge's recommendation that actual suspension in current matter be consecutive to such suspension was inconsistent with recommendation that only one 1.4(c)(ii) hearing be required to terminate both suspensions. Review department therefore recommended that actual suspension in current matter be prospective to Supreme Court's order, but concurrent with balance of all suspensions in effect as of entry of such order. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[22]**

The Standards for Attorney Sanctions for Professional Misconduct provide that the appropriate discipline for culpability for professional misconduct where the member has a record of two prior impositions of discipline is disbarment unless the most compelling circumstances clearly predominate. Application of this standard was not appropriate where the attorney's criminal convictions and prior discipline, which were caused by an extensive

history of drug and alcohol abuse, did not directly involve clients or the practice of law, and did not cause specific harm to the public or courts, and where the attorney had taken steps to address the underlying substance abuse problem, and had already been under suspension for five years as a result of previous discipline. Continued probation monitoring with substance abuse conditions, and a requirement that the attorney demonstrate rehabilitation and fitness to practice, would ensure that the substance abuse was controlled prior to the attorney's resuming the practice of law. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[9]**

Where respondent had not yet complied with a prior discipline order to demonstrate rehabilitation and present fitness to practice before being relieved of the actual suspension in that prior proceeding, no useful purpose would be served by requiring respondent to comply with this requirement twice; one showing would satisfy the requirement as to both the prior and subsequent proceedings. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[11]**

Where an attorney previously involved in serious drug abuse had ceased such abuse unilaterally and did not present any expert evidence of current freedom from substance abuse, and the attorney did not submit any evidence of present learning and ability in the law following an interim suspension the length of which exceeded the attorney's prior period of licensure, public protection would be served by continuing the attorney's actual suspension until the attorney established freedom from drug dependency and present learning and ability in the general law. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[4]**

Under applicable expedited hearing procedures, a respondent may apply for a hearing pursuant to standard 1.4(c)(ii) up to 150 days before the respondent's actual suspension is set to expire. (Rules 810-826, Trans. Rules Proc. of State Bar.) *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[15]**

Where relevant facts and circumstances surrounding perjury conviction were serious, and respondent had not yet demonstrated sufficient rehabilitation, but in light of mitigation and circumstances as a whole disbarment was not necessary, lengthy actual suspension, including some prospective suspension, and standard 1.4(c)(ii) requirement were appropriate discipline. However, review department reduced length of recommended prospective suspension to reflect time expired since issuance of hearing judge's decision. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[12]**

Where examiner was concerned to obtain detailed, complete information regarding respondent's anticipated application to resume practice pursuant to standard 1.4(c)(ii), review department recommended that respondent follow same format in application as in an application for reinstatement; otherwise, examiner could seek such information by a discovery request which would be more time consuming. (Trans. Rules Proc. of State Bar, rules 810-826.) *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[14]**

For an egregious rule violation, the State Bar may seek suspension of at least two years and application of standard 1.4(c)(ii); an attorney who can satisfy the showing required by standards 1.4(c)(ii) poses no continuing threat to the public warranting disbarment. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[11]**

First offense deceit has not resulted in disbarment in Supreme Court cases. No act of concealment or dishonesty is more reprehensible than attempts to mislead a court; nonetheless, disbarment for such misconduct may be too drastic and unnecessary to achieve the goals of attorney discipline. Where respondent presented evidence of general good character, discipline of five years stayed suspension, five years probation, and two years actual suspension, with standard 1.4(c)(ii) requirement, was adequate. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[20]**

Requirement that respondent comply with standard 1.4(c)(ii) before returning to active practice after suspension was particularly appropriate where respondent defaulted in disciplinary proceeding, indicating a need for an affirmative showing of fitness prior to resuming practice. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[14]**

Probation is not mandated in all cases where an actual suspension is imposed. When a lengthy period of actual suspension is recommended, imposing the provisions of standard 1.4(c)(ii) in lieu of a probation grant may serve adequately to protect the public and test the attorney's rehabilitation. Probation may not be indicated by virtue of the nature of the misconduct, the passage of time since the misconduct or clear evidence of the attorney's rehabilitation. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[11]**

Where review department recommended that respondent be suspended for one year and until respondent made restitution to clients, review department also recommended that if respondent was suspended for more than two years, he be required to make showing required by standard 1.4(c)(ii). *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[16]**

Where the review department recommended that an attorney be placed on actual suspension for six months and until payment of restitution, the review department also recommended that if such actual suspension amounted to more than two years, the attorney should be required, before being relieved of the suspension, to show fitness to practice, rehabilitation, and present ability and learning in the law. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[12]**

While standard 1.4(c)(ii) hearings are not appropriate in all cases where a two-year suspension is ordered, such a hearing appears particularly appropriate where lengthy suspension is recommended in a default proceeding. A defaulting attorney has called into question the propriety of the attorney's automatic return to practice by failing to appear in defense of the serious charges levied against the attorney. Public protection requires that after a lengthy suspension, the attorney not resume practice without demonstrating rehabilitation, fitness to practice, and learning and ability in the general law. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[21]**

Procedural rules proposed by State Bar which would permit attorney in standard 1.4(c)(ii) hearing to make required showing by preponderance of evidence; would allow stipulation that attorney meets conditions; would guarantee opportunity to make required showing before expiration of two-year actual suspension; and would provide for expedited review, appeared to answer Supreme Court's concerns regarding conduct of such hearings. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[22]**

177 Limitations on Practice

Where review department recommended actual suspension for two years and until respondent proved his rehabilitation, fitness to practice law, and learning and ability in the general law, probation conditions requiring respondent to submit list of open files to probation monitor, draw up law office plan, and take law office management courses were unnecessary. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[20]**

178 Requirement to Pay Costs (rules 5.129, 5.130)

Note: For award of costs to exonerated respondent (rule 5.131), see topic number 133.

178.10 Cost requirement imposed

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Weber (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Ike (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr.430.

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

In the Matter of Langfus (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161.

Where review department imposed public reproval, it was statutorily required to order that respondent pay costs of disciplinary proceeding. Respondent's request to be relieved of such order to pay costs, on ground that State Bar abused its discretion in filing one of the charges, was rejected as premature in light of statute and rules permitting respondent to seek relief from order assessing costs after its effective date. (Trans. Rules Proc. of State Bar, rules 460-464.) *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[10]**

178.50 Cost requirement not imposed

Since an admonition does not constitute either an exoneration or the imposition of discipline, neither respondent nor State Bar is entitled to an award of costs. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[7]**

Where the review department rejected the hearing judge's recommended discipline of three months actual suspension and imposed a private reproval, this rendered moot respondent's arguments against the hearing judge's recommended imposition of notification requirements pursuant to rule 955 of the California Rules of Court and the imposition of costs. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[23]**

178.70 Relief from Costs

178.71 Relief granted

In the Matter of Langfus (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161.

It was not an abuse of discretion for the hearing judge to conclude that partial relief from costs was justified, even in the absence of evidence of bad faith on the part of counsel for the State Bar, based on the State Bar's lack of responsiveness to respondent's extraordinary efforts to provide information and good faith offers to settle the matter prior to the filing of formal charges. Elimination of all costs assessed for the stage after filing formal charges,and of half of the State Bar's costs for the pre-filing stage, was within the hearing judge's discretion. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[3]**

Reducing costs recoverable by the State Bar in a disciplinary matter by a significant amount where, in the interest of justice, it appears appropriate, serves the salutary purposes of both promoting substantial savings in litigant and judicial resources and enhancing public protection by discouraging unnecessary delay in the imposition of stipulated discipline. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[7]**

178.75 Relief denied

The statute governing cost awards in disciplinary proceedings expressly excludes attorney fees from recoverable costs to either the State Bar or the respondent. Accordingly, the provision of the statute permitting reduction of costs for good cause cannot be interpreted to permit an offset for a party's incurrence of additional attorney's fees due to the other party's bad faith tactics in failing to comply with a settlement agreement. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[11]**

178.77 Showing required for relief

Under rules 460 and 461 of the Transitional Rules of Procedure, the costs assessed in discipline matters are derived from a formula established by a committee of the State Bar Board of Governors which reflects average chargeable costs. The level of costs assessed depends on the stage at which a matter is resolved. The use of these cost models is appropriate as a simple and efficient means of assessing costs, but does not prevent a respondent from seeking, or a hearing judge from granting, relief from costs in an appropriate case. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[1]**

Under Business and Professions Code section 6086.10(c) and rules 462 and 464 of the Transitional Rules of Procedure, an attorney ordered to pay disciplinary costs may be granted full or partial relief from such order, or an extension of time to pay, based on hardship, special circumstances, or other good cause. Good cause for such relief may include consideration of the conduct of counsel for the State Bar. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[2]**

178.90 Other Issues re Costs (including rules 5.132-5.134)

Right to recover costs is purely statutory. That is courts have no discretion to award costs that are not statutorily authorized. However, because Supreme Court retains inherent and original jurisdiction over attorney disciplinary proceedings, Supreme Court might well adopt rules providing for or regulating recovery of costs in State Bar Court proceedings, but has not yet done so. Accordingly, right of attorneys to recover costs from the State Bar is granted solely by statute, which statute State Bar Court must strictly construe. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[1]**

Statutory provision granting attorneys the right to recover costs from State Bar provides that attorneys who have been exonerated of all disciplinary charges following a trial are entitled to reimbursement from the State Bar "in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparing for [trial]" without defining "reasonable expenses" (other than expressly excluding fees for attorneys and experts) and without prescribing the method by which State Bar is to determine what they are. Accordingly, State Bar Board of Governors properly exercised its statutory rule making authority and adopted State Bar Rule of Procedure 283 to define what expenses (or costs) are allowable as "reasonable expenses" for which exonerated attorneys may obtain reimbursement under statute and to provide the procedure by which exonerated attorneys are to seek reimbursement from the State Bar for those expenses. In absence of Supreme Court authority to the contrary, the State Bar Court may award exonerated attorneys reimbursement from the State Bar for reasonable expenses only if they are specified as allowable expenses in Rule of Procedure 283. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[2]**

Under clear language of State Bar Rule of Procedure 283(b)(5), State Bar Court may award attorneys exonerated of all disciplinary charges after trial reimbursement for expenses incurred in obtaining transcripts of court proceedings only if the court ordered that the transcripts be prepared. Fact that exonerated attorney could not obtain plenary review of hearing judge's decision finding him culpable of professional misconduct without first obtaining and paying for trial transcript is not synonymous with the court ordering the preparation of a transcript. In fact, requirement of obtaining trial transcript for plenary review is not imposed by court, but by State Bar Rule of Procedure 301(a)(2), which makes clear that it is the party seeking review that orders the trial transcript. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[3]**

A disciplinarily suspended attorney does not have to pay the costs of the disciplinary proceeding as a condition of reinstatement where the attorney has not also been administratively suspended for failure to pay such costs as part of the attorney's next annual bill for membership fees. No such automatic administrative suspension

occurred here and therefore, respondent was not culpable of the unauthorized practice of law for appearing in court as counsel for a client after the date that his actual suspension terminated but before he had paid the disciplinary costs and was reinstated. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[8]**

Under applicable provisions of the State Bar Act, read together, costs of a disciplinary proceeding need not be paid by a disciplinarily suspended member of the State Bar as a condition of reinstatement of active membership unless the member has also been administratively suspended for failure to pay such costs as part of the member's next annual bill for membership fees. (Bus. & Prof. Code, §§ 6140(b), 6140.7, 6142, 6143.) *In the Matter of Langfus* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161. **[1]**

A statute raising constitutional questions must be construed in a manner that avoids any doubt as to its validity. Because there is no provision for challenging a disciplinary cost award prior to the issuance of the Supreme Court's disciplinary order, due process concerns would be implicated if the costs statute were interpreted to mean that a State Bar member receiving an actual disciplinary suspension must pay the associated costs prior to being entitled to resume practice at the conclusion of the disciplinary suspension. *In the Matter of Langfus* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161. **[2]**

Statute providing for respondents to pay costs of disciplinary proceeding upon determination of sanction of public reproval or greater discipline, and also providing for assessment of costs against State Bar in case of complete exoneration of attorney, is neutral in its application. Moreover, since salaries of State Bar Court judges are set by statute and are unaffected by assessment or collection of costs by State Bar, and State Bar Court's ruling on costs is only a recommendation to Supreme Court that costs be assessed, cost statute does not provide basis for alleging bias of State Bar Court judges based on alleged personal financial interest. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[6]**

Where review department imposed public reproval, it was statutorily required to order that respondent pay costs of disciplinary proceeding. Respondent's request to be relieved of such order to pay costs, on ground that State Bar abused its discretion in filing one of the charges, was rejected as premature in light of statute and rules permitting respondent to seek relief from order assessing costs after its effective date. (Trans. Rules Proc. of State Bar, rules 460-464.) *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[10]**

In the Matter of Brazil (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679.

Respondents in public proceedings should anticipate that their names will be published in any opinion except those resulting in dismissal or private reproval or, in the case of remanded proceedings, those which may potentially result in dismissal or private reproval. Accordingly, where respondent was on notice that petition for review of order denying relief from costs would probably be referred to review department in bank, and where respondent had already been required to notify clients, courts and opposing counsel of his suspension, review department declined to omit respondent's name from published opinion in relief from costs matter. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[1]**

Where a party did not seek review of that portion of an order on a motion for relief from costs with which it disagreed, but stated its disagreement in its brief on review without seeking affirmative relief, that party's challenge to the order was not properly before the review department in a proceeding resulting from the opposing party's petition for review of a different portion of the same order. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[2]**

The standard for review of rulings on chargeable costs is abuse of discretion. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[3]**

Under rules 460 and 461 of the Transitional Rules of Procedure, the costs assessed in discipline matters are derived from a formula established by a committee of the State Bar Board of Governors which reflects average chargeable costs. The level of costs assessed depends on the stage at which a matter is resolved. The use of these cost models is appropriate as a simple and efficient means of assessing costs, but does not prevent a respondent from seeking, or a hearing judge from granting, relief from costs in an appropriate case. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[1]**

Where a party sought review by the Presiding Judge of an order granting relief from costs under rule 462(c) of the Transitional Rules of Procedure, and the matter presented an important question of first impression, the Presiding Judge referred the matter to the review department in bank. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[4]**

The appropriate standard of review for an order granting relief from costs is abuse of discretion, which is the standard of review for orders taxing costs in civil cases and is also the standard of review generally applied to procedural motions in the State Bar Court. *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273. **[5]**

Where disciplinary proceeding was dismissed due to State Bar's failure to bring forth clear and convincing evidence to support any of the charges, respondent was entitled by statute to reimbursement for the reasonable expenses of preparation for hearing, but State Bar Court was not authorized to award respondent any amount for attorney fees. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[9]**

179 Other Issues re Conditions Imposed as Part of Discipline

Respondent was unable to confront her husband concerning his handling of the trust account. Absent equally strong evidence of respondent's recovery from such a disability concerning such a fundamental duty of a lawyer the review department would recommend severe remedial discipline. Respondent's compelling evidence of her actions to terminate her relations with her husband and her continuing psychiatric treatment make clear that such a recovery is well under way. Respondent expressed remorse for the misconduct; was candid with the State Bar in stipulating to the misconduct; has taken effective steps to avoid a repetition of that misconduct including severing her relations with her husband and continuing in therapy; and has made a contribution to society in seeking, and obtaining, legislation dealing with human reproduction. While serious misconduct occurred as the result of respondent's inattention to financial matters, including the trust account she maintained with her husband, a future recurrence of such problems is unlikely. The hearing judge's recommended condition of continued psychiatric treatment lends assurance to this conclusion. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[7]**

Where State Bar neither impeached nor rebutted attorney's testimony that he had not gambled for more than five years, where State Bar did not proffer any expert testimony that attorney suffered from compulsive gambling, and where there was no evidence that attorney currently suffered from compulsive gambling, record did not support hearing judge's recommendation that attorney be required to attend Gamblers Anonymous meetings while on disciplinary probation. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[12]**

In default proceeding, period of stayed suspension and disciplinary provision authorizing probation conditions to be imposed on attorney in the future by State Bar Court ought not to be rejected by hearing judge merely because attorney's actual suspension will continue until attorney establishes rehabilitation under standard 1.4(c)(ii) or until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[3]**

In default proceeding, no loss of public protection occurs when specific probation conditions are not immediately imposed on attorney who is placed on actual suspension because such attorney will be prohibited from practicing law for duration of attorney's actual suspension and until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[4]**

Failure to recommend period of stayed suspension merely because attorney failed to appear in disciplinary proceeding results in marked reduction in public protection and in defaulting attorney receiving less discipline than attorneys who appear and participate in disciplinary process. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[6]**

Despite the mandate in State Bar Rule of Procedure, rule 290(a) that every imposition of discipline (other than reprovals) include a requirement that attorney attend State Bar Ethics School, the appropriate time to consider imposing State Bar Ethics School as a condition of probation in default proceeding in which attorney's actual suspension will continue until the attorney files and State Bar Court grants motion to terminate actual suspension

under State Bar Rule of Procedure, rule 205, is at the time of ruling on the rule 205 motion to terminate the actual suspension. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[7]**

Disciplinary recommendation in a default proceeding in which attorney's actual suspension will continue until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205 may, in appropriate cases, require that attorney's actual suspension continue until attorney attends State Bar Ethics School. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[8]**

While rule 205 of the Rules of Procedure does not specifically preclude a hearing judge in a default matter from recommending a period of actual suspension be imposed as a condition of probation along with appropriate additional conditions of probation, the rule clearly contemplates that probation and its attendant conditions be imposed at the time the defaulting attorney brings a motion under rule 205(c) to terminate his or her actual suspension. The entire purpose of rule 205 is to eliminate the necessity of multiple proceedings against an attorney who is unwilling to participate in the disciplinary process and evidences no interest in maintaining his or her membership in the bar. Under rule 205 the burden is placed on a defaulting attorney to bring forward to the State Bar Court his or her interest in continuing the right to practice. The appropriate time to consider imposing probation and its attendant conditions is when the attorney seeks relief from the actual suspension that may be imposed following his or her default in a disciplinary proceeding. It is only at that time that the court has before it an attorney who evidences a willingness to comply with conditions of probation and a full understanding of the reasons for the attorney's failure to participate in the disciplinary process. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[2 a, b]**

Attendant to a recommendation of suspension, the State Bar Court lacks the authority to impose conditions of probation without the prior approval of the Supreme Court. Therefore, it is appropriate, in any decision or opinion made under rule 205 of the Rules of Procedure recommending the actual suspension of an attorney, to recommend to the Supreme Court that the disciplined attorney be ordered to comply with the conditions of probation, if any, reasonably related to the found misconduct that the State Bar Court may impose as conditions of probation attendant on terminating the actual suspension of that attorney. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[3]**

Attorney discipline is under the control of the Supreme Court and the State Bar Court may only recommend such discipline for the approval of the Supreme Court. As a consequence the clear parameters of any proposed discipline must be included in the State Bar Court's recommendation to the Supreme Court. Both stayed and actual suspension are discipline within the context of attorney discipline. It follows that in any recommendation for discipline made to the Supreme Court under rule 205 of the Rules of Procedure must include, if appropriate, a period of stayed suspension. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[4 a, b]**

There is nothing in rule 205 of the Rules of Procedure that expressly precludes the State Bar Court from recommending appropriate preconditions to a defaulting and disciplined attorney bringing a motion to terminate his or her actual suspension under rule 205, such as recommended in this matter by the hearing judge, requiring respondent to make restitution and attend Ethics School. However, the requirement that respondent take and pass the Professional Responsibility Examination prior to bringing a motion for relief from suspension is in conflict with Supreme Court case law requiring that a disciplined attorney be given a minimum of one year within which to pass the examination. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[5 a, b]**

As the reproval imposed on respondent in the prior disciplinary proceeding is final, it and the conditions attached to it are presumed valid and enforceable. The reproval decision is subject to collateral attack only on the grounds that the judge (1) lacked jurisdiction of the subject matter, (2) lacked personal jurisdiction over respondent, or (3) acted in excess of jurisdiction. The burden of proof is on the party who attacks the judgment to show lack of jurisdiction. Furthermore, to succeed on collateral attack, the jurisdictional defect must be proven from the face of the record in the prior proceeding. Respondent's contention that the conditions attached to his prior private reproval are subject to collateral attack because the hearing judge failed to explicitly recite in her decision two findings required by rule 956 of the California Rules of Court, that the reproval conditions would serve to protect the public and to serve respondent's interests, is an allegation that the hearing judge acted in excess of her jurisdiction. Respondent failed to prove from the face of the record in the prior reproval that the conditions attached to it would not serve to protect the public or serve respondent's interest. In any event, the unchallenged factual

findings in the hearing judge's decision in the prior case establish that the hearing judge acted within her jurisdiction in attaching the conditions. Without question, the reproval conditions that he take and pass a professional responsibility examination and attend the State Bar's Ethics School will serve to protect the public and serve respondent's interests. The hearing judge's error is not a jurisdictional error that can subject the hearing judge's decision to collateral attack. At most, the error was a procedural defect that respondent waived by failing to appear in the prior proceeding and object to the hearing judge's decision on that ground. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[1]**

In the absence of any direct precedent construing rule 956 of the California Rules of Court, the review department held that the purpose of the rule's findings is to aid in ensuring that any duties attached to a reproval are reasonably related to its purposes. Although rule 956 prescribes a salutary requirement, it cannot be said that it is jurisdictional. The findings themselves do not go to the essential fairness of the underlying disciplinary proceeding or even a subsequent enforcement proceeding. If findings are omitted from a reproval decision to which rule 956 applies, the error can be called to the State Bar Court's attention in a timely manner. If not done timely, the objection is waived, absent a showing that respondent was clearly prejudiced by the omitted findings. No showing of prejudice was made in this proceeding and such a claim would be hard to envision regarding the two duties that respondent was charged with violating in this proceeding: passage of a professional responsibility examination and attendance at the State Bar's Ethics School. These are requirements imposed in almost every disciplinary probation. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[4]**

California Rules of Court, rule 951, which explicitly authorizes the State Bar Court to extend the time within which an attorney must take and pass a professional responsibility examination, applies only when the Supreme Court orders the attorney take and pass such an examination. It does not apply when the State Bar Court orders an attorney to take and pass the examination as a condition attached to a reproval. When the State Bar Court imposes such a condition, its authority to extend the time for the attorney to comply is derived from California Rules of Court, rule 956, which authorizes the State Bar Court to attach conditions to the reprovals that it imposes. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[1]**

Even after respondent's private reproval became final, the State Bar Court retained jurisdiction over the conditions attached to it under the Former Transitional Rules of Procedure of the State Bar (now the Rules of Procedure of the State Bar, title II, State Bar Court Proceedings). Thus, when the hearing judge extended the time for respondent to comply with the conditions attached to the reproval after the time to comply had expired, the hearing judge did not act without jurisdiction; but in excess of jurisdiction. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[2]**

When a party seeks or consents to a court's action that is in excess of the court's jurisdiction, the party may be estopped to complain of the court's action as long as the court had subject matter jurisdiction. Respondent was estopped from collaterally attacking a final order extending the time in which he was required to comply with conditions attached to a reproval where he consented to the order and where the court had jurisdiction of the subject. The review department concluded that the application of estoppel was in harmony with the primary goals of attorney discipline. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[3]**

Disciplinary probation furthers the fundamental purposes of attorney discipline only when attorney probationers are effectively monitored to ensure that they do not engage in further misconduct and are conforming their conduct to the ethical strictures of the profession. Historically, attorney probationers have been monitored to ensure their compliance with these requirements through appointed voluntary probation monitors or through court-ordered self-reporting by the attorney or both. Even though probation monitors have played an important role in monitoring attorneys on probation and were, at one time, appointed in most instances, the use of a probation monitor may not be necessary where only routine, simple, periodic reporting conditions are recommended or are coupled with a rule 955 requirement and/or passage of the Professional Responsibility Examination. Appointment of a probation monitor was not warranted in this case in light of the simple probation conditions recommended and the found misconduct, mitigation, and aggravation. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[3]**

Quarterly probation reporting is important because it requires attorney probationers, four times a year, to reflect upon their prior misconduct and to review their current conduct to ensure that it complies with all of the

conditions of their probation. However, quarterly probation reporting is not mandated in all cases in which probation is recommended. When the circumstances in a case establish that quarterly probation reporting is not necessary, the circumstances should be set forth in the court's decision. In this case involving attorney-client misconduct with a recent priorreproval, however, the appropriateness of a quarterly-reporting condition of probation was clear. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[4]**

Reproval conditions attached to respondent's two prior reprovals requiring him to file quarterly probation reports were important steps towards respondent's rehabilitation and important means of protecting the public because they permitted the State Bar to monitor respondent's compliance with ethical standards. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[9]**

In respondent's second disciplinary proceeding for his failure to comply with the quarterly reporting requirements imposed on him under two prior reprovals, it was inappropriate to include, in the discipline recommendation, a reporting condition with a lower frequency of reporting than that previously imposed on respondent, which he had been unable or unwilling to comply. Absent extraordinary and enunciated circumstances, the reporting condition should have at least required that respondent demonstrate that he can now comply with the reporting requirements previously imposed on him under his two reprovals by imposing the same reporting requirements on him prospectively. Recommending a lower reporting requirement would "reward" respondent for his noncompliance. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[9]**

The review department rejected the argument that respondent was not culpable of violating probation conditions because he was actually suspended from the practice of law during the entire time that the probation conditions were in effect as a result of other disciplinary orders and therefore his probation was de facto revoked. The Supreme Court placed respondent on probation and the order was not revoked or modified. If respondent believed that subsequent events impacted the order, or if he was unclear of the requirements of the order, he could have raised the issue with the State Bar Court and the Supreme Court, which he did not do. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[1]**

Respondent was not given credit for the period of time he was ineligible to practice law against the time period he must wait before he may petition for reinstatement. The ban on respondent's practice for which he sought credit resulted from other disciplinary proceedings, not from the present case and, therefore, was not a related interim ban on his practice. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[8]**

Where the recommended period of actual suspension was less than 90 days, State Bar's request for a recommendation that respondent be required to comply with rule 955 of the California Rules of Court as a means of forcing respondent to demonstrate submission to the disciplinary authority of the State Bar and the courts was rejected as no authority was found to support imposing a rule 955 requirement for this reason. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[5]**

Where the recommended period of actual suspension was less than 90 days and the respondent had continuously been on administrative suspension for failing to pay bar dues for more than five years and on involuntary inactive enrollment for more than a year, there was no identifiable preventative benefit sufficient to recommend that respondent be required to comply with rule 955 of the California Rules of Court. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[6]**

Where, after prior discipline in connection with violation of statutory contingent fee limit in medical negligence cases, respondent continued to assert that such fee limit did not apply to particular case, it was appropriate to require as condition of disciplinary probation that respondent provide written retainer agreements to all medical negligence plaintiff clients not paying on hourly basis; that such agreements disclose statutory fee schedule; and that disclosures regarding fee limit be contained in such fee agreements and in declarations to be presented to judges approving respondent's petitions for attorney representation or attorney fees. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[24]**

Respondent's unilateral and ill-conceived interpretations of disciplinary orders demonstrated tendency toward interpreting important and significant court orders in such a way as to fit his needs, which might negatively impact future clients and thus raised concern about need to protect public. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[13]**

Period of stayed suspension was required for respondent's wilful failure to comply with rule 955(c), California Rules of Court, so as to provide enforcement mechanism for compliance with terms and conditions of probation. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[16]**

The Supreme Court order in a probation revocation matter can become effective earlier than the Supreme Court order in an original discipline matter. (Cal. Rules of Court, rule 952(a), (b).) Accordingly, where a probation revocation matter and an original discipline matter were consolidated, the review department made a separate disciplinary recommendation for each matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[1]**

Where respondent believed that after notice to show cause in disciplinary probation revocation proceeding had been filed, his probation was terminated and he no longer needed to comply with probation reporting requirement, but respondent took no steps to ascertain whether this belief was correct, respondent was grossly negligent in failing to file required probation report, and thereby violated probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[7]**

Where respondent requested "credit for time served" based on his having voluntarily limited his law practice to avoid misconduct, but cited no authority supporting such request, and where much of respondent's misconduct occurred after date he testified he terminated his practice, review department declined to give such credit. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[11]**

Requirements for quarterly probation reports and monthly restitution payments as conditions of disciplinary probation were important steps toward rehabilitation, and were appropriate from effective date of Supreme Court discipline order, rather than being delayed until after respondent resumed active law practice. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[14]**

Where extended time had passed since hearing judge's decision in consolidated probation revocation and original discipline matters, during which time respondent had been ineligible to practice law, review department recommended that actual suspension in original discipline matter be fully concurrent with, and retroactive to effective date of, respondent's actual suspension in probation revocation matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[25]**

Disbarment is a remedy generally available for statutory violations in original disciplinary proceedings, but not in probation revocation proceedings. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[6]**

Where review department recommended respondent's disbarment, issue of whether respondent should be given credit toward required waiting period to apply for reinstatement (Trans. Rules Proc. of State Bar, rule 662), on account of time spent on continuous suspension prior to disbarment, was properly reserved for consideration by a hearing judge on an appropriate petition following the disbarment. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[7]**

The Supreme Court has expressly approved retroactive disciplinary suspension. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[9]**

Both the Legislature, by statute, and the Supreme Court, by case law, have recognized that the Supreme Court has inherent authority over regulation of the practice of law. The Supreme Court has not felt constrained by lack of authorizing legislation to exercise this inherent power, and has concerned itself with comparable treatment of respondents in comparable situations. Accordingly, Supreme Court case law constituted appropriate authority for review department recommendation that a disbarred respondent be permitted to credit time spent on inactive enrollment toward waiting period to apply for reinstatement, just as an interimly suspended attorney-felon can do by rule (rule 662, Trans. Rules Proc. of State Bar). *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[5]**

By rule, convicted felons are always entitled to credit for time spent on interim suspension against the waiting period for seeking reinstatement. (Rule 662, Trans. Rules Proc. of State Bar.) Inactive enrollment has the same effect as interim suspension in banning the practice of law pending a final order of discipline, and is similarly designed to protect the public during the pendency of a disciplinary case against the malfeasant attorney. Giving credit for

interim suspension against the waiting period for reinstatement reflects the decision that five years removal from practice is a sufficient minimum opportunity for rehabilitation, even if the time period precedes the order of disbarment. No policy interest would be served by treating inactively enrolled attorneys differently from interimly suspended attorneys in this regard. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[6]**

From the point of view of a suspended attorney, the effect of a suspension is the same regardless of whether it is called interim or actual: the attorney is denied the right to practice law for the duration of the suspension. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[12]**

Normally, the requirement that a disciplined attorney show rehabilitation, fitness to practice, and learning in the law prior to returning to practice is imposed where the attorney's actual suspension is two years or greater. However, where period of time that attorney was enrolled inactive on account of failure to answer notice to show cause, coupled with one-year actual suspension recommended by review department, resulted in attorney being continuously ineligible to practice law for greater than two years, it was appropriate to recommend compliance with such requirement. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[5]**

In attorney disciplinary matters, a period of stayed suspension subject to probation conditions is applied primarily as an additional measure to protect the public, courts and legal profession. However, where one-year actual suspension, coupled with requirement that attorney demonstrate rehabilitation, present fitness to practice and present learning in the law before being relieved of his actual suspension, would protect public, courts and profession, review department concluded that stayed suspension and probation were not necessary. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[6]**

Where review department recommended that respondent be required to establish entitlement to return to good standing under standard 1.4(c)(ii) before actual suspension could be terminated, continuing education requirement recommended by hearing judge as condition of probation was not adopted by review department, because standard 1.4(c)ii) inquiry would evaluate steps respondent had taken to establish fitness to practice and present learning. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[10]**

Evidence needed to establish culpability of failure to comply with probation conditions regarding content of required quarterly reports was (1) text of probation conditions in question; (2) evidence that respondent had notice of such conditions; (3) text of quarterly reports at issue, and (4) evidence of wilful failure to comply with probation conditions, which was established by respondent's testimony that statement at issue was not included in reports due to respondent's interpretation of probation conditions. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[2]**

Where respondent in probation revocation matter had been continually suspended from practice of law for preceding four years, review department did not need to order that respondent be placed on inactive enrollment under Business and Professions Code section 6007(d) pending final Supreme Court order. (Trans. Rules Proc. of State Bar, rule 612(b).) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[23]**

The California Professional Responsibility Examination, when appropriately ordered, does assist in the rehabilitation of an errant attorney and, as a general proposition, the examination is an effective tool to measure an attorney's understanding and appreciation of the rules and statutes which are designed to protect the public and the best interests of the profession. However, when imposed as a condition of a reproval, the examination may only be required based on a finding that the protection of the public and the interests of the attorney will be served thereby. (Cal. Rules of Court, rule 956(a).) *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181. **[2]**

An attorney is not a good candidate for suspension and/or probation where that attorney has failed to comply with the terms and conditions of a prior criminal probation, and has failed to participate in present and past disciplinary proceedings. These facts reflect the attorney's disdain and contempt for the orderly process and rule of law and clearly demonstrate that the risk of future misconduct is great. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[29]**

Attorney could not be found culpable of violating probation by failing to respond to an inquiry from the State Bar Court, as required by conditions of his probation, where the notice to show cause in the probation revocation proceeding referred only to the requirement to file quarterly reports, an independent probation condition, and such

charge would be factually duplicative of previously-adjudicated charge of failing to file quarterly report. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[2]**

Where respondent had been placed on involuntary inactive enrollment pursuant to section 6007(c) prior to hearing on underlying charges, and after review, proceeding on underlying charges was remanded for partial rehearing and new discipline recommendation, review department directed that on remand, whether suspension or disbarment was recommended, respondent should receive credit for time spent on inactive enrollment. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[25]**

The goals of the State Bar's probation program are: (1) public protection; (2) rehabilitation of the respondent; (3) maintaining integrity of the legal profession; (4) enforcement of restitution orders; (5) aiding future enforcement and (6) partially alleviating discipline. These goals are to be realized by use of probation conditions which are innovative, individualized, rehabilitative and flexible and which are implemented using the efforts of volunteer probation monitor referees. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[6]**

Probation is not mandated in all cases where an actual suspension is imposed. When a lengthy period of actual suspension is recommended, imposing the provisions of standard 1.4(c)(ii) in lieu of a probation grant may serve adequately to protect the public and test the attorney's rehabilitation. Probation may not be indicated by virtue of the nature of the misconduct, the passage of time since the misconduct or clear evidence of the attorney's rehabilitation. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[11]**

Probation conditions which were not set forth in language of standard conditions of probation utilized in disciplinary proceedings were inadequate. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[20]**

Where delay in commencement of disciplinary probation until end of actual suspension would not further rehabilitation objective of probation, review department recommended that probation commence on finality of Supreme Court's discipline order. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[21]**

179.10 Consistency with primary purpose of discipline (Standard 1.4(g))

179.20 Motions for relief under rule 9.10, Cal. Rules of Ct. (rule 5.162)

179.90 Other issues

190 Miscellaneous General Issues in State Bar Court Proceedings

191 Effect of/Relationship to Other Proceedings

Members of the State Bar may be disciplined on the basis of their pre-admission misconduct. State Bar Moral Character Committee's consideration for moral character purposes of respondent's pre-admission misdemeanor conviction did not bar State Bar Court from considering it for discipline purposes. Records relating to respondent's admission to the State Bar were admissible in his post-admission disciplinary proceeding, especially where respondent failed to object at trial to being questioned about such records. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[2]**

Order issued by federal bankruptcy court in California suspending respondent from practice for misconduct was conclusive evidence that respondent was culpable of professional misconduct in California. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[1]**

State Bar Court gives strong presumption of validity to superior court's findings if supported by substantial evidence, and may rely on court of appeal opinion in case where attorney was party as conclusive determination of civil matters strongly similar or identical to charged disciplinary conduct. Where respondent had been ruled a vexatious litigant by both trial and appellate courts, and rulings were supported by clear and convincing evidence, respondent was culpable of maintaining unjust actions in violation of section 6068(c). *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[2]**

Where respondent unsuccessfully sought restraining order seeking to halt disciplinary proceedings three days before trial, this was additional evidence of aggravating factor that respondent failed to accept responsibility for his actions. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[8]**

Hearing judge did not abuse discretion in denying respondent's motion to abate, filed one month before disciplinary trial, in order to protect public, where respondent's grounds for seeking abatement were not persuasive. Pending civil proceeding involving same client as disciplinary matter dealt with recovery of damages based on breach of contract and fraud, while issue in discipline matter was whether respondent performed with competence. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[3]**

While the purpose of a civil proceeding differs from that of a disciplinary matter, review department considers findings in civil matter, which are entitled to a strong presumption of validity, where issues in civil matter bear a strong similarity or identity to charged disciplinary conduct. *In the Matter of Allen* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198 **[3]**

Issues presented in civil matter bore strong identity with issues in disciplinary matter where the civil lawsuit involved the same sales transaction that was the focus of the disciplinary proceeding, an expert witness testified about the nature of the attorney/client relationship and its ramifications on sale in question, the jury considered the same facts contained in the stipulation in the disciplinary matter, and the jury found in favor of the respondent. Further, the jury's findings, which were made under the preponderance of the evidence standard, were supported by substantial evidence. *In the Matter of Allen* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198 **[4]**

There is no reason to preclude the use of civil findings merely because they are exculpatory of a respondent. To conclude otherwise would give the State Bar an unfair advantage, allowing it to use prior civil findings that are adverse to respondents in establishing culpability, while precluding those same respondents from relying on prior civil findings that help them defend against disciplinary charges. *In the Matter of Allen* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198 **[5]**

In contrast to original disciplinary proceedings, which emanate from complaints against lawyers or from State Bar investigations and require an accusatory pleading alleging with reasonable specificity the charges related to alleged violations of specific conduct rules or laws, conviction referral proceedings are intended to be more streamlined because they are initiated based solely on a member of the State Bar's conviction, which is conclusive evidence of guilt of the crime. Convictions for offenses which may or may not involve moral turpitude or other misconduct warranting discipline should be referred for an evidentiary hearing to determine whether in the commission of the crime the convicted lawyer was guilty of misconduct warranting suspension or disbarment; typical offenses in this category include: assault and battery crimes, driving while intoxicated, certain tax convictions, and certain drug law convictions. Because it is appropriate to consider a wide ambit of facts and circumstances surrounding an attorney's commission of a crime during an evidentiary hearing in a referral proceeding, the State Bar met historic notice requirements by alerting respondent that evidence could be introduced on the facts and circumstances surrounding his assault conviction. The review department held the State Bar was not further required to provide respondent written notice of all the facts it considered germane to the referral proceeding at the time it started or respondent's default was entered for failure to reply to the notice of hearing. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[1 a–d]**

While allegations in an original proceeding are deemed admitted after a default is entered, in a conviction referral matter, even after a default, the State Bar must prove by clear and convincing evidence any facts or circumstances it maintains are relevant to the conviction. If respondent in conviction referral proceeding had repliedinstead of defaulting, he could have sought to discover the State Bar's contentions of specific facts surrounding the conviction, and the court could have required the parties to exchange pretrial statements to identify factual contentions still in dispute before trial. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[3]**

Civil findings made under a preponderance of the evidence standard are entitled to a strong presumption of validity if supported by substantial evidence. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[2]**

Because a stipulation remains binding on a party in a subsequent proceeding unless the court relieves the party from the stipulation, respondent's stipulation with Sacramento county counsel as part of a settlement of a civil contempt proceeding which stipulated to the findings in a sanctions order constituted stipulated findings, which, standing alone, were sufficient to meet the clear and convincing standard. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[3]**

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

Where preliminary and permanent injunctions prohibited respondent's client and the agents of respondent's client from filing any actions relating to certain realty, respondent's filing of a quiet title action in superior court and recording of a lis pendens on behalf of a company the client owned violated Business and Professions Code section 6103 because respondent had actual knowledge of the restraints imposed by the injunctions and because respondent was acting as an agent of the client. *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966. **[1 a–c]**

An attorney's conviction of a crime pursuant to a plea of nolo contendere is conclusive proof that the attorney committed all acts necessary to constitute the offense. Thus, respondent's convictions on two counts of violating Penal Code section 549 based on respondent's recklessness and not his actual knowledge conclusively establish that he acted in reckless disregard of the unlawful intentions of others. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[5]**

The fact that petitioner waited almost ten years after he resigned before he made restitution did not detract from petitioner's showing of rehabilitation since he demonstrated a proper attitude and sincerity toward restitution by voluntarily choosing not to discharge debts owed to creditors who were former clients or lienholders and by fully reimbursing all but one of his victims. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[3a, b]**

When a member of the State Bar has committed misconduct prior to admission to practice law, the State Bar may seek the attorney's discipline or seek to recommend the cancellation or revocation of the member's law license. Depending on the balance of facts and circumstances unique to each case, either or both alternatives could be considered in appropriate cases. It appears that the Supreme Court considers cancellation the appropriate step when an applicant has wrongfully obtained the benefits of admission such as by intentional misrepresentation which prevents the Committee of Bar Examiners from adequately considering the applicant's fitness to practice. Although respondent should have timely updated her application to disclose to the Committee of Bar Examiners misdemeanor charges against her, as she had a duty to do so under the Rules Regulating Admission to Practice Law and it bore upon her application to practice law, the nondisclosure was not intended to and did not result in wrongfully conferring on respondent the benefit of law licensure. Given the formal record of the events surrounding respondent's misdemeanor charges before the review department, the Committee of Bar Examiners was not deprived of the opportunity to adequately consider respondent's fitness to practice such that respondent wrongfully obtained the benefit of law licensure. Therefore, the review department did not recommend cancellation of respondent's law license. *In the Matter of Pasyanos* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746. **[1a–d]**

There was sufficient evidence to find that respondent failed to refund an unearned fee promptly upon the termination of employment where: the fee agreement provided for a fixed nonrefundable retainer fee and a contingent fee and provided that any modifications to the agreement had to be in writing and signed by both parties; respondent orally requested and received another $5,000 from the client above the amount called for in the written fee agreement; there was never a written modification to the fee agreement, such that respondent never earned the additional $5,000 fee; and respondent refused for approximately six months after the client obtained a judgment against him to refund the $5,000. The review department concluded that it could not consider whether the value of respondent's services exceeded the price for which he had agreed to perform them, since respondent would have been entitled to the entire fee set forth in the agreement if the services had been worth less than the price set forth in the fee agreement. Further, because respondent drafted the fee agreement, any ambiguities should be interpreted against him. The fiduciary relationship between an attorney and a client is of the very highest character, and transactions between them which are beneficial to the attorney are closely scrutinized for unfairness. *In the Matter of Lindmark* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668. **[2 a-g]**

When an attorney pleads nolo contendere to a felony wobbler, i.e., a crime that may be charged or judged either as a felony or misdemeanor, and that offense is declared to be a misdemeanor at sentencing or at the imposition of probation under Penal Code section 17, subdivision (b), the Legislature made it clear that it remains a felony for State Bar Act purposes even if it is later declared a misdemeanor in postconviction proceedings, including proceedings resulting in punishment or probation. This does not mean that an attorney's conviction of a wobbler will always be of a felony. If the attorney's plea of guilty or nolo contendere or the verdict of guilty is to a

misdemeanor charge, including a felony reduced to a misdemeanor at the time of the plea or verdict, the conviction will be of a misdemeanor.*In the Matter of Jackson* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610.**[1 a-c]**

After a review department opinion remanding a case to the hearing department for a new trial had become final, respondent could not, on a subsequent review following the new trial, continue to attack the findings and conclusions set forth in that opinion.*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.**[1 a-c]**

The State Bar is required by statute to disclose to criminal investigatory agencies certain incriminating information discovered about an attorney as a result of an investigation or formal proceeding. The State Bar also is obligated by statute to refer all convictions to the State Bar Court. Where it appeared that the State Bar complied with these statutory duties by disclosing information to federal authorities well before the start of trial in an earlier original proceeding and by notifying the State Bar Court after respondent sustained a federal conviction, there was no evidence that the subsequent State Bar Court conviction proceeding was the product of vindictive prosecution tactics of the State Bar.*In the Matter of Curtis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.**[1]**

A disciplinary proceeding arising from conviction of a crime is fundamentally different from and a complete alternative to an original proceeding brought under Business and Professions Code section 6075 et seq. The streamlined procedures following an attorney's conviction of a crime rest on proceedings in the criminal courts in which the burden is proof beyond a reasonable doubt. These procedures recognize that the basis for attorney discipline is not the provable violation of a rule of professional conduct but the mere existence of a certified copy of an attorney's record of conviction. Only convictions which do not inherently involve moral turpitude are referred for an evidentiary hearing to determine whether there is a legal basis for imposing discipline, but even in these cases guilt is conclusively established by the record of conviction and is not subject to collateral attack. Thus, where a conviction proceeding was commenced in the State Bar Court, which proceeding arose from the same underlying facts as an earlier original proceeding in the State Bar Court, neither res judicata nor collateral estoppel acted as a bar to the conviction proceeding, since neither the issues nor the causes of action in the two types of proceedings are the same.*In the Matter of Curtis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.**[2 a-g]**

Except in conviction proceedings eligible for summary disbarment, in determining the degree of discipline to be imposed in a conviction proceeding where an earlier original proceeding rested on the same underlying facts, a court should take into consideration any discipline imposed in the earlier original proceeding. To assess the appropriate discipline in the conviction proceeding, and to ensure fundamental fairness, a court should consider: (1) whether discipline in the conviction proceeding is needed to protect the public or the courts or to maintain the integrity of the administration of justice; (2) the extent to which the hearing judge or the parties in the original proceeding addressed the underlying facts supporting the criminal conviction which forms the basis for the subsequent conviction proceeding; (3) whether the criminal conviction yielded any relevant information that was not considered by the hearing judge in the original proceeding; (4) whether the discipline imposed in the conviction proceeding would unfairly duplicate any discipline actually imposed in the original proceeding, or would otherwise be unfair to the respondent; and (5) the extent to which the public policy sought to be protected in the original proceeding relates to the public policy sought to be protected in the criminal conviction which forms the basis for the conviction proceeding.*In the Matter of Curtis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.**[3 a, b]**

Under controlling federal regulation and Board of Immigration Appeals precedent, respondent could not properly limit the scope of his representation of clients referred to him by nonattorney immigration services providers to that of an "appearance attorney," which respondent asserts is an attorney who appears in his clients' immigration cases only for the limited purpose of making court appearances, and when respondent did so, he effectively provided those clients with no legal representation or services.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[5 a-h]**

Because parties failed to address relevant immigration court and Board of Immigration Appeals rules and procedures that are set forth in the Code of Federal Regulation and have the force and effect of law, hearing judge and review department were required to take and did take judicial notice of those rules and procedures sua sponte. (Rules Proc. of State Bar, rule 214; Evid. Code, §§ 451, subd. (b), 459, subd. (a).)*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[8]**

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

Where respondent's character evidence was not from a sufficiently wide range of references, did not demonstrate that each witness was aware of the full extent of respondent's misconduct, and did not address the State Bar's disciplinary concerns or discuss respondent's fitness for practice, the evidence was entitled to only limited weight in mitigation.*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[5]**

Reinstatement petitioner's outstanding income tax delinquencies of $458,000 and his offer to compromise and settle the delinquency with Internal Revenue Service for $50,000 did not show adverse moral character. This was not a case where petitioner concealed assets or his delinquencies. Nor was this a case where petitioner failed to file tax returns. Further, petitioner should not be deprived of the ability to take advantage of the offer in compromise procedures open to any citizen seeking to resolve a large delinquency, particularly when that delinquency consists of sizeable penalties and interest. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[8 a-d]**

Civil verdicts and judgments have no disciplinary significance apart from the underlying facts. Nevertheless, civil findings made under a preponderance of the evidence test are entitled to a strong presumption of validity in disciplinary proceedings if they are supported by substantial evidence. Where the trial judge in a civil proceeding found that respondent knew prior to filing a lawsuit that he had not been defamed, that his law firm had not been disparaged, and that his retainer contract with his clients had not been interfered with at all, and those findings were supported by substantial evidence in the record, the hearing judge's conclusion in the disciplinary proceeding that respondent filed the lawsuit based on his honest and reasonable belief in its validity was contrary to the civil findings and did not appear to have accorded the civil findings the strong presumption of validity to which they were entitled. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[1]**

There is no authority for the proposition that the strong presumption of validity accorded to civil findings in a disciplinary proceeding shifts the burden of proof in the disciplinary proceeding to the respondent attorney to rebut the presumption. As in any discipline case, the State Bar bears the burden of proving culpability by clear and convincing evidence.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[2]**

As respondent did not appeal the dismissal of a civil lawsuit, he could not assert in the discipline proceeding that the dismissal was in error, as collateral attack is not available to challenge non jurisdictional error in a judgment. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[3]**

A cause of action in a civil proceeding based on factual allegations that respondent knew he could not prove was patently frivolous and unjust, and respondent's continued pursuit of the meritless factual allegations was strong circumstantial evidence that he was motivated by vindictiveness. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[4]**

The aggravating weight of prior discipline was diminished where the misconduct underlying the prior discipline occurred during the same time period as did the misconduct underlying the present matter. Under such circumstances, the totality of the charges brought in both cases was considered in order to determine the appropriate discipline. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349.**[6]**

Wilfulness for purposes of probation revocation (and other disciplinary) proceedings is simply a general purpose or willingness to commit an act or to make an omission; it does not require any intent to violate the law or the probation condition and does not necessarily involve bad faith. Moreover, wilfulness does not require actual knowledge of the provision violated. Respondent admitted that he did not pay the restitution, and there was no evidence in the record suggesting that this omission was other than a purposeful act. Thus, the failure to pay the restitution was unquestionably wilful under the above definitions. Whether respondent believed that he had no obligation to pay the money because the restitution was discharged in his bankruptcy was simply not relevant to the issue of the wilfulness of his failure to pay, as it need not be shown that respondent intended the consequences of his omission or was even aware of the disciplinary provision he was violating. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.**[3]**

Procedures for ruling on standard 1.4(c)(ii) petitions for relief from actual suspension (Rules Proc. of State Bar, rules 630-641) are expedited to avoid procedural delays that might effectively create a far longer period of actual suspension than that originally ordered by the Supreme Court. Proceedings on standard 1.4(c)(ii) petitions are summary in nature, not full-fledged reinstatement proceedings in which disbarred attorneys seek to be reinstated to the practice of law. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289.**[3]**

Even though petitioner in a standard 1.4(c)(ii) proceeding for relief from actual suspension did not know that Client Security Fund had previously paid one of his former clients more than $3,400 based on the client's claim that petitioner improperly failed to pay that sum to the client's medical care providers and even though letters from the client's file demonstrated that medical providers had been paid, petitioner must still reimburse Client Security Fund for the monies it paid the client. (Bus. & Prof. Code, § 6140.5, subd. (c).) *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[5]**

In standard 1.4(c)(ii) proceeding for relief from actual suspension, State Bar Court presumes that the prior discipline imposed on petitioner was, based on the facts as shown in the prior record of discipline, appropriate to accomplish the goals of attorney discipline to protect the public, the courts, and the profession. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[8]**

Because record in standard 1.4(c)(ii) proceeding for relief from actual suspension established (1) that, when petitioner committed the misconduct in his prior record that resulted in his actual suspension, he was abusing and addicted to alcohol and cocaine, (2) that his abuses of and addictions to alcohol and cocaine causally contributed to his prior misconduct, (3) that he had undergone a meaningful and sustained period of rehabilitation from his abuses and addictions, (4) that, when the discipline was imposed on him in his prior record, these facts were not known to State Bar, State Bar Court, the Supreme Court, and (5) that when discipline was imposed in prior proceeding, petitioner was in denial regarding his abuses of and addictions to alcohol and cocaine, review department found, when it reviewed record to determine whether hearing judge's findings of rehabilitation and present fitness were supported by substantial evidence, that petitioner's addictions were not excuses for, but explanations of his prior misconduct. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[9]**

Because bankruptcy court's findings that attorney engaged in actual fraud when attorney incurred credit card debts were made under preponderance of the evidence standard and not clear and convincing standard applicable in disciplinary proceedings, hearing judge correctly (1) declined to apply principles of collateral estoppel to bind attorney with bankruptcy court's findings that attorney engaged in actual fraud; (2) reweighed evidence from bankruptcy court proceedings under clear and convincing standard after giving attorney fair opportunity to contradict, temper, and explain that evidence; and (3) permitted State Bar to present additional evidence regarding attorney's culpability. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[3]**

The application of collateral estoppel with respect to prior civil findings does not modify the fundamental requirement that the State Bar must establish each element of a disciplinary violation and aggravating circumstance by clear and convincing evidence. The State Bar may rely upon collateral estoppel to establish an element of a disciplinary violation or aggravating circumstance only if that same element was found against the attorney in the civil proceeding by clear and convincing evidence. If the same element was not found against the attorney in the civil proceeding by clear and convincing evidence, the State Bar must established that element in the State Bar Court with clear and convincing evidence. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[1 a-c]**

Collateral estoppel may be applied in the State Bar Court to deny an attorney the right to relitigate an issue that was litigated and resolved against him or her in a prior civil proceeding only if (1) the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, (2) the civil finding was made under the same burden of proof applicable to the same issue in the State Bar Court, (3) the attorney was a party to civil proceeding, (4) there is final judgment on the merits in the civil proceeding, (5) the attorney fails to demonstrate any unfairness in precluding the relitigation of the issue, and (6) the civil finding was necessary to the judgment in the civil proceeding. The requirement that the civil finding be necessary to the judgment in the civil proceeding is required by procedural fairness to insure that preclusive effect is not given to nonessential prior findings. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[2 a, b]**

The relevant testimony of a witness given in civil proceeding is admissible in disciplinary proceedings without regard to the witness's availability and is considered and weighed as though the witness was present and testifying in the disciplinary proceeding. Moreover, the State Bar Court may take judicial notice of non-testimonial matters (i.e., pleadings, exhibits, findings) in a civil action that involved the same conduct underlying the disciplinary charges against an attorney. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[3]**

Whenever the State Bar relies upon all or part of the record in prior civil proceeding to prove an element of a disciplinary violation or aggravating circumstance independent of the application of collateral estoppel, neither the evidence nor any factual findings in the civil proceeding may be judicially noticed as conclusive or otherwise given preclusive effect in the State Bar Court, but must be independently assessed under the clear and convincing standard of proof. In addition, the attorney must be given a fair opportunity to contradict, temper, or explain the evidence and findings in the civil proceeding with other evidence, including the live testimony of the same witnesses who testified in the civil proceeding. The attorney need not be given free reign to completely retry the civil suit in the State Bar Court. The hearing judge retains the sound discretion to restrict or excluded cumulative evidence and otherwise control the introduction of evidence as in any other case.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[4 a, b]**

Independent of the application collateral estoppel, admissions made by an attorney in a prior civil proceeding are not conclusive and cannot be given preclusive effect in the State Bar Court even if they are admissible in the State Bar Court as party admissions. Such admissions must be independently assessed under the clear and convincing standard of proof.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[5]**

In its answers to the special findings in a prior civil proceeding against respondent, the jury found that respondent was liable to the plaintiff on the plaintiff's claims for, among other things, breach of fiduciary duty and fraud. In a separate special finding on the issues of malice, oppression, and fraud, the jury found by clear and convincing evidence that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of liability for either breach of fiduciary duty or fraud." The use of the disjunctive conjunction "or" in the phrase "malice, oppression or fraud," precluded the review department from determining whether the jury found that respondent was guilty of malice, oppression, fraud, or some combination thereof. And the use of the disjunctive correlative conjunction "either . . . or" in the phrase "finding of liability for either breach of fiduciary duty or fraud" precluded the Review Department from determining whether the jury found that respondent was guilty of "malice, oppression or fraud" when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both. Nonetheless, regardless of whether the jury based its answer against respondent on the malice, oppression, and fraud special finding on a finding that respondent was guilty of malice, oppression, fraud, or some combination thereof when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both, the jury's answer against him on the malice, oppression, and fraud special finding established, under collateral estoppel principles, that he committed acts involving moral turpitude in violation of statute proscribing acts of moral turpitude, but did not establish the nature and extent of those acts. An attorney who breaches a fiduciary duty (whether to a client or non-client) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law. Similarly, an attorney who commits an act of fraud (whether in the capacity as of an attorney or not) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[6 a-f]**

Even though the hearing judge properly admitted and judicially noticed the record in a prior civil proceeding in which respondent was a party, the hearing judge erred in making factual findings regarding the nature and extent of respondent's violations of the moral turpitude statute based upon the evidence in the civil record independent of the application of collateral estoppel because he did not first give respondent a fair opportunity to attempt to contradict, temper, or explain the evidence in it with other evidence. That error required the reversal of the hearing judge's findings as to the nature and extent of respondent's statutory violations and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the nature and extent of respondent's violations.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[7]**

The requisite elements of a violation of the first subdivision of the former rule of professional conduct governing business transactions with clients (i.e., subdivision (A) of former rule 3-300) were that the transaction was unfair to the client or that the terms of the transaction were not disclosed and transmitted to the client in writing in a manner that the client should have been able to understand. The requisite elements of a violation of the second subdivision of that former rule (i.e., subdivision B of former rule 3-300) were that the client was not advised, in writing, of the right to seek advice from an independent attorney of the client's choice or that the client was not given a reasonable opportunity to exercise that right. None of these elements are addressed in the special finding under

which the jury in a prior civil proceeding in which respondent was a party found, by clear and convincing evidence, that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of [respondent's] liability for either breach of fiduciary duty or fraud." Thus, collateral estoppel does not establish that respondent violated the former rule governing business transactions with clients.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[8]**

In making his factual findings with respect to charged violations of the former rule of professional conduct governing business transactions with clients, the hearing judge erred in reweighing and relying upon the evidence in a prior civil proceeding in which respondent was a party without first giving respondent a fair opportunity to attempt to contradict, temper, or explain that evidence. That error required the reversal of the hearing judge's findings that respondent committed multiple violations of the former rule governing business transactions with clients and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the charged violations of that former rule.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[9 a, b]**

The agreement between respondent and his client's subsequent counsel for respondent to refund $500 in unearned fees was sufficient to defeat the client's small claims suit against respondent to collect the advanced fee the client had paid him. Nonetheless, their agreement does not affect the ethical conclusion that respondent failed to earn any part of the fee paid.*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. **[2 a, b]**

Principles of collateral estoppel may be applied to preclude a respondent from relitigating an issue that was actually litigated and resolved against him in a prior civil proceeding. In State Bar Court proceedings, principles of collateral estoppel may be applied with respect to an adverse prior civil finding if (1) the issue resulting in the civil finding is substantially identical to that in the State Bar Court proceeding, (2) the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, (3) the respondent was a party to the civil proceeding, (4) there is a final judgment on the merits in the civil proceeding, and (5) the respondent does not establish that it would be unfair to bind him to the prior adverse civil finding.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[1]**

Where the only evidence presented in the hearing department to support the contention that it would be unfair to prohibit relitigation of harassment and emotional distress claims was respondent's own testimony without corroborating evidence, respondent's reiteration of his testimony on review does not provide a basis to disturb the hearing judge's rejection of respondent 's testimony. The review department gives great weight to hearing judges' factual findings resolving issues pertaining to credibility of witnesses.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[2 a, b, c]**

Introducing into evidence the pleadings and exhibits from a civil matter without also introducing the trial transcript from the civil proceeding provides little evidence as to the nature and extent of respondent's conduct underlying the adverse civil findings of harassment and intentional infliction of emotional distress on a client or the resulting harm to the client. Such evidence may have had a material effect on the measure of the appropriate level of discipline.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[3]**

The hearing judge erred when he held that the record lacked clear and convincing evidence that respondent filed a frivolous appeal. The general rule is that civil findings are not, by themselves, dispositive of the issues in a disciplinary case. Often the issues in the civil case may be either broader or narrower than the operative issues in a disciplinary proceeding. However, civil findings made under a preponderance of the evidence standard are entitled to a strong presumption of validity in the State Bar Court if supported by substantial evidence. In order to hold that an appeal is frivolous, the law requires an extremely high showing, so that zealous but good faith appeals having any merit are neither deterred nor sanctioned. Accordingly, the court of appeal's decision finding that respondent's appeal of a case was frivolous and pursued in bad faith was, at the very least, a prima facie determination of such. Respondent failed to adduce evidence that overcame that determination. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[1 a-d]**

Unless civil sanctions issues arising under section 128.5 of the Code of Civil Procedure are adequately litigated before the sanctioning court, it would appear inappropriate to apply collateral estoppel in the State Bar Court to the sanction order.*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[2]**

Hearing judge erred as a matter of law in finding that petitioner for reinstatement had not previously resigned from State Bar with disciplinary charges pending where petitioner's resignation was entitled "resignation with charges pending;" stated that charges were pending against him; was in form prescribed by California Rule of Court 960; was accepted by Supreme Court without prejudice to further proceedings; and where petitioner stated in his petition for reinstatement that, at time he resigned from State Bar, no formal charges were filed against him by State Bar, but only a number of minor client complaints that he had responded to, taken adequate measures to deal with, and answered State Bar in writing denying any misconduct. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[3]**

Even though Rules of Procedure adopted by State Bar's Board of Governors are not legislative acts, it is appropriate to construe them using rules for statutory interpretation/construction. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[4]**

Respondent's convictions of making false statements to federally insured financial institution to influence action on loans, felonies involving moral turpitude, did not occur in respondent's practice of law or in manner such that a client was victim. Thus, respondent's convictions did not meet statutory criteria for disbarment under former version of summary disbarment statute that was in effect between 1986 and January 1, 1997. And respondent's summary disbarment was warranted, if at all, only under present version of statute (Bus. & Prof. Code, § 6102, subd. (c)), effective January 1, 1997. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51. **[1 a-c]**

With respect the considered views of the federal judge who presided over the criminal proceeding, the review department was bound by Supreme Court precedent rejecting consideration of very similar remarks by a sentencing judge expressing an opinion on an issue within the unique province of the Supreme Court and of the State Bar Court acting as the Supreme Court's arm. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942. **[3]**

In determining whether an attorney's convictions meet the statutory criteria for summary disbarment, the review department is limited to the record of conviction and any undisputed facts that may exist. Where the record of conviction did not establish that the offenses were committed in the course of the practice of law or in any way such that a client of respondent's was a victim, the offenses did not meet the criteria for summary disbarment under the version of Business and Professions Code section 6102, subdivision (c), in effect prior to January 1, 1997. Summary disbarment was warranted, if at all, only under the present version of the statute. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[1]**

A retroactive law is one that affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute. Respondent's crimes were committed and her conviction occurred when the prior version of Business and Professions Code section 6102, subdivision (c) was in effect and her offenses were not within the scope of the former version of the statute. In addition, as respondent would not have been subject to summary disbarment, she had a right under the former version of the statute to a hearing and to present evidence prior to the imposition of discipline. The application of the present version of section 6102, subdivision (c) under these circumstances would be retrospective. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[2]**

It is presumed an amendment to a statute operates prospectively unless the Legislature has expressly stated the contrary or, after considering all pertinent factors, there is clear indication of a legislative intent that the statute operate retrospectively. Business and Professions Code section 6102, subdivision (c) does not contain an express retroactivity provision and after considering extrinsic factors, including public protection and due process, the review department concluded that section 6102, subdivision (c) should not be applied retroactively. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[3]**

A hearing judge properly applied collateral estoppel and denied respondent the right to relitigate the issue of dishonest billing in a disciplinary proceeding where respondent had fully litigated the issue in a superior court action; where the jury in the prior action had determined by clear and convincing evidence that respondent had acted with oppression, fraud, and malice; and where no unfairness resulted from precluding the relitigation of the issue. *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. **[1]**

A hearing judge erroneously relied on an unpublished hearing department decision and a Supreme Court order in another case. The unpublished decision of the hearing department in another proceeding, involving another respondent, may not be relied on either as precedent or as evidence. While the hearing department could take

judicial notice of the Supreme Court order, that order provided no information that would make it relevant as either evidence or precedent in the matter before the court. It merely recited the discipline ordered, without discussion of the relevant facts or law and therefore should not have been relied on in this proceeding. *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639. **[3]**

The rule is well settled in California that a void order cannot be the basis for a valid contempt judgment. A person affected by an injunctive order may challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by (1) complying with the order while seeking a judicial determination as to its jurisdictional validity or (2) disobeying it and then raising the jurisdictional challenge if and when he is sought to be punished for his disobedience. If a person affected by an injunctive order chooses to challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by disobeying it and then raising the jurisdictional challenge as a defense against any contempt charges brought against him, his violation of the order constitutes no punishable wrong if it is ultimately determined that the order was issued without or in excess of jurisdiction. However, the contempt order here was final and there was no valid reason to go behind a now-final order. The State Bar Court properly defers to the judgements of the courts of record that rendered contempt judgements against respondent and that considered respondent's subsequent appeals, requests for reconsideration, and certiorari. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[2]**

The State Bar Court determines whether a petitioner seeking relief from actual suspension has met the requirements of standard 1.4(c)(ii) without reevaluating the petitioner's prior discipline, whether perceived as lenient or harsh. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[2]**

The State Bar Court considers the prior misconduct of a petitioner seeking relief from actual suspension under standard 1.4(c)(ii), as well as the aggravating and mitigating circumstances surrounding such misconduct, to determine the amount and nature of the required rehabilitation. In addition, other misconduct that predates the last discipline and was not considered in the underlying disciplinary matters should be considered in weighing the starting point for measuring discipline. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[3]**

Compliance with the terms of actual suspension and probation presumptively satisfies the discipline required for a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) to become a productive attorney. However, the petitioner must also show rehabilitation, present fitness to practice law, and present learning and ability in the general law. That showing must be measured from the time of the last prior discipline. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[4]**

Where a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) had been disciplined several times, the misconduct underlying that discipline could not be used to rebut the petitioner's showing of rehabilitation, but can be used as a point from which to measure rehabilitation. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[5]**

A petitioner seeking relief from actual suspension under standard 1.4(c)(ii) must show compliance with the terms of probation. Also, the petitioner must show by a preponderance of the evidence that (1) his conduct has been exemplary from the time of the imposition of the last prior discipline and (2) the conduct evidencing rehabilitation is such that the court may make a determination that the conduct leading to the discipline or other need for rehabilitation is not likely to recur. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[10]**

In determining whether a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) is likely to commit further misconduct, the State Bar Court should look to the nature of the petitioner's underlying offense or offenses; any aggravation, other misconduct, or mitigation that may have been considered; and any evidence about elimination of the cause or causes of such misconduct. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[11]**

Substantial evidence supported a decision relieving a petitioner from actual suspension under standard 1.4(c)(ii) where the petitioner had eliminated the medical, emotional, and financial problems underlying his misconduct; had been disciplined for violating probation conditions and eventually had complied with the terms of his probation; had provided 13 declarations attesting to his major life changes and to his good character; had

suffered from undiagnosed diabetes when he had been administratively suspended for failing to take the California Professional Responsibility *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[12]**

Examination within the time prescribed by a Supreme Court order; had paid a great many debts; had reached an agreement with the Internal Revenue Service about failing to file federal income tax returns and was paying the outstanding tax debt; had only three other debts, which were unrelated to the practice of law and which totalled $2,800 to $3,200; and had received and later paid a traffic ticket for speeding. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[12]**

A prior record of discipline is an aggravating factor regardless of when the discipline was imposed. Where misconduct addressed by a current disciplinary proceeding resembles misconduct addressed by a prior disciplinary proceeding and occurred after the filing of a notice to show cause in the prior proceeding, the filing alerted the attorney to the ethically questionable nature of the misconduct. Thus, the prior disciplinary proceeding warranted significant weight in aggravation to the extent that the misconduct addressed by the current proceeding happened after the filing of a notice to show cause in the prior proceeding. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[5]**

Before the State Bar Court orders that an attorney be involuntarily enrolled inactive under Business and Professions Code, section 6007, subdivision (d), it must weigh the need for public protection in light of the Supreme Court's inherent and plenary jurisdiction over attorney admissions and discipline. To order the involuntary inactive enrollment of an attorney under subdivision (d) any time its requirements are met without regard to whether there is an issue of public protection and to the length of the actual suspension recommended could conceivably defeat or materially impair the Supreme Court's inherent prerogatives. When measured against these criteria, the review department enrolled respondent inactive, concluding that respondent's four prior records of discipline and lack of any mitigating circumstances established a public protection issue, and that as the review department recommended an actual suspension of almost a year, there could be no reasonable expectation that the time elapsing between when respondent was enrolled inactive and the finality of the matter would equal or exceed the final actual suspension imposed by Supreme Court. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[7 a-e]**

The only prerequisite to initiating a conviction referral proceeding against an attorney in the State Bar Court is a guilty plea by the attorney or a guilty verdict rendered against the attorney. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[1]**

Criminal court's lenient sentence did not change the nature of respondent's convictions of felony conspiracy to commit theft and theft for disciplinary purposes and was therefore not a mitigating circumstance. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[7]**

Neither the law nor the facts supported respondent's contention that by denying two continuance requests during the six days of trial, the hearing judge deprived him of a reasonable opportunity to be represented by counsel. An attorney in a disciplinary hearing has no constitutional right to the assistance of counsel. Further, continuances of State Bar Court hearings are disfavored. (State Bar Court Rules of Practice, rule 1131.) To prevail on a procedural argument in a disciplinary matter, an attorney must show both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged procedural error. Respondent proved neither where respondent's counsel set a murder trial for the day before the scheduled start of the disciplinary hearings and failed to provide timely information about this conflict to the State Bar Court, where respondent failed to show that his counsel could not have anticipated or avoided the conflict, and where respondent failed to show that the only proper means of handling the conflict was to grant a continuance. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[1]**

Respondent's argument that res judicata bars this disciplinary proceeding because a similar matter was dismissed by the state bar of another state was rejected. First, res judicata is applicable with respect to only final judgements rendered on the merits. Second, the State Bar was not a party to the other disciplinary proceeding. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[4]**

Civil court records are proper subjects of judicial notice in moral character proceedings. Therefore, where applicant was a party to the civil proceeding and that proceeding involved many issues substantially identical to issues in the moral character proceeding, the hearing judge properly considered the civil court's jury verdicts, trial

minutes and judgment, and a Court of Appeal's unpublished opinion. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[3]**

Section 6049.2 of the Business and Professions Code authorizes the admission of transcripts of testimony from civil proceedings in State Bar disciplinary proceedings without proof of the witnesses' unavailability. However, section 6049.2 is, under its express terms, applicable only in disciplinary proceedings, and there is no parallel section permitting admission of prior transcripts in moral character proceedings. Accordingly, if a proper objection is made, transcripts of testimony from civil proceedings are admissible in moral character proceedings only upon a showing that the witnesses whose testimony is recorded in such transcripts are unavailable to testify. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[4]**

In moral character cases, the Supreme Court must independently assess the weight that any civil court findings have with respect to State Bar's burden of proof on rebuttal of applicant's prima facie showing of good moral character, in light of other evidence on rebuttal and applicant's showing, if any, in rehabilitation. The ultimate question is unique to moral character proceeding, in which no deference is owed to a civil judgment. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[5]**

Prior civil court findings made under a preponderance of the evidence standard of proof merely constitute evidence in a State Bar Court proceeding, not the exclusive record upon which an issue must be adjudicated. While the State Bar may choose to proffer prior civil court findings as its entire case against an attorney or applicant on the underlying issue, the attorney or applicant then has the right to controvert, temper, or explain the civil findings with other evidence, including live testimony from the same witnesses who testified in the civil trial. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[6]**

Prior civil court findings made under the preponderance of the evidence standard of proof are entitled to a strong presumption of validity in State Bar Court proceedings if they are supported by substantial evidence. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[7]**

Neither the Supreme Court nor the State Bar Court is bound by civil findings that exculpate a respondent of charged misconduct, or by an attorney's acquittal in a criminal case, or by the dismissal of criminal charges against an attorney. The reasons the State Bar is not bound by exculpatory civil findings or criminal acquittals in disciplinary proceedings are that the parties are different, the quantum of proof required in each proceeding is virtually always different, and the purposes of each proceeding are vastly different. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[10]**

Neither the Supreme Court nor the State Bar Court will bind an applicant or a respondent to an adverse civil finding made upon the usual civil standard of proof of a preponderance of the evidence when the standard of proof in the State Bar proceeding is clear and convincing evidence. When civil findings are made under a preponderance of the evidence standard, they must be independently assessed under the more stringent standard of proof applicable to disciplinary proceedings of clear and convincing evidence. It is only in this context that civil findings have no disciplinary significance apart from the underlying facts. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[11]**

The State Bar Court may apply collateral estoppel principles to preclude an applicant from relitigating an issue that was actually litigated and resolved adversely to him or her in a prior civil proceeding, provided that the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, that the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, that the applicant was a party to the civil proceeding, that there is a final judgment on the merits in the civil proceeding, and that no unfairness in precluding relitigation of the issue is demonstrated by the applicant. An applicant may demonstrate that it would be unfair to bind him or her to an adverse civil finding by showing, among other things, that he or she had less incentive or motive to litigate the issue in the civil proceeding, that the civil finding or judgment is itself inconsistent with some other finding or judgment, or that he or she was required to litigate under different and less advantageous procedures in the civil proceeding. Where applicant's fraud judgment met the above criteria and no unfairness was demonstrated, the hearing judge appropriately applied the doctrine of collateral estoppel to the underlying fraud issue in this moral character proceeding. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[12]**

Where respondent stated at oral argument that she did not object to judicial notice of her conviction for the unlicensed practice of law and admitted that she had improperly practiced law, the review department augmented the record on review to note the record of her conviction and considered the unlicensed practice as an aggravating circumstance. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (d)(1).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[4]**

Review department took judicial notice of stipulation and Court of Appeal opinion in civil cases involving respondent that post-dated hearing department proceedings and concerned matters discussed at hearing. (Rule 1304, Prov. Rules of Practice.) *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[1]**

Clients may not waive statutory limit on contingent fees in medical negligence cases, and superior court award of such fees in excess of statutory limits is erroneous. Where attorney did not reveal material issue of potential applicability of such statutory fee limit to superior court in connection with approval of settlement and award of fees, such award did not constitute res judicata, because attorney and client were not adversaries in proceeding. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[9]**

Where respondent's client's settlement had always been treated by civil court and by counsel in civil proceeding as having certain value, respondent's argument in disciplinary proceeding that settlement had different value for purpose of applying statutory contingent fee limits was without merit. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[10]**

Respondent's alleged misconduct in federal civil appeal was not entitled to any weight in aggravation where State Bar did not introduce any evidence regarding respondent's conduct other than appellate court opinion establishing respondent's failure to comply with federal rule of appellate procedure regarding form of briefs, and where record did not provide basis to determine whether respondent's noncompliance with such rule was isolated act of negligence or disciplinable offense, or to assess respondent's conduct independently under clear and convincing standard of proof. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[12]**

The State Bar Court may take judicial notice of the records of any California court. (See Evid. Code, § 452, subd. (d)(1); Trans. Rules Proc. of State Bar, rule 556.) Such notice may include the facts stated in court orders, findings of fact, conclusions of law, and judgments. Although civil findings bear a strong presumption of validity if supported by substantial evidence, they must be assessed independently under the more stringent standard of proof applicable to disciplinary proceedings. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[4]**

Conviction of violation of criminal statute is conclusive evidence of guilt of elements of that crime. Where respondent was convicted of battery on a police officer engaged in performance of official duties, and such officer's use of excessive force would have required finding that officer was not engaged in performance of official duties, respondent's conviction precluded State Bar Court from considering his claim that police initiated altercation or used excessive force in incident leading to respondent's conviction. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[8]**

Due to difference in applicable standards of proof, a civil court finding is not binding on the State Bar Court for purposes of discipline. Where, upon evidence presented to civil court plus additional testimony, hearing judge concluded, contrary to civil court's decision, that respondent's loan to a client was not a sham transaction, then, resolving all reasonable doubts in respondent's favor, it was appropriate to dismiss charges that the loan transaction violated statutory duties to counsel only legal or just actions and to employ only truthful means of maintaining clients' causes; constituted act of moral turpitude; and violated rule against advising violations of law. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[1]**

Where respondent was a creditor of a client's bankruptcy estate and also represented the client in the bankruptcy, and where the only evidence about the bankruptcy proceeding showed that the claims of two other creditors were found non-dischargeable, there was no clear and convincing evidence to sustain a charge that respondent's representation of the client was improper under bankruptcy law. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[8]**

An attorney is charged with knowledge that the legal consequences of the attorney's conviction include summary disbarment when statutory authority provides therefor. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[1]**

Summary disbarment is statutorily authorized where an attorney is convicted of a felony and (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. The crime of forgery includes as one of its elements the specific intent to defraud. A forgery conviction for altering a court document was unquestionably committed in the course of the practice of law in that it involved fraud on the court perpetrated on behalf of the attorney's client. Accordingly, summary disbarment was appropriate in the absence of conflicting Supreme Court precedent or a violation of due process in disbarring respondent without a hearing. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[2]**

An attorney convicted of a felony is chargeable with notice that the crime remains a felony for State Bar discipline purposes irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of post-conviction proceedings. Under some circumstances, prosecutorial discretion in originally charging a particular crime as a felony rather than a misdemeanor may raise questions as to the propriety of summary disbarment, but no such issue was presented where there was no evidence of abuse of discretion or other unfairness in charging forgery of a court document as a felony. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[3]**

Where respondent contended that he had only pleaded guilty in order to avoid two separate trials, and that he had not intended to commit a crime, due process did not entitle him to a hearing before the State Bar Court to prove these contentions, because he would be precluded from presenting evidence thereof by the statute providing that proof of an attorney's conviction of a felony or misdemeanor involving moral turpitude is conclusive evidence of the attorney's guilt of the elements of the crime in any proceeding to suspend or disbar the attorney. This conclusive presumption precludes collateral attack on the conviction by attorneys who seek to reassert their innocence in subsequent State Bar proceedings. In this regard, a conviction following a guilty plea is just as conclusive as a conviction following a full criminal trial. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[5]**

Where bankruptcy court order which was not already part of record showed that restitution payments had been made to victim of respondent's misconduct, review department granted request to take judicial notice of such order. Undisputed evidence bearing on issue of restitution is important, if for no other purpose than to create an accurate record on the status of restitution. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[2]**

Respondent's conviction of grand theft and forgery was conclusive evidence of his guilt of all elements of those crimes. The grand theft conviction necessarily carried with it the specific intent to deprive the victim permanently of his funds. The forgery conviction necessarily showed that respondent acted without authority and with an intent to defraud. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[3]**

The question of the proper degree of discipline in a conviction referral matter may rest on a wide scope of evidence not directly connected with the crimes themselves. Evidence that respondent's real estate license had been revoked over a year before his crimes was improperly excluded from rebuttal evidence. Such evidence was not an essential element of the State Bar's case in chief, and could properly be reserved to rebut respondent's contention that his crimes were aberrational. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[9]**

Where administrative proceeding in which respondent had not appeared had resulted in revocation of respondent's real estate license, and record of such administrative proceeding was relevant in State Bar disciplinary proceeding, hearing judge and parties should have addressed issues regarding whether administrative decision had preclusive weight; if not, whether it was admissible under any hearsay exception, and whether respondent should be permitted to introduce evidence concerning culpability or mitigation with respect to the license revocation. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[10]**

Rules of evidence in civil cases are generally applicable in State Bar proceedings (Trans. Rules Proc. of State Bar, rule 556) and include taking judicial notice of records of any federal court of record. Where neither party

specifically requested augmentation of record with federal court's opinion on appeal in related matter, but respondent attached copy of such opinion to review brief, review department took judicial notice of such opinion. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[3]**

It would have been inappropriate in involuntary inactive enrollment proceeding for judge to draw any inference from pending criminal charges in and of themselves. However, testimony offered under oath and subject to cross-examination in preliminary hearings on such criminal charges supported judge's findings regarding facts of respondent's criminal conduct. This evidence was sufficient to demonstrate a reasonable probability that State Bar would prevail on merits of disciplinary charges brought thereon. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[3]**

State Bar prosecutors have statutory authority to apply to superior court to grant immunity from criminal prosecution to a witness in an attorney disciplinary proceeding. Where such procedures were properly invoked, and respondents showed no prejudice to themselves on account of the procedures followed in seeking such immunity, respondents were not entitled to relief based on asserted error in such procedures. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[6]**

Finality of an attorney's criminal conviction is not essential for an order referring the conviction to the State Bar Court Hearing Department for a determination whether there is probable cause to conclude that the circumstances of the conviction involved moral turpitude for purposes of interim suspension of the attorney. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[1]**

The possibility that criminal proceedings against an attorney may be dismissed if the attorney complies with the terms of criminal probation is not relevant to the effect of the conviction in disciplinary proceedings. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[2]**

A conviction after a plea of nolo contendere is a conviction for disciplinary purposes no less than a conviction after a plea or verdict of guilty. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[3]**

Respondent's conviction of assault conclusively established that he did not act in self-defense, i.e., that he did not have an honest *and* reasonable belief that he was about to suffer bodily injury. Hearing judge could not reach conclusions, even based on credible evidence, that were inconsistent with such conclusive effect. Thus, where hearing judge found that respondent honestly believed he was about to be assaulted, review department rejected any finding that such belief was reasonable as being inconsistent with the conviction. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[2]**

In attorney discipline proceedings arising from a criminal conviction, the record of the attorney's conviction is conclusive evidence of the attorney's guilt of the crime for which the attorney was convicted. This conclusive presumption of guilt applies whether the convicted attorney seeks to reassert his or her innocence or merely to relitigate a claim of procedural error. The convicted attorney is conclusively presumed to have committed all of the elements of the crime. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[3]**

An attorney's conviction for assault with a firearm is conclusive proof that the attorney committed the elements for that crime, i. e., that a person was assaulted and that the assault was committed with a firearm. An assault is defined as an unlawful attempt to apply physical force upon the person of another at a time when the accused had the present ability to apply such physical force. An attempt to apply physical force is not unlawful when done in lawful self-defense. An attorney's conviction of this crime therefore conclusively established that the attorney unlawfully attempted to apply physical force upon the victim. As the assault was by definition unlawful, the review department concluded that it was not done in self-defense. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[7]**

Summary disbarment is statutorily authorized if an attorney commits a California or federal felony as to which: (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement; and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. If the State Bar Court determines that disbarment would be ordered by the Supreme Court without regard to mitigating circumstances, a recommendation of summary disbarment is justified. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[2]**

In considering whether to recommend summary disbarment, the State Bar Court is generally limited to determining whether the statutory and case law criteria have been met on the face of the conviction papers, although undisputed additional facts may also be taken into account. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[3]**

Where respondent committed grand theft by embezzlement, the felony conviction papers demonstrated that an element of respondent's offense was the specific intent to deceive, defraud, steal, or make or suborn a false statement. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[5]**

Interim suspension is imposed on an attorney who commits a crime of moral turpitude or a felony, unless an exception is appropriate in the interest of justice, with due regard to maintaining the integrity of, and confidence in, the legal profession. Whether interim suspension is warranted prior to a hearing on the merits of a felony conviction depends, among other things, on the nature of the crime, its relationship to the practice of law, the undisputed surrounding factual circumstances, and the likely range of final discipline. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[5]**

Where a felony could have been charged as a misdemeanor, the reduction of the felony conviction to a misdemeanor in postconviction proceedings does not affect the characterization of the crime as a felony for the purpose of interim suspension, but it may be taken into account in determining whether good cause exists for vacating an interim suspension order. If the reduction were ignored, arbitrary results might follow based on the discretionary charging practices of different prosecutors. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[8]**

It was appropriate for both the hearing judge and the review department to take judicial notice of the status, at the time of their respective decisions, of a separate pending disciplinary matter involving the same respondent. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[5]**

Where a hearing judge's decision in one matter indicated that if the respondent filed a post-decision declaration in that matter, this would be taken into account in assessing discipline in a second pending matter, the examiner's objections on review to this aspect of the decision were rendered moot by the respondent's failure to file any such declaration, by the State Bar's apparent satisfaction with the result in the second matter, and by the review department's recommendation of disbarment in the first matter based on other grounds. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[6]**

Transcript of superior court trial regarding probate matter which was subject of disciplinary proceeding was admissible pursuant to Bus. & Prof. Code, § 6049.2, and hearing judge did not err in admitting entire transcript, even though much of testimony was not relevant to disciplinary proceeding, where transcript was admitted subject to respondent's motion to strike parts that were not material or relevant, and respondent failed to make such motion. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[10]**

While respondent's motive in appealing superior court's reduction of his fees as attorney and executor of estate might have been suspect, where there was no clear and convincing evidence that such appeal was in bad faith or was otherwise improper, review department declined to consider respondent's appeal as an aggravating factor in light of the important policies favoring unfettered access to the courts. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[15]**

Where civil malpractice action against respondent involved essentially identical factual issues to those in discipline proceeding, nontestimonial exhibits consisting of documents relating to judgment in such civil proceeding, including unpublished appellate opinion explaining reasons for decision of civil courts, were admissible evidence in disciplinary proceeding. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[4]**

Because the preponderance of the evidence standard of proof in a civil malpractice trial is lower than the clear and convincing evidence standard of proof in a disciplinary proceeding, the conclusions reached by civil courts in a malpractice action against respondent are not dispositive of disciplinary charges. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[6]**

Where decisions by the former State Bar Court concerning a petitioner's prior reinstatement petition helped illuminate the petitioner's subsequent progress toward rehabilitation, the review department took judicial notice of such decisions pursuant to Evidence Code section 452(d). *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[3]**

Where respondent's knowledge of welfare fraud perpetrated by his wife was conclusively established by his guilty plea to a crime of which fraud was an essential element, the State Bar did not need affirmative evidence beyond the conviction itself to prove respondent's participation in the fraud. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[3]**

In 1990, the majority of the California Supreme Court expressly declined to determine whether a nexus between criminal conduct and the practice of law is required in order to impose professional discipline based on a criminal conviction. The Court unanimously agreed, however, that it would be unreasonable to hold attorneys to such a high standard of conduct that every violation of law, however minor, would constitute a ground for professional discipline. Thus, the integrity of the profession does not require professional discipline in addition to criminal sanctions for every violation of law by an attorney. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[2]**

Taking judicial notice of court records does not mean noticing the existence of facts asserted in the documents in the court file; a court cannot take judicial notice of the truth of hearsay just because it is part of a court record. Notice may be taken of another court's findings of fact and conclusions of law in support of a judgment, but not of hearsay allegations, even those of a judge-declarant. Accordingly, hearing judge erred in taking judicial notice of truth of testimony by respondent's criminal probation officer in criminal probation revocation proceeding. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[9]**

Where superior court appellate department had reversed decision revoking respondent's criminal probation due to municipal court's refusal to permit respondent's counsel to cross-examine prosecution's witness, transcript of municipal court proceeding could not have been considered as evidence pursuant to Business and Professions Code section 6049.2. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[11]**

Where complaining witness testified credibly that an attorney-client relationship existed between himself and respondent, respondent himself had filed pleadings in civil litigation acknowledging such relationship, and respondent's counsel conceded that respondent had held himself out as complaining witness's attorney, respondent's argument in disciplinary proceeding that complaining witness was not his client was without merit. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[2]**

Findings in aggravation of harm to client and indifference to rectification of misconduct, based on delay in restitution of funds, could not be supported where there was no clear and convincing evidence that respondent had originally acted improperly in applying such funds to respondent's fees based on good faith belief that client had authorized such payment. Client's small claims court judgment against respondent did not operate as res judicata on issue of obligation to make restitution. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[21]**

Record of respondent's criminal conviction, which had been judicially noticed by hearing department, was admitted into evidence by review department in order to make it part of record in disciplinary proceeding for Supreme Court review, but was considered solely for purpose of establishing criminal complaint, charges, plea, and conviction. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[2]**

It is appropriate for disciplinary purposes to consider any criminal charges that were dismissed as well as the charges for which the attorney was actually convicted. Thus, where the criminal complaint in a Vehicle Code violation matter charged respondent with being under the influence of phencyclidine, and clear and convincing evidence was presented establishing that respondent was under the influence of phencyclidine, that circumstance could be considered in the disciplinary proceeding even though respondent was not convicted of being under the influence of phencyclidine. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[7]**

An attorney's interim suspension following a criminal conviction is not affected by the expungement of the conviction. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[1]**

Because a suspended attorney is unqualified to sit as a judicial arbitrator, any decisions the attorney renders as an arbitrator could be open to attack as void. Thus, respondent's misconduct in failing to disclose his suspended status when applying for an arbitrator position was of most serious concern because of its potential for harm to public confidence in the court system. Respondent's very service as an unqualified arbitrator harmed the administration of justice. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[5]**

In reviewing the record of an attorney's criminal conviction resulting from a guilty plea, for the purpose of determining the propriety of summary disbarment, the court does not take into account language in the information unnecessary to the crime to which the attorney pled guilty, but may consider additional undisputed facts based on the record. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[2]**

Where the Supreme Court's order referring a conviction matter to the State Bar required the State Bar Court to determine whether the conviction involved misconduct warranting discipline, the order demonstrated that the attorney's conviction alone did not establish that the attorney was culpable of professional misconduct. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[2]**

A nexus between an attorney's criminal misconduct and the practice of law might have been established if the State Bar had proven that the attorney's present criminal conduct had violated the terms of the attorney's previously imposed criminal probation. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[8]**

Based on surrounding circumstances and on subsequent federal appellate decisions holding that conduct for which respondent was convicted is not a crime, referee properly determined that respondent's convictions for violating federal currency transaction reporting laws did not involve moral turpitude or other conduct warranting discipline. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[2]**

Where Supreme Court directed State Bar Court only to hear evidence on appropriate level of discipline, hearing referee correctly ruled that Supreme Court had already established nature of respondent's criminal offense as one inherently involving moral turpitude, and Supreme Court's classification of offense of harboring a fugitive as one involving moral turpitude per se was final and binding on the State Bar Court. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[5]**

The whereabouts of a fugitive client known to an attorney constituted privileged communications which the attorney cannot disclose. (Bus. & Prof. Code, § 6068 (e); ABA Model Rules, rule 1.6.) The attorney must advise the client to surrender and must not assist or facilitate the fugitive in avoiding capture or committing a crime. Thus, respondent's knowledge that his fugitive client was in California and his meetings with the client to discuss the progress of negotiations with the authorities regarding the outstanding criminal charges were client confidences which respondent was obligated to preserve. However, an attorney's ethical duty not to disclose client confidences does not extend to affirmative acts which further a client's unlawful conduct, and respondent's guilty plea constituted conclusive proof that he committed all the acts necessary to commit the charged offense of harboring his fugitive client with the intent of preventing the client's discovery and arrest by federal authorities. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[11]**

It is generally presumed that the arbitrators heard and decided all disputed issues in an arbitration. Where issue regarding costs was raised in an attorney's fees arbitration, and the arbitration award showed on its face that it covered costs as well as fees, and neither party contested the arbitrators' jurisdiction to consider issues of costs, issue of whether costs had been reimbursed should not have had to be relitigated in subsequent State Bar disciplinary proceeding. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[12]**

The doctrine of res judicata seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration. Mistakes of fact or law do not affect the conclusive nature of an arbitration award against collateral attack. If the contending parties had a full and fair opportunity to litigate, there must be compelling reasons to sustain a plea for a second chance. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[13]**

Although an arbitrator's testimony is admissible on the question of what issues were tried in the arbitration, the arbitrator's expression of his own belief does not bind the State Bar Court in adjudicating the effect of the arbitration award. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[14]**

Requests to augment the record at the review department level will be granted only if the original record is incomplete or incorrect. (Rule 1304, Provisional Rules of Practice.) Out-of-court evidence offered at the appellate level is ordinarily hearsay, and impossible to evaluate because of the absence of cross-examination to test the credibility of the declarant. The rule is to rely only on evidence which was presented to the trier of fact. The only general exception is to permit documentary evidence of subsequent rehabilitation when it is the only means to meet the heavy burden of demonstrating recovery from substance abuse or mental disorder. Where proffered additional evidence was derived from the record in another proceeding involving respondent, and was not offered to correct any omission in the record, the review department declined to grant respondent's motion to augment the record. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[2]**

Disciplinary proceedings and involuntary inactive enrollment proceedings are not related so as to require consolidation, and may be conducted on simultaneous, parallel tracks. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[3]**

In reviewing hearing department decision in disciplinary proceeding, review department took judicial notice that in separate involuntary inactive enrollment proceeding, respondent had been found to have rebutted the presumption, arising from hearing department's disbarment recommendation, that respondent's conduct posed a continuing threat of harm to clients and the public. However, the findings in the involuntary inactive enrollment proceeding were not binding in the disciplinary matter, nor did they have any probative value. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[4]**

Where respondent did not agree in writing that statutory attorney-client fee arbitration would be binding, arbitration award was not binding even though it recited that it was. However, the award became binding when respondent failed to seek a post-arbitration trial within the statutory time limit. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[3]**

The State Bar Court, as an arm of the Supreme Court in attorney disciplinary matters, does not sit as a collection board for clients aggrieved over fee matters, nor is its jurisdiction derivative of fee arbitration proceedings. The administration of attorney discipline, including such remedial orders as restitution, is independent of any remedy that an aggrieved client may pursue. In a disciplinary proceeding to protect the public, the alleged flaws in a fee arbitration proceeding and resulting judgment have little relevance. Accordingly, the State Bar Court has jurisdiction over a disciplinary matter even though there has already been a factually related fee arbitration. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[4]**

A finding of failure to return the unearned portion of an advanced fee upon termination of employment was legally independent of the validity of a related fee arbitration award. Where respondent took an advance fee, failed to complete the work, was discharged by the client, agreed to return the unearned portion of the fee, and then failed to do so, respondent was culpable of misconduct notwithstanding alleged defects in a subsequent fee arbitration proceeding. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[5]**

Where restitution was appropriate, but record reflected that client might have filed Client Security Fund claim, review department recommended that respondent be ordered to pay restitution either to client, or to Client Security Fund if client's claim had been paid. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[32]**

An attorney may be found culpable of professional misconduct, based on charges of failing to obey state law by failing to file tax returns, even if the attorney has not been convicted of a crime based on that conduct. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[4]**

One distinction between an interim suspension order and a final order of discipline is the type of record before the court. At the interim suspension stage, the court has the criminal conviction and a statutory mandate to order interim suspension absent a showing of good cause. The petitioner has the burden of showing good cause to set aside an order of interim suspension, and no evidentiary hearing has occurred to test alleged mitigating factors. Thus, contested facts cannot be relied upon as a basis for vacating the order of interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[4]**

While the leniency of an attorney's criminal sentence might be relevant in assessing final discipline, punishment by the criminal court serves a fundamentally different purpose than the provisions of the State Bar

Act, and leniency of the criminal sentence therefore is not relevant to the determination whether there is good cause to vacate the attorney's interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[6]**

The commercial or distribution aspect of respondent's crime was conclusively established by his conviction of possession of marijuana for sale. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[4]**

Respondent's conviction for exhibiting a replica of a firearm in a threatening manner to cause reasonable fear or apprehension of harm conclusively established that respondent's acts were done in a threatening manner so as to cause a reasonable person apprehension or fear of bodily harm. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[7]**

Although attorney disciplinary proceedings are sui generis and not criminal in nature, rules of criminal law may provide guidance in appropriate circumstances; case law and statutes in criminal law indicate that lack of wilfulness constitutes a reason not to revoke probation. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[7]**

Where a municipal court order finding an appeal frivolous and awarding sanctions did not explain the basis for such finding or the statutory basis for awarding sanctions, and no additional evidence was introduced to establish that the appeal was substantively without merit, the record did not clearly and convincingly establish for disciplinary purposes that the appeal was frivolous or pursued in bad faith. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[7]**

Civil verdicts and judgments have no disciplinary significance apart from the underlying facts. While civil findings bear a strong presumption of validity if supported by substantial evidence, the disciplinary court must assess them independently under the more stringent standard of proof applicable to disciplinary proceedings. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[8]**

The mere fact that an attorney has been held in contempt of court is not grounds for discipline. The State Bar must establish that the contempt resulted from bad faith noncompliance with a court order, or that the underlying facts present other independent grounds for discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[4]**

In proceedings on petition for reinstatement, the review department, with the concurrence of the parties, could take judicial notice of State Bar Court decisions on earlier unsuccessful reinstatement petition. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[1]**

Although prior civil court actions are not binding in disciplinary matters, they are admissible when they address issues substantially identical to those raised in the disciplinary hearing. Civil court decisions that are supported by substantial evidence are accorded a strong presumption of validity, and individual facts established by such civil court decisions may serve as a conclusive legal determination as to particular facts determined by the civil courts. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[5]**

Where court in civil action related to disciplinary proceeding had concluded (applying preponderance of evidence standard) that there was substantial evidence that purported transfer of partnership interest to respondent was fraudulent, and it was undisputed that respondent had prepared partnership transfer document, referee's conclusion in disciplinary proceeding that there was no evidence that respondent actively participated in fraud in preparation of document could only be consistent with civil court finding if referee's conclusion was based on difference in applicable standard of proof, in that culpability in disciplinary cases must be proven by clear and convincing evidence. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[7]**

At respondent's request, in a conviction proceeding, the review department took judicial notice of the record in a disciplinary case involving another attorney who was respondent's co-defendant in the underlying criminal matter. The discipline imposed on the co-defendant was considered in determining the appropriate discipline for respondent. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[2]**

In a reinstatement proceeding, records of prior discipline, including the proceeding in which the petitioner was disbarred, are admissible, because the evidence of the petitioner's present character must be considered in light

of the moral shortcomings which resulted in the prior discipline. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[1]**

Court of appeal opinion regarding respondent's criminal appeal could be cited in related disciplinary proceeding, notwithstanding Supreme Court's depublication order, under Cal. Rules of Court, rule 977(b)(2). *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[1]**

In determining whether nature of attorney's crimes warranted summary disbarment, review department gave great weight to decision of court of appeal issued on direct appeal from respondent's criminal conviction. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[7]**

Court of appeal opinion on direct appeal from attorney's criminal conviction is conclusive with respect to attorney's guilt of underlying crime, but for discipline purposes, State Bar Court must independently determine, through careful review of criminal record, whether clients were victims of misconduct or misconduct was committed in attorney's capacity as attorney. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[8]**

The State Bar Office of Trial Counsel was bound by the ruling of the Supreme Court in a matter in which its counsel, the State Bar Office of General Counsel, did not request a rehearing before the Supreme Court. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[3]**

192 Constitutional Issues - Due Process/Procedural Rights

Where State Bar conceded at trial that respondent's conviction did not involve moral turpitude, but argued on review that conviction did involve moral turpitude, State Bar's unexplained change of position was troubling, because it denied respondent opportunity to develop trial record on the issue. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283. **[2 a,b]**

Respondent's discovery rights under the revised Rules of Procedure of the State Bar, which are based on similar discovery provisions in the California Administrative Procedure Act, satisfy fair trial concerns. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[4]**

Respondent's discovery rights under the revised Rules of Procedure of the State Bar, which are based on similar discovery provisions in the California Administrative Procedure Act, satisfy fair trial concerns. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[1]**

In conviction referral proceeding, ample due process protections were afforded to respondent where the State Bar served him via certified mail with a copy of the conviction referral order along with written notice that informed him of the specific conviction that was subject to the referral and of the specific issues to be decided at the hearing, warned him of the specific consequences of failure to timely reply, and directed him to attend the hearing to present evidence on his behalf and to examine and cross-examine witnesses. Further, the motion for entry of default, also served by certified mail, again warned respondent of the consequences of his failure to participate and notified him of the minimum level of discipline the State Bar would recommend if the hearing judge found culpability. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[2]**

Trial judge did not prejudicially err in exercising discretion to excuse witness where respondent failed to either request that the witness be recalled or to make an offer of proof as to the testimony respondent expected to elicit from the witness. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[1]**

Where respondent neither identified an exhibit for the record nor made an offer of proof demonstrating what the exhibit would have established, respondent failed to perfect his right to claim on appeal the that hearing judge improperly excluded the exhibit from evidence. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[2]**

Ordinarily in disciplinary proceedings culpability must be established by convincing proof and to a reasonable certainty. However, this standard does not apply where otherwise provided by law. Therefore in finding a violation of rule 1–300, proof beyond a reasonable doubt is constitutionally required because the applicable South Carolina statute regulating the profession makes the unauthorized practice of law a crime. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[8]**

Respondent's Sixth Amendment claim to a jury trial does not attach to disciplinary proceedings in California because such proceedings are not governed by the rules of procedure governing criminal litigation. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[9]**

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

The review department declined to consider applicant's argument that the Supreme Court's order in his previous disciplinary matter, filed in 1998, was void on its face because of numerous constitutional infirmities. The review department simply does not have the authority to set aside the Supreme Court's order. Once the record in applicant's previous disciplinary cases was transmitted to the Supreme Court, the review department no longer retained jurisdiction over the matter. Accordingly, the review department declined to consider applicant's collateral attack on his prior discipline.*In the Matter of Applicant B* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 731.**[1]**

After the hearing judge gave respondent the express opportunity to present his evidence, respondent's unpersuasive reasons for failing to do so could not be the basis of any claim of error on review.*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.**[2]**

In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.

Respondent's testimony and arguments regarding his customary practices (1) to limit the scope of his representation of clients referred to him by nonattorney immigration services providers to that of an "appearance attorney," which respondent asserts is an attorney who appears in his clients' immigration cases only for the limited purpose of making court appearances, and (2) to rely on or permit referring nonattorney immigration services providers to prepare and file immigration applications, pleadings, and other documents for his clients placed respondent's practices in issue so that any uncharged improprieties in them may appropriately be considered as aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[4 a-c]**

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

Respondent's arguments and testimony that almost all hearing judge's findings of misconduct are erroneous because they are based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients placed respondent's methods of practicing law in issue so that any uncharged impropriety in them may appropriately be considered as aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[9 a, b]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do

too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

In view of the review department's duty to independently review the record and make findings of fact and conclusions of law, any alleged denial of due process by the hearing judge's failure to clearly identify respondent's misconduct in the hearing judge's decision was remedied by the review department's issuance of an opinion that superseded the hearing judge's decision. Therefore, respondent's due process contention was rendered moot and was not addressed on the merits.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[2]**

Where respondent asserted for the first time at oral argument that Business and Professions Code section 6049.1 was being unconstitutionally applied because a Michigan disciplinary action required only a preponderance of the evidence for a finding of culpability and that California reliance on that lower standard deprived him of due process and equal protection of the law, respondent's failure to have raised the issue before the hearing department or in his briefs on review constituted a waiver of the issue. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349.**[2]**

Absent a motion by the State Bar to amend the notice of disciplinary charges in a way that would have given respondent a sufficient opportunity to defend, the hearing judge should have sustained respondent's objection to evidence of uncharged misconduct on the ground that it was beyond the scope of the charge set forth in the notice of disciplinary charges. In view of respondent's timely and specific objection, the review department declined to adopt the finding of uncharged misconduct as an aggravating circumstance. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[16]**

Respondent's argument that the State Bar should be estopped from raising the timeliness of his motion to modify the probation was rejected. It is not at all clear that estoppel is applicable in this disciplinary proceeding. Estoppel will not ordinarily lie against a governmental agency if the result will be the frustration of a strong public policy. The goals of attorney discipline - protection of the public, courts and legal profession - are strong public policy considerations that militate against applying the doctrine. Even if estoppel were applicable, respondent failed to demonstrate a factual basis for the claim as he failed to show that the State Bar's actions were intended to be acted upon by him to his injury and that he was ignorant of the true state of facts. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.**[2]**

Considerations of due process and fundamental fairness require, under the circumstances presented in this case, an examination of both respondent's ability to pay the restitution and his efforts at acquiring the resources to pay. Respondent presented evidence of his income, but not of his assets and expenses. While respondent's income was not significant during the relevant period of time, it was not conclusive or persuasive when considered outside the context of total assets and expenses. The evidence presented regarding respondent's efforts at

acquiring the resources to pay the restitution was also lacking. Based on the above, the review department concluded that no circumstances were presented showing that it would be fundamentally unfair to revoke respondent's probation in this case. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[4]**

Respondent's contention that revoking his probation was a violation of due process and equal protection, and was discriminatory based upon financial status was rejected. The premise upon which it was based, that respondent's probation was being revoked because of his financial condition, was flawed. The revocation was based on his wilful failure to pay the restitution coupled with his failure to make reasonable efforts to acquire the resources to pay or to make other good faith efforts to satisfy the restitution obligation. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[5]**

Even though State Bar erroneously amended the charges to "conform to proof" by deleting the charge that respondent violated the revised (i.e., "current") version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110 as amended eff. Sept. 14, 1992) and replacing it with a charge that respondent violated the "former" version of that rule instead of correctly amending the charges by adding, to the charged violation of the "current" rule, a charge that respondent also violated the "former" rule, no due process violation occurred when review department held that respondent was culpable of violating both the "former" rule and the "current" rule because (1) the text of both rules was virtually identical, (2) respondent did not argue lack of notice, and (3) the trial in hearing department covered respondent's conduct during the time period in which the "former" rule was in effect and after the effective date of the "current" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[3]**

Rule of Procedure requiring hearing judges to file decisions within 90 days after taking cases under submission is neither mandatory nor jurisdictional. Thus, respondent's contention that the hearing judge's decision was void because it was filed four days after the expiration of the ninety-day time limit was rejected. Furthermore, because respondent failed to establish that he suffered any actual harm or prejudice, he was not entitled to any relief for the hearing judge's failure to file his decision timely. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[8]**

Collateral estoppel may be applied in the State Bar Court to deny an attorney the right to relitigate an issue that was litigated and resolved against him or her in a prior civil proceeding only if (1) the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, (2) the civil finding was made under the same burden of proof applicable to the same issue in the State Bar Court, (3) the attorney was a party to civil proceeding, (4) there is final judgment on the merits in the civil proceeding, (5) the attorney fails to demonstrate any unfairness in precluding the relitigation of the issue, and (6) the civil finding was necessary to the judgment in the civil proceeding. The requirement that the civil finding be necessary to the judgment in the civil proceeding is required by procedural fairness to insure that preclusive effect is not given to nonessential prior findings. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[2 a, b]**

The fact that a portion of a hearing judge's salary might be paid from part of the costs that the State Bar recovers from disciplined attorneys does not create a condition disqualifying the judge because the amount of costs actually recovered are relatively nominal to the State Bar's Budget. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[10]**

Since over a year of respondent's Michigan misconduct was committed after the 1986 effective date of Business and Professions Code section 6049.1, that statute was not retroactively applied to respondent. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[3]**

Retroactive law is one that affects rights, obligations, acts, transactions, or conditions performed or existing before adoption of law. Even though respondent's criminal convictions occurred after January 1, 1997, effective date of present version of the summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)), respondent committed criminal acts underlying those convictions before January 1, 1997, effective date. Thus, respondent's summary disbarment under present version of statute would be improper retroactive application of statute because, but for amendments to statute effective January 1, 1997, respondent would not be subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51. **[2 a-c]**

In two situations, applying statute to acts before statute's effective date are not retroactive application of statute: when statute merely clarifies, rather than substantially changes law; and when statute changes trial procedure, but does not change legal consequences of parties' past conduct. Amendments effective January 1, 1997, to summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)) are not clarifying or procedural because they significantly broadened scope of crimes for which attorneys are subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.51.**[3 a-c]**

When respondent's refusal to provide names of any witnesses or identify any exhibits as required by Rules of Practice regarding pretrial statements and exchange of exhibits was based on respondent's dissatisfaction over hearing judge's pretrial order, hearing judge did not abuse discretion in sanctioning respondent for not complying with Rules of Practice by precluding respondent from presenting any evidence at trial. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[6 a-g]**

Neither due process nor former Transitional Rules of Procedure, rules 508 and 509 required State Bar to give respondent exhaustive list of each complaint against her before filing notice of disciplinary charges. Former rules 508 and 509 merely gave respondent right to deny or explain her actions to State Bar and inquire of State Bar concerning the charges against her. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[7 a-h]**

It is not evident whether defense of selective prosecution is applicable in State Bar disciplinary proceedings. Even if such defense were available, respondent would have been required to show an intentional violation of essential principle of practical uniformity and an element of intentional or purposeful discrimination. That is respondent would have been required to demonstrate that she had been deliberately singled out for prosecution on basis of some invidious criterion. There is no evidence in record on any of these issues. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[14 a-c]**

Cases which hold that constitutional due process rights would be violated if a father delinquent in child support were held in a later criminal contempt proceeding to a statutory presumption of ability to pay the support order, in the face of the prosecutor's burden to prove criminal contempt beyond a reasonable doubt, are distinguishable as State Bar proceedings have long been defined by our Supreme Court as unique, and not as criminal proceedings. Moreover, even if respondent lacked the ability to pay, respondent would not be disciplined for failing to pay the sanction, but for failing to pay the sanction without first attempting to be relieved of the order in whole or in part in the superior court or Court of Appeal on the basis of ability to pay. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.**[7]**

An attorney's reliance on the former law is a factor to consider in determining the constitutional question of whether the retroactive application of the statute would deny due process. However, if, as a matter of statutory construction, the provision is prospective, no constitutional question is presented. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[5]**

The fact that respondent may be placed in "indefinite limbo" if specified charges are dismissed in the furtherance of justice without prejudice is not sufficient cause to require that the charges be dismissed with prejudice. His remedy in any subsequent proceeding would be a due process argument for relief caused by unreasonable delay based upon a sufficient showing of specific prejudice resulting therefrom. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[3]**

In its opinion remanding a petition for reinstatement for further proceeding not inconsistent with the opinion, the review department held, on the record then before it, that the petitioner had demonstrated his moral reform from the acts which lead him to resign from the Bar with disciplinary charges pending. Accordingly, under law of the case, it would be improper for hearing department to reconsider petitioner's moral reform on remand in the absence of additional evidence. As to events that predated the petition, and were disclosed on the petition, it is clear that reopening would be impermissible. The same would be true of events about which the State Bar had a reasonable opportunity to investigate and present at a hearing. However, one of the underlying purpose of reinstatement proceedings is to insure that only persons of present good moral character are reinstated to the practice of law in this state. Accordingly, with the exceptions noted, the State Bar Court may consider any act or conduct that is relevant to a petitioner's moral character regardless of when or where the act or conduct occurred. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[1]**

The rule is well settled in California that a void order cannot be the basis for a valid contempt judgment. A person affected by an injunctive order may challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by (1) complying with the order while seeking a judicial determination as to its jurisdictional validity or (2) disobeying it and then raising the jurisdictional challenge if and when he is sought to be punished for his disobedience. If a person affected by an injunctive order chooses to challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by disobeying it and then raising the jurisdictional challenge as a defense against any contempt charges brought against him, his violation of the order constitutes no punishable wrong if it is ultimately determined that the order was issued without or in excess of jurisdiction. However, the contempt order here was final and there was no valid reason to go behind a now-final order. The State Bar Court properly defers to the judgements of the courts of record that rendered contempt judgements against respondent and that considered respondent's subsequent appeals, requests for reconsideration, and certiorari. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[2]**

Based on the determination that the provisions of the State Bar Act and the Rules of Procedure of the State Bar concerning investigative subpoenas for trust account records meet the standard as enunciated by the Supreme Court in a prior case, the review department concluded that there was no need to import either the provisions of Code of Civil Procedure section 1985 et seq., or the provisions of Government Code section 7470 et seq., for either due process or other reasons into the procedures for the issuance of State Bar investigative subpoenas. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[4]**

In California, as in all the states, the regulation of the practice of law is a judicial function. The California Supreme Court has original, inherent, and plenary jurisdiction to regulate attorneys in California. The State Bar provides assistance in the area of attorney regulation; it serves as an administrative assistant to or adjunct of the Supreme Court, which nonetheless retains its inherent judicial authority. Thus, contrary to respondent's suggestions, the State Bar Court possesses the jurisdiction to adjudicate attorney disciplinary proceedings as an arm of the Supreme Court. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[1]**

One to whose conduct a statute clearly applies may not successfully challenge it for vagueness. Accordingly, respondent could not successfully challenge section 6106 of the Business and Professions Code as unconstitutionally vague where he had deliberately misinformed a client about the receipt of a settlement check, misappropriated funds from four clients, and practiced law and held himself out as entitled to practice law when he knew he was suspended. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[3]**

Respondent's argument that a new trial was necessary because the notices to show cause did not pair facts with each alleged ethical violation was rejected. Even though the Supreme Court has repeatedly criticized this practice, a defective notice entitles an attorney to relief only if the attorney shows that specific prejudice resulted from the defect. Respondent made no such showing. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[4]**

Respondent's suggestion that alleged ineffective assistance of his counsel necessitates a new trial was rejected. A disciplinary proceeding is administrative in nature, not governed by the rules of criminal procedure. Although an attorney in a disciplinary hearing must have a fair hearing, the attorney has no constitutional right to counsel or effective assistance from counsel. Any mistakes of respondent's counsel thus did not warrant retrial. Nor did the record establish that respondent received an unfair hearing. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[5]**

Respondent's claim that the application of the Civil Discovery Act to attorney disciplinary proceedings denied him due process was rejected. State Bar disciplinary proceedings are administrative but of a nature of their own. It has been repeatedly held that they are not governed by the rules of procedure governing civil or criminal litigation although such rules have been invoked when necessary to insure administrative due process. The Supreme Court observed that the Rules of Procedure of the State Bar supply a wide array of procedural safeguards and that pursuant to these rules, the Civil Discovery Act, as adopted and limited by the Rules of Procedure of the State Bar, constitutes the rules of discovery in State Bar disciplinary proceedings. Under Supreme Court case law, such application is constitutional. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[6]**

Respondent waived any due process violation resulting from the State Bar's failure to notify him in the notice of hearing that the cancellation of his license to practice law would be an issue at the trial where he did not allege in his appellant's brief, with supporting references to the record, that he presented his lack of notice objection to, and obtained a ruling on it from, the hearing judge. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[8]**

Neither the law nor the facts supported respondent's contention that by denying two continuance requests during the six days of trial, the hearing judge deprived him of a reasonable opportunity to be represented by counsel. An attorney in a disciplinary hearing has no constitutional right to the assistance of counsel. Further, continuances of State Bar Court hearings are disfavored. (State Bar Court Rules of Practice, rule 1131.) To prevail on a procedural argument in a disciplinary matter, an attorney must show both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged procedural error. Respondent proved neither where respondent's counsel set a murder trial for the day before the scheduled start of the disciplinary hearings and failed to provide timely information about this conflict to the State Bar Court, where respondent failed to show that his counsel could not have anticipated or avoided the conflict, and where respondent failed to show that the only proper means of handling the conflict was to grant a continuance. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[1]**

No merit was found to respondent's claim that California's disciplinary process violates due process because of the alleged financial interest of State Bar Court judges and State Bar staff in the outcome of disciplinary proceedings and in the collection of disciplinary costs. California provides attorneys subject to discipline with more than constitutionally sufficient procedural due process. The Supreme Court has inherent and plenary authority to regulate and discipline attorneys, and the State Bar serves as its administrative arm to assist with these matters. The Supreme Court appoints the judges of the State Bar Court, and the Legislature sets their salaries comparable to judges of courts of record. The State Bar Court judges are subject to discipline on the same grounds as a judge of any other state court. The annual membership fees of attorneys who belong to the State Bar, not the costs assessed upon the imposition of discipline, pay the salaries of the State Bar Court judges and State Bar staff. Thus, personal financial interest does not dictate the outcome of disciplinary proceedings or the imposition of disciplinary costs. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[3]**

Although the burden of proof in State Bar proceedings is generally clear and convincing evidence, there is no State Bar rule that specifically sets forth the State Bar's burden of proof on rebuttal in moral character proceedings. An applicant's claim for admission to the practice of law in this state is not a mere privilege, but a claim of right that is afforded the protection of due process. Even though there are distinctions between admission proceedings and disciplinary proceedings, the question involved in both disciplinary and admissions proceedings is the same—is the applicant for admission or the attorney sought to be disciplined a fit and proper person to be permitted to practice law. The test for admission and for discipline is and should be the same. Accordingly, except as otherwise provided by law, the State Bar's burden of proof in adducing evidence of bad moral character on rebuttal of an applicant's prima facie showing is by clear and convincing evidence. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[8]**

It is not clear that selective prosecution may be raised as defense in State Bar disciplinary proceedings. Even if such defense were available, it cannot be premised on asserted discrimination due to notoriety rather than on constitutionally prohibited basis such as race, gender, or exercise of constitutional rights. In absence of allegation of prohibited basis for prosecution, State Bar's failure to prove all charges was not sufficient to show invidiously discriminatory prosecution. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[16]**

A party may not recall a witness who has been excused from giving further testimony without leave of court, which may be granted or withheld in the court's discretion. Hearing judge did not deny due process to respondent by denying respondent's motion to recall State Bar witness who had been excused from giving further testimony. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[6]**

Where State Bar witness had not been excused from giving further testimony, hearing judge erred in not permitting respondent to recall such witness for questioning about document respondent did not possess at time witness first testified. However, where such additional testimony was relevant only to refute factual contention later abandoned by State Bar, hearing judge's error did not result in prejudice to respondent. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[7]**

A statute raising constitutional questions must be construed in a manner that avoids any doubt as to its validity. Because there is no provision for challenging a disciplinary cost award prior to the issuance of the Supreme Court's disciplinary order, due process concerns would be implicated if the costs statute were interpreted to mean that a State Bar member receiving an actual disciplinary suspension must pay the associated costs prior to being entitled to resume practice at the conclusion of the disciplinary suspension. *In the Matter of Langfus* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161. **[2]**

It is not clear that selective prosecution may be raised as defense in State Bar disciplinary proceedings, in which respondents do not enjoy full panoply of procedural protection afforded to criminal defendants. If such defense were available, burden of proof to establish selective prosecution would be on respondent. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[10]**

Former disciplinary structure under which local administrative committees had both investigative and fact-finding powers raised due process concerns. Under volunteer State Bar Court system which superseded it, investigative and prosecutorial functions were separated from fact-finding and adjudicative functions. This separation was strengthened and institutionalized by reforms which created independently appointed State Bar Court. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[5]**

When a disciplinary proceeding is pending in State Bar Court, the respondent may be able to argue that evidence sought to be used by the State Bar which was obtained by improper means should be excluded. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[9]**

Where hearing judge's oral comments at close of case regarding appropriate discipline deviated from the recommendation made in judge's written decision, but hearing overall was fair and respondent's counsel had opportunity to present argument regarding degree of discipline, hearing judge's written decision controlled, and respondent was not denied due process. Respondent could not, as a matter of law, rely on hearing judge's oral or written discipline recommendation since it was not binding on review department or Supreme Court. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[10]**

An attorney is charged with knowledge that the legal consequences of the attorney's conviction include summary disbarment when statutory authority provides therefor. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[1]**

An attorney convicted of a felony is chargeable with notice that the crime remains a felony for State Bar discipline purposes irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of post-conviction proceedings. Under some circumstances, prosecutorial discretion in originally charging a particular crime as a felony rather than a misdemeanor may raise questions as to the propriety of summary disbarment, but no such issue was presented where there was no evidence of abuse of discretion or other unfairness in charging forgery of a court document as a felony. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[3]**

Where respondent contended that he had only pleaded guilty in order to avoid two separate trials, and that he had not intended to commit a crime, due process did not entitle him to a hearing before the State Bar Court to prove these contentions, because he would be precluded from presenting evidence thereof by the statute providing that proof of an attorney's conviction of a felony or misdemeanor involving moral turpitude is conclusive evidence of the attorney's guilt of the elements of the crime in any proceeding to suspend or disbar the attorney. This conclusive presumption precludes collateral attack on the conviction by attorneys who seek to reassert their innocence in subsequent State Bar proceedings. In this regard, a conviction following a guilty plea is just as conclusive as a conviction following a full criminal trial. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[5]**

Where notice to show cause charging client solicitation did not identify clients allegedly solicited, but did name persons who were alleged to have performed such solicitations and fixed the period of charged misconduct, and where respondents were informed of identities of allegedly solicited clients well before most pre-trial discovery was completed, and at least six months before trial, respondents' motion to dismiss notice to show cause based on alleged vagueness, which was not made until first day of trial, was properly denied. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[1]**

Where respondents' non-lawyer agents solicited a client who, unknown to them, was a State Bar attorney, and invited that attorney to respondents' office, that attorney did not improperly search respondents' law office by reading papers spread out on table in front of him by respondents' staff, without touching papers or opening any cabinets, drawers, or files. Such conduct would not have been improper if committed by a police agency in collecting evidence in a criminal case. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[5]**

A notice to show cause in a disciplinary proceeding meets the requirements of due process when it specifies the conduct at issue and the rule charged. Where a notice to show cause named the clients involved in each count, identified them as driver and passenger, averred that respondent agreed to represent each in a personal injury case without advising them of their potential conflict and obtaining their written consent, and cited the rule regarding representation of adverse interests, respondent was given adequate notice of the charge against him. Given the specificity of the factual allegations, adequate notice was given even in a count which did not specify the subsection of the rule being charged. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[5]**

An administrative determination by the Board of Legal Specialization regarding an application for certification must comport with due process, and review by the State Bar Court exists in part to test whether due process was afforded. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[5]**

No decision denying specialist certification is permissible unless the applicant for certification receives some meaningful opportunity to be heard in his or her own defense. Where an attorney in good standing applied for certification as a legal specialist 14 years after committing misconduct, 11 years after the resulting suspension order, and 8 years after the completion of the suspension, the Board of Legal Specialization was required to allow the attorney an opportunity to be heard on the attorney's current qualifications. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[8]**

By controlling specialist certification, the Board of Legal Specialization substantially affects not only the professional status of an attorney, but also an important economic interest which is worthy of due process protection. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[9]**

Where the Board of Legal Specialization summarily denied an application for legal specialist certification solely on the basis of applicant's prior serious discipline, without considering any evidence or permitting a hearing on applicant's recent conduct and present qualifications, the Board violated its own rules and applicant's common law right to fair procedure. The Board's indication that it might reconsider the denial at a later date, without any enumerated criteria as to when it would do so, underscored the arbitrariness of its position. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[10]**

California courts have long recognized a common law right to fair procedure protecting individuals from arbitrary exclusion or expulsion from private organizations which have the practical power to affect substantially an important economic interest. A basic and indispensable ingredient of the fair procedure required under the common law is that an individual who will be adversely affected by a decision be afforded some meaningful opportunity to be heard in the individual's defense. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[11]**

Within due process limits, the Board of Legal Specialization has broad discretion in certifying specialists. It may consider any competent evidence rebutting an applicant's showing and may weigh and balance evidence in an appropriate manner. An applicant's prior discipline for very serious misconduct is clearly evidence that should be considered in this process. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[12]**

In determining whether evidence of additional uncharged ethical misconduct should be admitted as aggravating evidence in the discipline phase of the hearing, the hearing judge must balance the desire for additional relevant evidence against the due process requirement of fair notice of all discipline charges. Where there was sufficient evidence in the record to warrant a recommendation of disbarment, it was unnecessary for the review department to resolve a claim that the hearing judge erred in failing to admit aggravating evidence of uncharged misconduct. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[18]**

The respondent in a disciplinary proceeding has a right to a fair hearing. The State Bar's interest in protecting the public and maintaining integrity and public confidence in the legal profession would not be served by disciplining an

attorney who is mentally incompetent to the degree that she or he cannot assist in a defense against disciplinary charges. Therefore, if an attorney is unable to assist in his or her own defense, due process requires that the disciplinary proceeding be abated. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[7]**

In addressing the constitutionality of imposing professional discipline for criminal conduct not involving moral turpitude, the State Bar Court must endeavor to interpret the "other misconduct warranting discipline" standard to render its application in the particular case constitutional. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[6]**

A due process challenge to a discipline proceeding based on vagueness is appropriate where the misconduct involved is not clearly within the scope of a disciplinary standard and the standard is so broad that people of common intelligence must necessarily guess at its meaning and differ as to its application. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[7]**

Where respondent clearly was on notice that drinking and driving could result in criminal penalties, and it was established law that any vehicular homicide or felony conviction resulting from drunk driving could result in professional discipline, respondent apparently had sufficient notice that criminal behavior of driving under the influence could, depending on circumstances, result in professional discipline. However, review department declined to decide notice issue where disciplinary proceeding was dismissed on another ground. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[8]**

Where notice to show cause could have been more clearly phrased with respect to duration of respondent's alleged misconduct, but hearing judge correctly concluded after colloquy at trial that it encompassed misconduct prior to as well as after a certain date, and where hearing judge prohibited introduction of evidence as to respondent's conduct prior to such date only after respondent had had ample time to present such evidence, and where respondent gave no offer of proof or explanation regarding any additional evidence on such issue, respondent's claims of denial of adequate notice of charges and fair opportunity to present evidence were without merit. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[8]**

State Bar disciplinary proceedings are unique—not criminal, civil or administrative. Nonetheless, the respondent is entitled to a guarantee of a fair hearing, one of the elements of which is the right to offer relevant and competent evidence on a material issue. Denial of such right is almost always reversible error. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[10]**

Where a certain set of facts was considered by the criminal court at the time of respondent's sentencing, and notice of such consideration was given to respondent at the time, there was sufficient notice to respondent prior to his disciplinary hearing of the relevance of such facts, and since respondent had an opportunity to present evidence on the issue at the disciplinary hearing, due process did not require remanding the case for submission of additional exculpatory evidence. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[4]**

Where record established that respondent had had opportunity to be heard by Supreme Court, prior to referral to State Bar Court, on question whether respondent's criminal offense involved moral turpitude per se, respondent was not denied due process by the Supreme Court's determination of that issue. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[6]**

Where the original notice to show cause alleged misappropriation, and the examiner amended the notice to charge respondent with commingling resulting from his bookkeeper's negligence, and there was no evidence that respondent's defense was thereby prejudiced, respondent had sufficient notice of the charges to satisfy his due process rights, because the duty to keep client funds safe is a personal obligation of the attorney and nondelegable, and the attorney was therefore on notice that he could be culpable if his staff's conduct resulted in a violation of that duty. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[2]**

Denial of respondent's motion to compel discovery did not deprive respondent of due process, where the information sought (information concerning the race, practice and gender of members of the State Bar, and statistics allegedly maintained by the Bar) was not gathered or maintained by the State Bar, and the State Bar was under no obligation to survey its membership in order to respond to respondent's discovery request. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[6]**

A notice to show cause may be amended, including amendment to conform to proof, so long as the attorney is given a reasonable opportunity to defend the charge and provided the amendment is not a trap for the unwary attorney. Where respondent was given informal, oral notice of an intended amendment five months prior to its filing, and formal notice one month prior to trial, respondent had adequate time to prepare a defense, and due process was not violated. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[8]**

Respondent was not entitled to a three-member hearing panel as a matter of due process. Where it was evident from the pre-trial filings that the case would require more than one day of hearing, the State Bar Court did not have discretion to assign the matter to a three-member panel, under the then-applicable statue. (Bus. & Prof. Code, § 6079 (b).) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[9]**

Bias on the part of the hearing referee was not demonstrated when the referee, without the knowledge of the parties, corresponded with an out-of-state trial court judge in an attempt to coordinate conflicting trial schedules. While the better method would have been for the referee to have advised the parties of his intent to contact the trial court judge and to have copied the parties on any correspondence, the referee's conduct was not improper in nature and did not establish an appearance of bias constituting a denial of due process. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[12]**

Attorney discipline proceedings are sui generis, neither criminal nor civil, and ordinary criminal procedural safeguards do not apply. The proceedings are conducted pursuant to the Rules of Procedure adopted by the State Bar, which contain procedural safeguards that have been held to be adequate to assure procedural due process. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[26]**

Respondents have a right to reasonable notice of the charges against them and they may not be disciplined for a violation not alleged either in the original or a properly amended notice to show cause. Where the notice to show cause charged respondent with dishonest acts with regard to non-payment of tax monies withheld from an employee's wages, respondent could not, based on that notice, be held culpable of improperly concealing personal money from the tax authorities by putting it in a client trust account. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[2]**

Probation revocation proceedings are disciplinary proceedings, and no additional discipline can be imposed for a breach of probation absent proof of such violation in conformity with fundamental due process (notice and an opportunity to be heard), as set forth in rules 612-613, Trans. Rules Proc. of State Bar. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[4]**

As with the treatment of failure to pay restitution in reinstatement and criminal probation cases, in a disciplinary proceeding for failure to make timely restitution as a condition of attorney disciplinary probation, due process requires an examination of the probationer's ability to make restitution and the sufficiency and good faith of the probationer's efforts to acquire the resources to pay. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[11]**

A respondent can only be found culpable of conduct which is charged in the notice to show cause. If the charges do not appear in the notice and the notice is not properly amended, the charges will not be sustained. However, culpability will be sustained in the event of a slight variation in the evidence from the notice, without an amendment, unless the respondent's defense can shown to have been compromised. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[2]**

Given that the examiner's pretrial statement indicated that facts and circumstances surrounding respondent's perjury conviction would be at issue and that the record would include the transcript of a related infraction trial as well as respondent's perjury trial, and given the rule permitting the hearing judge to consider evidence of facts not directly connected with respondent's conviction if such facts are material to the issues stated in the order of reference, respondent had sufficient notice that all relevant facts and circumstances would be considered in the disciplinary proceeding. (Trans. Rules Proc. of State Bar, rule 602.) *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[3]**

The facts of each case will determine whether a particular rule of civil or criminal law should be applied in State Bar proceedings to ensure due process. This principle applies in involuntary inactive enrollment proceedings as well as disciplinary proceedings. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[12]**

Where an attorney was not charged in the notice to show cause with violating the ethical rules governing attorneys' business transactions with clients, then even if compliance with those rules were required under the facts, the attorney could not be found culpable of violating those rules. It is a fundamental constitutional and statutory requirement that an attorney must be given notice of all charges and a reasonable opportunity to prepare his defense thereto. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[12]**

Attorney could not be found culpable of misconduct where not given adequate notice of charges, but this did not preclude consideration of such misconduct for other purposes, including aggravation. Evidence of uncharged misconduct may not be used as an independent ground of discipline, but may be considered for other relevant purposes. Right to notice of charges is not violated by use of uncharged misconduct in aggravation where evidence of such misconduct was necessarily elicited in cause of proving other charges; evidence was used in aggravation only; and facts were based on respondent's own testimony. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[19]**

Aggravating factors are not required to be separately charged. However, facts that could have formed the basis for an additional charge omitted from the notice to show cause cannot be relied on in aggravation in a default matter, because respondent is not fairly put on notice that such facts will be relied on. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[12]**

In administrative mandamus proceedings where the court is authorized to exercise independent judgment on the evidence, abuse of discretion by the lower tribunal is established if the court determines that the findings are not supported by the weight of the evidence. Where the court is not authorized to exercise independent judgment, then it must determine whether the findings are supported by substantial evidence in the light of the whole record. In such cases, due process requires that the body deciding the case must at least review a transcript of the evidence. The argument that this standard had been violated on earlier review by the former review department was mooted by the full-time review department's de novo review of the record on a second review after the former review department's remand for further hearing. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[1]**

Service of discovery requests after entry of default is inconsistent with fundamental fairness and due process, and does not serve purposes of modern discovery procedures such as exchanging information, informing parties of merits of case, and facilitate settlement or resolution of matter. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[10]**

In default matter, hearing referee erred in basing findings of culpability partly on facts deemed admitted by failure to respond to improper post-default discovery, and in finding culpability on charges broader than those set forth in notice to show cause. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[12]**

Rule of Procedure 557, permitting amendment of notice to show cause to conform to proof without requiring additional time to prepare answer and defense, assumes respondent attorney's presence at disciplinary proceeding. Where respondent is not present due to entry of default, respondent does not have an opportunity to defend against charges. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[14]**

A motion to dismiss a notice to show cause for failure to provide the respondent with sufficient notice of the alleged misconduct is available where appropriate to assure adequate notice of charges in compliance with statutory mandate and due process. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[1]**

In order to defend against charges, a respondent needs to be adequately apprised of the precise nature of the charges. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[2]**

Neither civil nor criminal rules of procedure govern State Bar disciplinary proceedings. However, the right to practice one's profession is sufficiently precious to be surrounded by a panoply of legal protection, including invocation of civil and criminal procedural rules when necessary to insure administrative due process. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[3]**

Adequacy of notice is an essential element of due process, in order that the accused may have a reasonable opportunity to prepare and present a defense and not be taken by surprise by evidence offered at trial. The respondent in a disciplinary proceeding is entitled to reasonable notice of the specific charges, which is the purpose of the notice to show cause. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[4]**

The principle that due process requires notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, applies with equal force in State Bar proceedings. The right to practice law is a valuable one which should be suspended or revoked only on charges alleged and proved and as to which full notice and opportunity to defend have been accorded. Thus, the charges in the notice to show cause should relate individual facts to specific statutory and rule violations. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[5]**

It is important for decisions of the State Bar Court to identify with specificity both the rule or statutory provision that underlies each charge and the manner in which the conduct allegedly violated that rule or statutory provision. This specificity is essential to the respondent's due process right to adequate notice, as well as to meaningful Supreme Court review of the recommendation of the State Bar Court. The notice to show cause must be sufficient to support the charges relied upon in the decision, because the findings of the State Bar Court must rest on the charges filed. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[6]**

The opportunity for permissive amendment of the notice to show cause at a later stage in the proceedings on adequate notice of new factual allegations does not negate the State Bar's obligation in the first instance to provide adequate notice of the original charges. While developments during discovery may lead to augmentation or modification of the charges by amendment, the ability to amend does not affect the requirement of particularity in the original charges. Informal sharing of source material on which charges are based, while highly desirable, is no substitute for formal charges. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[15]**

The State Bar cannot impose discipline for any violation not alleged in the original notice to show cause. If the evidence produced before the hearing department shows the attorney has committed an ethical violation that was not charged in the original notice, the State Bar must amend the notice to conform to the evidence adduced at the hearing. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[16]**

Unless the respondent demonstrates that the respondent's defense was actually compromised, a slight variance in the evidence that relates to the noticed charge does not, in itself, deprive the respondent of adequate notice. This situation, however, is patently different from one in which ambiguity and lack of specificity in the notice to show cause make it unclear which aspect of the respondent's conduct over a number of years allegedly violated the rules and statutes cited in the notice. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[17]**

The scope of the respondent's defense is determined by the scope of the notice to show cause. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[20]**

The degree of specificity required in a notice to show cause does not necessitate lengthy detailed pleading. A notice to show cause does not have to include explicit details of a respondent's alleged misconduct, nor does it have to match the subsequent proof at the hearing as long as the difference is immaterial or the pleading is amended and the respondent is given an opportunity to respond to the additional allegations. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[21]**

Increased specificity in articulating the charged misconduct in the notice to show cause will enable the respondent to prepare to meet the charges; provide the hearing judge with a proper framework for findings and conclusions; and make it easier for the review department and the Supreme Court to conduct meaningful de novo review of the hearing judge's decision. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[22]**

Review department will not consider misappropriation implied by evidence but not charged in notice to show cause, and not mentioned at trial, in hearing department decision, or in briefs on review. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[1]**

Where an attorney had failed to comply with the statutory duty to maintain a current address on the State Bar's member records and to notify the State Bar within 30 days of any address change, the attorney failed to show good cause for relief from default even though he did not receive notice of the State Bar proceedings until the review department's opinion was published. Because the address requirement is reasonable, an attorney receives reasonable notice of documents properly sent to the attorney's address of record with the State Bar. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[2]**

Respondent's claimed alcoholism did not excuse him from his statutory duties to notify the State Bar promptly of any change of his address of record, and to participate in State Bar disciplinary proceedings against him. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[4]**

Where notice to show cause did not charge that respondent misrepresented to his clients the status of their claims, and respondent defaulted and did not appear at hearing, the review department declined to find, based on client's testimony at hearing, that respondent had committed act of dishonesty by making such misrepresentation. The review department is most reluctant to consider, even for the purpose of aggravation, misconduct which could have been, but was not charged in notice to show cause, especially where respondent is in default and has no opportunity to learn of or rebut matters arising during hearing. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[3]**

Where the examiner asserted for the first time in his request for reconsideration of the review department's decision that the respondent's misappropriation of client trust funds constituted an act of embezzlement within the meaning of Penal Code section 506, and, as such, constituted a wilful violation of the attorney's oath and duty to support the laws of this state, the review department concluded that the belated attempt to prove culpability through an uncharged violation of another statute was improper. The State Bar cannot impose discipline for any violation not alleged in the notice to show cause. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[1]**

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Statutes regarding legal disciplinary system are not exclusive, but rather supplementary to California Supreme Court's disciplinary authority over members of California bar. Given Supreme Court's partial delegation of its disciplinary authority to State Bar Court, and its instruction that State Bar Court should follow disciplinary standards whenever possible, statute providing for actual suspension of up to three years for violations of Rules of Professional Conduct did not preclude State Bar Court from recommending disbarment for rules violation when otherwise justified by disciplinary standards. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418 **[6]**

Attorneys cannot be disciplined for speech that is protected by the First Amendment. However, because attorneys are officers of the court, reasonable speech restrictions may be imposed on them. Rule 1-700, which regulates speech by attorney candidates for judicial office, burdens a category of speech at the core of First Amendment freedoms, but false statements are not protected speech and may be basis for discipline if made intentionally or with reckless disregard for truth. Objective "reasonable attorney" test, rather than subjective test, is properly applied in determining whether statement was made with reckless disregard for truth. Attorney judicial candidate, who made a false claim that his opponent was involved in corporate fraud and bribery, was culpable of violating rule 1-700 because he made the factual misrepresentation knowingly or with reckless disregard for the truth as viewed under an objective standard. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370 **[1 a-c]**

Sending numerous, threatening voicemail messages is intentionally harassing and constitutes moral turpitude. Such conduct is not protected by the First Amendment of the U.S. Constitution. *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 **[2 a,b]**

The review department declined to consider applicant's argument that the Supreme Court's order in his previous disciplinary matter, filed in 1998, was void on its face because of numerous constitutional infirmities. The review department simply does not have the authority to set aside the Supreme Court's order. Once the record in applicant's previous disciplinary cases was transmitted to the Supreme Court, the review department no longer retained jurisdiction over the matter. Accordingly, the review department declined to consider applicant's collateral attack on his prior discipline. *In the Matter of Applicant B* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 731. **[1]**

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

While respondent's improper assertion of various constitutional and statutory privileges showed a lack of cooperation with the State Bar during the disciplinary proceedings and constituted an aggravating factor, such factor was given little weight because (1) there was no evidence of resulting excessive delay in the disciplinary proceedings, (2) respondent willingly responded to most of the questions presented to him and only asserted the privileges as to matters which he believed involved the possibility of criminal prosecution, (3) the delay which did occur was not caused solely by respondent, (4) respondent's assertion of the privileges did not interfere with the State Bar's ability to prove its case, and (5) there was no clear and convincing evidence that respondent asserted the privileges in bad faith. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[17]**

The review department rejected a finding that respondent displayed a lack of cooperation during State Bar proceedings by making unfounded and inflammatory statements in various pleadings filed in this disciplinary matter. Respondent's statements were not proper subjects for aggravation where the State Bar made no showing by clear and convincing evidence that they were false. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[18]**

The review department rejected a finding that respondent displayed a lack of cooperation during State Bar proceedings by filing six petitions for interlocutory review with the review department, at least one petition for review with the California Supreme Court, and over 30 motions in the hearing department. These documents were not proper subjects for aggravation where it was not shown by clear and convincing evidence that the documents were completely lacking in merit and were filed in bad faith. Respondent acted as cocounsel during the hearing department proceedings and was entitled to reasonable access to the courts to seek judicial remedies. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[19]**

Retroactive law is one that affects rights, obligations, acts, transactions, or conditions performed or existing before adoption of law. Even though respondent's criminal convictions occurred after January 1, 1997, effective date of present version of the summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)), respondent committed criminal acts underlying those convictions before January 1, 1997, effective date. Thus, respondent's summary disbarment under present version of statute would be improper retroactive application of statute because, but for amendments to statute effective January 1, 1997, respondent would not be subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.51.**[2 a-c]**

In two situations, applying statute to acts before statute's effective date are not retroactive application of statute: when statute merely clarifies, rather than substantially changes law; and when statute changes trial procedure, but does not change legal consequences of parties' past conduct. Amendments effective January 1, 1997, to summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)) are not clarifying or procedural because they significantly broadened scope of crimes for which attorneys are subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.51.**[3 a-c]**

Disciplinary rules governing legal profession cannot punish activity protected by First Amendment, but neither false statements made knowingly nor false statements made with reckless disregard for truth are protected by First Amendment. Thus, because respondent's statements in pleadings, which she filed in superior court action and this disciplinary action, that her opposing counsel in superior court action was "well-known racist," "champion of the Emeryville pedophile ring," "operated by organized crime," "intent upon avoiding his own criminal indictment," and "motivated by racial hatred," and described young children as "niggers, hood and scums" were proved false at trial; because those statements were not mere rhetorical hyperbole, incapable of being proved true or false; and because respondent either knew statements were false or made them with reckless disregard of truth as there was no objective evidence that statements were true, hearing judge properly found respondent culpable of violating professional rules requiring attorneys to employ only such means as are consistent with truth and not to seek to mislead courts and judicial officers as well as statute proscribing acts involving moral turpitude. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[2 a-i]**

Charge for violating statute proscribing offensive personality was dismissed because statute was previously declared unconstitutionally vague by federal appeals court. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[3]**

Party invoking Fifth Amendment bears burden of showing that proffered evidence might tend to incriminate. Thus, while respondents may not be disciplined solely for invoking Fifth Amendment, the improper invocation of that amendment and resulting refusal to testify may be considered as aggravation if culpability has otherwise been found. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[9 a-e]**

Whether hearings to determine witness's right to Fifth Amendment privilege should be held in camera rather than open court is left to trial court's discretion. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[10]**

Hearing judge did not error in drawing inferences against respondent with respect to authenticity of documents written by respondent when respondent refused to answer proper questions after respondent's claim against self incrimination under Fifth Amendment was denied and she had been ordered to answer. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[11]**

It is not evident whether defense of selective prosecution is applicable in State Bar disciplinary proceedings. Even if such defense were available, respondent would have been required to show an intentional violation of essential principle of practical uniformity and an element of intentional or purposeful discrimination. That is respondent would have been required to demonstrate that she had been deliberately singled out for prosecution on basis of some invidious criterion. There is no evidence in record on any of these issues. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[14 a-c]**

The hearing judge's discussion of his concerns over petitioner's actions in terms of according her a "reasonable doubt" made review somewhat difficult. It is clear that in a disciplinary proceeding, where the State Bar has the burden of proving charges by clear and convincing evidence, the accused is entitled to the exercise of reasonable doubts. However, in a reinstatement proceeding, where the petitioner unquestionably has the burden of presenting clear and convincing evidence of her qualifications, petitioner can not be given the benefit of reasonable doubts. However, by reading the decision in its entirety, the review department construed the hearing judge's decision finding reasonable doubts in favor of petitioner to not invoke the normal meaning of the term "reasonable doubt" as used in this area of law, but rather, such narrow doubt that would be acceptable in a satisfactory showing for reinstatement. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.1.**[3 a-b]**

Cases which hold that constitutional due process rights would be violated if a father delinquent in child support were held in a later criminal contempt proceeding to a statutory presumption of ability to pay the support order, in the face of the prosecutor's burden to prove criminal contempt beyond a reasonable doubt, are distinguishable as State Bar proceedings have long been defined by our Supreme Court as unique, and not as criminal proceedings. Moreover, even if respondent lacked the ability to pay, respondent would not be disciplined for failing to pay the sanction, but for failing to pay the sanction without first attempting to be relieved of the order in whole or in part in the superior court or Court of Appeal on the basis of ability to pay. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.**[7]**

Disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment. However, because attorneys are officers of the court with a special responsibility to protect the administration of justice, reasonable speech restrictions may be imposed on them. To survive judicial scrutiny such a restriction must (1) further an important or substantial governmental interest unrelated to the suppression of expression and (2) be no greater than is necessary or essential to the protection of that important or substantial governmental interest. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[1]**

An attorney may be disciplined for making a false statement that attacks the honesty, motivation, integrity, or competence of a judicial officer without violating the attorney's First Amendment guarantee of free speech so long as the attorney knew the statement was false when he made it or made it with a reckless disregard for its truth or falsity. Truth is an absolute defense. The State Bar has the burden of proving the falsity of the statement. The issue of whether a false statement was made with reckless disregard for its truth or falsity is governed by an objective standard under which the court must determine what a reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[2]**

An essential element to establishing an attorney's violation of his statutory duty to maintain the respect due the courts and judicial officers by making a statement that impugns the honesty or integrity of a court or judicial officer is the falsity of the disparaging statement. Even though the State Bar has the burden of proving the essential element of falsity, it did not proffer any evidence to establish the falsity of the respondent's disparaging statements regarding various judicial officers because the hearing judge made a erroneous pre-trial ruling relieving the State Bar of its burden to prove falsity. Therefore, the review department remanded the matter to the hearing department to allow the State Bar an opportunity to prove that respondent's statements were false. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[3]**

An attorney's statement impugning the honesty or integrity of a court or judicial officer is not disciplinable if it constitutes rhetorical hyperbole, or uses language only in a loose, figurative sense, or if it is not capable of being proved true or false. The statement is not disciplinable unless it implies or is based upon a false assertion of fact. In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[4]**

The fact that respondent may be placed in "indefinite limbo" if specified charges are dismissed in the furtherance of justice without prejudice is not sufficient cause to require that the charges be dismissed with prejudice. His remedy in any subsequent proceeding would be a due process argument for relief caused by unreasonable delay based upon a sufficient showing of specific prejudice resulting therefrom. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[3]**

Generally, it is in the public interest to dispose of disciplinary charges on the merits. However, the public interest and the interests of justice would not be served by permitting the State Bar to maintain specified charges for possible later prosecution by dismissing the charges without prejudice when respondent relied on the charges to his detriment in preparation for and during trial and in doing so exposed his defense case. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[4]**

The rule is well settled in California that a void order cannot be the basis for a valid contempt judgment. A person affected by an injunctive order may challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by (1) complying with the order while seeking a judicial determination as to its jurisdictional validity or (2) disobeying it and then raising the jurisdictional challenge if and when he is sought to be punished for his disobedience. If a person affected by an injunctive order chooses to challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by disobeying it and then raising the jurisdictional challenge as a defense against any contempt charges brought against him, his violation of the order constitutes no punishable wrong if it is ultimately determined that the order was issued without or in excess of jurisdiction. However, the contempt order here was final and there was no valid reason to go behind a now-final order. The State Bar Court properly defers to the judgements of the courts of record that rendered contempt judgements against respondent and that considered respondent's subsequent appeals, requests for reconsideration, and certiorari. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[2]**

A client has a reasonable expectation of privacy regarding her deposits in an attorney's trust account. However, that expectation of privacy is limited by the Business and Professions Code section that provides that all attorneys are deemed to have irrevocably authorized the disclosure of the contents of their trust account records to the State Bar. Thus, the right of privacy is not absolute, and must be balanced against the need for disclosure. The legislature has clearly determined that there is a public interest in disclosure of trust account information sought in attorney misconduct investigations. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[1 a-c]**

Based on the determination that the provisions of the State Bar Act and the Rules of Procedure of the State Bar concerning investigative subpoenas for trust account records meet the standard as enunciated by the Supreme Court in a prior case, the review department concluded that there was no need to import either the provisions of Code of Civil Procedure section 1985 et seq., or the provisions of Government Code section 7470 et seq., for either due process or other reasons into the procedures for the issuance of State Bar investigative subpoenas. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[4]**

Respondent's claim that the State Bar Court is an entity created, owned, and run by the prosecuting party was frivolous. The current State Bar Court is modeled after courts of record. State Bar Court judges are appointed for specified terms by the Supreme Court and are subject to discipline by the Supreme Court upon the same grounds as judges of courts of record. The prosecution does not assign cases to State Bar Court judges, nor do their salaries depend upon finding attorneys culpable of misconduct. Although the Board of Governors of the State Bar is responsible for paying the salaries of State Bar Court judges, these salaries are set by law to equal those of judges of courts of record and come from annual membership fees. Thus, respondent provided no evidence that the State Bar Court is improperly dependent on, or controlled by, the prosecution. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[2]**

One to whose conduct a statute clearly applies may not successfully challenge it for vagueness. Accordingly, respondent could not successfully challenge section 6106 of the Business and Professions Code as unconstitutionally vague where he had deliberately misinformed a client about the receipt of a settlement check, misappropriated funds from four clients, and practiced law and held himself out as entitled to practice law when he knew he was suspended. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[3]**

Where respondent contended that California's disciplinary process violates the commerce clause of the United States Constitution, respondent failed to recognize that the judiciary of each state has the right to regulate the practice of law in that state. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[2]**

Where First Amendment rights are at stake, the State Bar's burden of proof in adducing evidence of bad moral character on rebuttal of an applicant's prima facie showing is proof beyond a reasonable doubt. Where the right of access to the courts is at stake, proof beyond a reasonable doubt may also be required. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[9]**

It is not clear that selective prosecution may be raised as defense in State Bar disciplinary proceedings. Even if such defense were available, it cannot be premised on asserted discrimination due to notoriety rather than on constitutionally prohibited basis such as race, gender, or exercise of constitutional rights. In absence of allegation of prohibited basis for prosecution, State Bar's failure to prove all charges was not sufficient to show invidiously discriminatory prosecution. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[16]**

Even if selective prosecution were a valid defense in State Bar proceedings, claim that respondent was singled out for prosecution based on success and fame could not succeed in absence of authority that claims of selective prosecution may be premised on asserted discrimination due to notoriety rather than on a constitutionally prohibited basis such as race, sex, or exercise of constitutional rights. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[9]**

Claim of selective prosecution in probation revocation proceeding was without merit, where such claim was based on asserted failure to give respondent same opportunity as other lawyers to cure defects in probation report, but revocation proceeding was also based on failure to pay restitution due ten months earlier; respondent's subsequent probation reports were also inadequate; and respondent failed to connect cited authorities on doctrine of selective enforcement to facts of proceeding. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[8]**

Former disciplinary structure under which local administrative committees had both investigative and fact-finding powers raised due process concerns. Under volunteer State Bar Court system which superseded it, investigative and prosecutorial functions were separated from fact-finding and adjudicative functions. This separation was strengthened and institutionalized by reforms which created independently appointed State Bar Court. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[5]**

Statutory scheme regarding State Bar discipline system does not provide for State Bar Court judges to report to Board of Governors or any of its committees, nor does it require Chief Trial Counsel to report to State Bar Court. Consistent with separation of prosecutorial and judicial roles, State Bar Court has no administrative oversight role with respect to functions of Chief Trial Counsel, and does not have general, plenary authority to supervise the conduct of investigations. Board of Governors and its Discipline Committee have general statutory authority over Chief Trial Counsel and Office of Investigations, subject to review by California Supreme Court. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[6]**

Review department declined to adopt construction of statute giving State Bar Court jurisdiction over motions to quash subpoenas (Business and Professions Code section 6051.1) which would do violence both to plain meaning of statute and to necessary separation of powers within disciplinary system. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[8]**

Solicitation of clients may be constitutionally protected under the First Amendment depending on the occupation or profession involved and certain other circumstances. Free speech guarantees have been held not to prevent enforcement of California's rules governing in-person solicitation, and solicitation of clients for lawyers has long been illegal in California. Where accident victims were tempted by persuasiveness of respondents' non-lawyer agents who had superior access to police reports, and in one instance a victim was solicited minutes after returning from the hospital, such facts showed constitutional justification for prohibition of such in-person solicitation. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[12]**

Both the Legislature, by statute, and the Supreme Court, by case law, have recognized that the Supreme Court has inherent authority over regulation of the practice of law. The Supreme Court has not felt constrained by lack of authorizing legislation to exercise this inherent power, and has concerned itself with comparable treatment of respondents in comparable situations. Accordingly, Supreme Court case law constituted appropriate authority for review department recommendation that a disbarred respondent be permitted to credit time spent on inactive enrollment toward waiting period to apply for reinstatement, just as an interimly suspended attorney-felon can do by rule (rule 662, Trans. Rules Proc. of State Bar). *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[5]**

While respondent's motive in appealing superior court's reduction of his fees as attorney and executor of estate might have been suspect, where there was no clear and convincing evidence that such appeal was in bad faith or was otherwise improper, review department declined to consider respondent's appeal as an aggravating factor in light of the important policies favoring unfettered access to the courts. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[15]**

Private personal information about a non-party to a proceeding may be privileged from discovery under some circumstances pursuant to the California constitutional right to privacy. The privacy right to be protected is that of the non-party, and the custodian of the private information may not waive it. The right to privacy is not absolute, but must be balanced against the need for disclosure. In a moral character proceeding, it was unreasonable for material witnesses against the applicant to claim a right of privacy preventing the disclosure of their identities to the applicant during discovery, while consenting to testify against the applicant at trial. However, as to the identities of persons whose testimony would not be used under any circumstances, the applicant had not made a sufficient showing of need to overcome these persons' privacy rights, and their names could be withheld from disclosure. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[10]**

Business and Professions Code section 6102 (c), providing for summary disbarment of attorneys convicted of crimes meeting the criteria set forth in the statute, must be read in the context of the statutory scheme of the State Bar Act as a whole, which indicates the Legislature's intent to defer to the Supreme Court's inherent authority to judge each case on its merits and disbar or suspend pursuant to its own view of the record. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[3]**

Rule 951(a), California Rules of Court, delegating certain powers to the State Bar Court regarding the discipline of attorneys convicted of crimes, limits the State Bar Court to recommending summary disbarment to the Supreme Court, rather than imposing it directly. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[9]**

No question on respondent's application for admission to practice law called upon respondent, as an applicant, to reveal criminal conduct for which respondent had not yet been convicted or arrested and for which respondent was not awaiting trial. If any such question had been asked, respondent would have had a good argument for withholding information that would lead to criminal liability. Nothing in respondent's manner of completing the application, or in respondent's subsequent two-month delay in reporting to the State Bar a criminal indictment handed down after the application was completed, undermined respondent's showing of rehabilitation from pre-admission criminal conduct. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[1]**

Since attorney discipline matters are not criminal cases for purposes of the Fifth Amendment of the U.S. Constitution, an attorney may be called to the witness stand at the attorney's own hearing, and immunized testimony may be introduced against the attorney. However, the attorney may assert the Fifth Amendment privilege against self-incrimination in response to specific questions, and no adverse inference may be drawn from such invocation. An attorney may not be disciplined solely based on invoking the privilege against self-incrimination. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[32]**

Where respondent refused to take the witness stand when ordered to do so by the referee at the disciplinary hearing, and invoked the protection of the Fifth Amendment through counsel and not in response to specific questions, respondent's actions were improper. If appearing under subpoena, respondent's actions could have been certified for contempt before the Superior Court. If culpability had been found on the underlying misconduct charges, respondent's actions could have been considered evidence in aggravation. However, the referee did not have contempt power and lacked the authority to sanction respondent by striking respondent's answer to the notice to show cause and deeming the allegations admitted by default as a matter of law. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[33]**

In a disciplinary action, an attorney does not have a privilege not to be called to testify, but may refuse to answer specific questions on the grounds that answering the question may subject the attorney to criminal prosecution. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[13]**

If an attorney wishes to invoke statutory or constitutional privileges which the attorney contends make a substantive response to a State Bar investigator's letter unnecessary, the attorney must nevertheless respond to the investigator's letter, if only to state that the attorney is claiming a privilege; otherwise, the attorney not only violates the statutory duty to cooperate, but also risks waiving the claimed privilege. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[14]**

It is not clear that the doctrine of selective prosecution applies in State Bar disciplinary proceedings, in which respondents do not enjoy the full panoply of procedural protection afforded to criminal defendants. But even if it does, there are several threshold procedural and evidentiary hurdles to be overcome before a case of selective prosecution can be established, and where respondent did not even attempt to make the requisite showing, respondent's claim of selective prosecution was without merit. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[22]**

Section 6077 does not bind the Supreme Court, in the exercise of its inherent power, should it decide that greater discipline than three years suspension for violation of a Rule of Professional Conduct is needed to protect the public in a particular case; the Supreme Court is not limited by the Legislature in exercising its disciplinary authority. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[7]**

The test for the constitutional validity of a mental examination order is whether the mental examination serves a compelling government interest and constitutes the least intrusive means of accomplishing that interest. Mere convenience or avoidance of administrative costs does not make a means the least intrusive; otherwise the overriding value would be expediency, not the compelling government interest. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[4]**

As a sui generis arm of the Supreme Court, the State Bar Court may recommend that the Supreme Court declare a statute or rule unconstitutional, but in proceedings not requiring Supreme Court action, the State Bar Court's authority is limited to interpreting existing law. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[5]**

Section 6053, which allows the State Bar Court to order a mental examination when an attorney's mental condition is a material issue in a State Bar proceeding, does not violate the California constitutional right of privacy, because section 6053 serves a compelling government interest in protecting the public, courts, and profession from mentally incompetent attorneys and because section 6053's grant of discretion to order a mental examination may be construed so as to allow such examinations to be ordered only when they are the least intrusive means to satisfy the compelling government interest. In addition, the limited distribution of the mental examination report and the confidentiality of the proceeding serve as further protections of the attorney's privacy and thereby bolster the constitutionality of section 6053. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[6]**

Where no evidence or finding indicated that a compulsory mental examination constituted the least intrusive means of determining a respondent's mental condition, the issuance of mental examination orders violated not only the applicable statutory requirements but also the respondent's California constitutional right of privacy. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[8]**

The probable cause determination necessary for the initiation of an involuntary inactive enrollment proceeding pursuant to section 6007(b)(3) does not suffice to order a mental examination pursuant to section 6053. Such an order necessitates the much stronger procedural and constitutional safeguards afforded by showings from the State Bar of "good cause" and "least intrusive means." *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[9]**

A determination of mental incompetency does not require a psychiatric examination. Witness testimony regarding a respondent's behavior and documents allegedly reflecting the respondent's mental infirmity may be introduced as evidence of incompetency, and a qualified psychiatrist may be appointed to render an opinion about the respondent's mental condition on the basis of such testimonial and documentary evidence. Then, if the judge remains unable to make the necessary determination without a mental examination of the respondent and the respondent refuses to consent to such an examination, an order for a compulsory mental examination may be justified as the least intrusive means of accomplishing the government's compelling interest in protecting the public, courts, and profession from mentally incompetent attorneys. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[10]**

Statutes affecting a substantive right are generally construed prospectively to avoid a declaration of unconstitutionality. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[14]**

There are marked differences between civil and criminal trials and the corresponding need to restrict free speech in order to assure fairness. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[7]**

False statements made with reckless disregard of the truth do not enjoy constitutional protection under the First Amendment. Attorneys may be disciplined for making defamatory or disrespectful statements in pleadings or court papers which have no basis in fact and which are made with conscious disregard of their falsity or with intent to be maliciously contemptuous. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[8]**

As a rule, constitutional questions will not be reached if a decision can rest on a different ground. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[9]**

The issue of retroactive application of the summary disbarment statute (Bus. & Prof. Code § 6102(c)) to conduct occurring prior to its enactment has not been decided by the Supreme Court. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[5]**

As with any aspirant to membership in State Bar, reinstatement petitioner is entitled to access to courts to decide good faith claims, but where petitioner who worked for confusingly intertwined entities sued customer of one entity for punitive damages for complaining against one entity instead of another, and failed to show justification for suit, petitioner failed to sustain burden of showing exemplary conduct required to qualify for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[14]**

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In the Matter of Torres (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19

In absence of specific statute or rule of procedure directing a specified mode of proceeding, it is not unreasonable or arbitrary for a hearing judge to utilize analogous civil procedures to resolve motions. *In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721. **[4]**

When an attorney pleads nolo contendere to a felony wobbler, i.e., a crime that may be charged or judged either as a felony or misdemeanor, and that offense is declared to be a misdemeanor at sentencing or at the imposition of probation under Penal Code section 17, subdivision (b), the Legislature made it clear that it remains a felony for State Bar Act purposes even if it is later declared a misdemeanor in postconviction proceedings, including

proceedings resulting in punishment or probation. This does not mean that an attorney's conviction of a wobbler will always be of a felony. If the attorney's plea of guilty or nolo contendere or the verdict of guilty is to a misdemeanor charge, including a felony reduced to a misdemeanor at the time of the plea or verdict, the conviction will be of a misdemeanor.*In the Matter of Jackson* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610.**[1 a-c]**

In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.

In attorney discipline, ethical standards for attorneys are primarily established by State Bar Rules of Professional Conduct and State Bar Act. But, when an attorney practices in a specific area or jurisdiction, those standards may be measured by reference to other relevant state and federal statutes, rules of court, regulations, and administrative rules.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[3]**

Under controlling federal regulation and Board of Immigration Appeals precedent, respondent could not properly limit the scope of his representation of clients referred to him by nonattorney immigration services providers to that of an "appearance attorney," which respondent asserts is an attorney who appears in his clients' immigration cases only for the limited purpose of making court appearances, and when respondent did so, he effectively provided those clients with no legal representation or services.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[5 a-h]**

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

Because parties failed to address relevant immigration court and Board of Immigration Appeals rules and procedures that are set forth in the Code of Federal Regulation and have the force and effect of law, hearing judge and review department were required to take and did take judicial notice of those rules and procedures sua sponte. (Rules Proc. of State Bar, rule 214; Evid. Code, §§ 451, subd. (b), 459, subd. (a).)*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[8]**Under Civil Discovery Act, respondent had affirmative duty to answer each of the State Bar's interrogatories as complete and straightforward as the information reasonably available to him permitted.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[28]**

The ability of federal courts and federal agencies to discipline attorneys who practice before them does not deprive a state bar of jurisdiction to discipline one of its members for engaging in misconduct while practicing before the federal courts or agencies. While neither the State Bar Court nor the Supreme Court has jurisdiction to prevent a person from practicing law in federal courts or agencies, the Supreme Court has the inherent authority to discipline attorneys licensed to practice in the State of California, and the State Bar Court has authority to conduct disciplinary proceedings and make recommendations of discipline to the Supreme Court. The federal regulations pertaining to discipline of attorneys practicing before federal immigration agencies themselves contemplate that the disciplinary agency of a state in which an attorney is admitted to practice has authority to discipline the attorney for misconduct committed in federal immigration agencies. In addition, various cases from federal courts and from the Board of Immigration Appeals have indicated that the disciplinary agencies of the states in which immigration attorneys are licensed have jurisdiction to discipline these attorneys for misconduct committed in immigration cases in federal courts and agencies.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[1 a-e]**

Rule 219 of the Rules of Procedure of the State Bar provides that, after the party with the burden of proof has rested, the opposing party may move for a determination that the party with the burden of proof has failed to meet that burden. In deciding the motion, the hearing judge is required to consider all the evidence introduced, weigh that evidence and make determinations of credibility. The review department held that the hearing judge's ruling on a motion made pursuant to rule 219 is reviewable on plenary review under rule 301 of the Rules of Procedure

of the State Bar and that such review is de novo. The review department must determine, based upon its independent review of the evidence before the hearing judge at the time the motion was made, whether clear and convincing evidence was presented of each element of the charged offenses. In deciding these issues, the review department must give great weight to the hearing judge's credibility determinations. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. **[1 a-c]**

Finding that an order of a worker's compensation judge was an order of a court within the meaning of Business and Professions Code section 6103, the review department found respondent culpable of violating section 6103 by disregarding such an order. *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126. **[4 a-b]**

Unless civil sanctions issues arising under section 128.5 of the Code of Civil Procedure are adequately litigated before the sanctioning court, it would appear inappropriate to apply collateral estoppel in the State Bar Court to the sanction order. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[2]**

Even though Rules of Procedure adopted by State Bar's Board of Governors are not legislative acts, it is appropriate to construe them using rules for statutory interpretation/construction. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[4]**

State Bar Court must interpret State Bar Rule of Procedure 665(a) that requires all petitioners for reinstatement to take and pass professional responsibility examination within frame work of California Rule of Court 951(f) dealing with reinstatement because State Bar's rule making authority is subject to Supreme Court's inherent authority over attorney regulatory matters. And State Bar Court should endeavor to construe State Bar rule as consistent Rules of Court. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[5]**

Applying rules of statutory interpretation to language of State Bar Rule of Procedure 665(a) requiring all petitioners for reinstatement to take and pass professional responsibility examination, review department held (1) that rule sets the earliest time to pass examination at one year before filing of petition, but does not set latest time to pass examination and (2) that rule does not require proof of passage as condition precedent to filing petition, but only as condition to precedent to State Bar Court recommendation of reinstatement. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[6 a-b]**

The duty to report sanctions timely pursuant to section 6068, subdivision (o)(3), Business and Professions Code, is not excused solely because of the pendency of an appeal of the sanction order. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70. **[2]**

Respondent's calling and threatening State Bar witness shortly before trial can be for no purpose other than interference with disciplinary proceeding and tends to demonstrate knowledge of culpability on part of respondent. Because such evidence was not offered to show culpability in uncharged count, it was properly admitted and considered as serious aggravation; see Penal Code section 136.1, subdivision (a)(2) (crime to prevent of dissuade another from attending or testifying). *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[8 a-c]**

Past Supreme Court practice in considering automatic or summary disbarment was not found by the review department to entail weighing and balancing issues such as the motive of the attorney in committing the crime, the extent to which harm did or did not occur, whether the offenses were limited or repeated or other issues pertaining to evidence bearing on either mitigating or aggravating circumstances. Therefore, to the extent that language in the review department opinions *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71, and *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729, would require the review department to undertake such an analysis, such language was disapproved. Although respondent denies that his offense was serious enough to warrant disbarment, all the facts are not before us nor are they undisputed. What is undisputed is that respondent stands finally convicted, inter alia, of mail fraud, a felony which unquestionably involves moral turpitude; and, as we observed collectively in *Segall* and *Salameh*, is the type of offense which has often resulted in disbarment. Our reading of the summary disbarment law and past Supreme Court practice, would not warrant any exception to a summary disbarment recommendation based on respondent's claims. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942. **[2]**

As the reproval imposed on respondent in the prior disciplinary proceeding is final, it and the conditions attached to it are presumed valid and enforceable. The reproval decision is subject to collateral attack only on the grounds that the judge (1) lacked jurisdiction of the subject matter, (2) lacked personal jurisdiction over respondent,

or (3) acted in excess of jurisdiction. The burden of proof is on the party who attacks the judgment to show lack of jurisdiction. Furthermore, to succeed on collateral attack, the jurisdictional defect must be proven from the face of the record in the prior proceeding. Respondent's contention that the conditions attached to his prior private reproval are subject to collateral attack because the hearing judge failed to explicitly recite in her decision two findings required by rule 956 of the California Rules of Court, that the reproval conditions would serve to protect the public and to serve respondent's interests, is an allegation that the hearing judge acted in excess of her jurisdiction. Respondent failed to prove from the face of the record in the prior reproval that the conditions attached to it would not serve to protect the public or serve respondent's interest. In any event, the unchallenged factual findings in the hearing judge's decision in the prior case establish that the hearing judge acted within her jurisdiction in attaching the conditions. Without question, the reproval conditions that he take and pass a professional responsibility examination and attend the State Bar's Ethics School will serve to protect the public and serve respondent's interests. The hearing judge's error is not a jurisdictional error that can subject the hearing judge's decision to collateral attack. At most, the error was a procedural defect that respondent waived by failing to appear in the prior proceeding and object to the hearing judge's decision on that ground. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[1]**

In the absence of any direct precedent construing rule 956 of the California Rules of Court, the review department held that the purpose of the rule's findings is to aid in ensuring that any duties attached to a reproval are reasonably related to its purposes. Although rule 956 prescribes a salutary requirement, it cannot be said that it is jurisdictional. The findings themselves do not go to the essential fairness of the underlying disciplinary proceeding or even a subsequent enforcement proceeding. If findings are omitted from a reproval decision to which rule 956 applies, the error can be called to the State Bar Court's attention in a timely manner. If not done timely, the objection is waived, absent a showing that respondent was clearly prejudiced by the omitted findings. No showing of prejudice was made in this proceeding and such a claim would be hard to envision regarding the two duties that respondent was charged with violating in this proceeding: passage of a professional responsibility examination and attendance at the State Bar's Ethics School. These are requirements imposed in almost every disciplinary probation. *In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929.**[4]**

Code of Civil Procedure 916 does not stay either execution of a judicial sanctions order or respondent's duty to report it to the State Bar. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.**[3]**

The terms judges and judicial officers as used in Business and Professions Code section 6068(d) and rule 5-200(B) of the Rules of Professional Conduct are limited to those individuals who are officers of a state or federal system and who perform judicial functions. Thus, the review department reversed the hearing judge's determination that respondent attempted to mislead judicial officers, in violation of section 6068(d) and rule 5-200(B), when he told an arbitration panel that he had represented his clients previously. The local bar association's arbitration panel was not composed of judges or judicial officers as required under both section 6068(d) and rule 5-200 and the local bar association's arbitration panel was not court-appointed. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.**[6]**

California Rules of Court, rule 951, which explicitly authorizes the State Bar Court to extend the time within which an attorney must take and pass a professional responsibility examination, applies only when the Supreme Court orders the attorney take and pass such an examination. It does not apply when the State Bar Court orders an attorney to take and pass the examination as a condition attached to a reproval. When the State Bar Court imposes such a condition, its authority to extend the time for the attorney to comply is derived from California Rules of Court, rule 956, which authorizes the State Bar Court to attach conditions to the reprovals that it imposes. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[1]**

The relationship between an attorney and client is of the highest order of fiduciary relation. Even where the attorney no longer represents the client, the attorney continues to owe the client a fiduciary duty of utmost good faith and fair dealing with respect to, at least, the subject matter of the attorney's prior representation of the client, including any express lien for attorney's fees. Respondent did not violate this duty by refusing to sign a settlement check which was in the possession of the former client's new attorney, and which was made payable to the former client, the former client's new attorney, and respondent. Respondent's fee agreement provided for a lien on any recovery, he perfected his lien as to part of the former client's recovery, he suggested, among other alternatives, that the disputed portion of the recovery be placed in his trust account or, alternatively, in a separate blocked

account requiring both his and his former client's signatures, and he took prompt action to judicially resolve the competing claims to the settlement proceeds. Respondent's duty of good faith and fair dealing did not require that he abandon his lawfully perfected lien by endorsing the settlement draft when it was under the client's control, as doing so would have immediately extinguished the lien as to the client's creditors and thereafter subjected the lien to extinguishment if the client spent the money. *In the Matter of Feldsott* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754. **[1]**

It is presumed an amendment to a statute operates prospectively unless the Legislature has expressly stated the contrary or, after considering all pertinent factors, there is clear indication of a legislative intent that the statute operate retrospectively. Business and Professions Code section 6102, subdivision (c) does not contain an express retroactivity provision and after considering extrinsic factors, including public protection and due process, the review department concluded that section 6102, subdivision (c) should not be applied retroactively. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[3]**

A hearing judge erroneously relied on an unpublished hearing department decision and a Supreme Court order in another case. The unpublished decision of the hearing department in another proceeding, involving another respondent, may not be relied on either as precedent or as evidence. While the hearing department could take judicial notice of the Supreme Court order, that order provided no information that would make it relevant as either evidence or precedent in the matter before the court. It merely recited the discipline ordered, without discussion of the relevant facts or law and therefore should not have been relied on in this proceeding. *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639. **[3]**

The rule is well settled in California that a void order cannot be the basis for a valid contempt judgment. A person affected by an injunctive order may challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by (1) complying with the order while seeking a judicial determination as to its jurisdictional validity or (2) disobeying it and then raising the jurisdictional challenge if and when he is sought to be punished for his disobedience. If a person affected by an injunctive order chooses to challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by disobeying it and then raising the jurisdictional challenge as a defense against any contempt charges brought against him, his violation of the order constitutes no punishable wrong if it is ultimately determined that the order was issued without or in excess of jurisdiction. However, the contempt order here was final and there was no valid reason to go behind a now-final order. The State Bar Court properly defers to the judgements of the courts of record that rendered contempt judgements against respondent and that considered respondent's subsequent appeals, requests for reconsideration, and certiorari. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[2]**

Based on the determination that the provisions of the State Bar Act and the Rules of Procedure of the State Bar concerning investigative subpoenas for trust account records meet the standard as enunciated by the Supreme Court in a prior case, the review department concluded that there was no need to import either the provisions of Code of Civil Procedure section 1985 et seq., or the provisions of Government Code section 7470 et seq., for either due process or other reasons into the procedures for the issuance of State Bar investigative subpoenas. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[4]**

Respondent's claim that the application of the Civil Discovery Act to attorney disciplinary proceedings denied him due process was rejected. State Bar disciplinary proceedings are administrative but of a nature of their own. It has been repeatedly held that they are not governed by the rules of procedure governing civil or criminal litigation although such rules have been invoked when necessary to insure administrative due process. The Supreme Court observed that the Rules of Procedure of the State Bar supply a wide array of procedural safeguards and that pursuant to these rules, the Civil Discovery Act, as adopted and limited by the Rules of Procedure of the State Bar, constitutes the rules of discovery in State Bar disciplinary proceedings. Under Supreme Court case law, such application is constitutional. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[6]**

Illegal use of the Great Seal of the State of California on respondent's letterhead was inherently inappropriate even if no one was misled. Fact that no one was misled was only a mitigating circumstance. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[2]**

Respondent violated his duty to maintain only just causes and abused the bankruptcy process by filing and maintaining a Chapter 11 bankruptcy proceeding for an insolvent client when he knew that the client's only assets were nine residential lots in which there was no equity and that the client had neither the ability nor the intention of making adequate protection payments to the lienholders on the nine lots in accordance with the law. Even if respondent was unaware of these facts, he would still be culpable. Under applicable federal rules of procedure, respondent's signature on the Chapter 11 petition as attorney of record for debtor was a certification that to the best of his knowledge and belief, formed after a reasonable inquiry, the petition was well founded in fact and warranted by either existing law or a good faith argument for the modification of existing law. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[3]**

Where respondent violated rule of professional conduct which prohibits an attorney from improperly obtaining an interest in a client's property and/or entering into a business transaction with a client, and that misconduct was the same misconduct underlying the charge that respondent violated statutory duty to uphold law on account of his violation of provisions of the Probate Code which prohibit self-dealing by trustees, and where discipline did not depend on whether respondent violated both rule and statute, statutory violation was cumulative and review department did not address it. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[1]**

The review department denied respondent's request for judicial notice of general facts about alcoholism and declined to consider several character references stressing respondent's recovery from alcoholism on the aggregate grounds that respondent had not shown at the disciplinary hearing that her alcoholism caused her misconduct, that she failed to show why she should be excused from not having presented the proffered evidence at the disciplinary hearing, and that she failed to show that the specific matters which she wanted to be judicially noticed were proper subjects of judicial notice. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (h).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[3]**

Where respondent stated at oral argument that she did not object to judicial notice of her conviction for the unlicensed practice of law and admitted that she had improperly practiced law, the review department augmented the record on review to note the record of her conviction and considered the unlicensed practice as an aggravating circumstance. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (d)(1).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[4]**

Attorney discipline is an available sanction for violation of rule 11 of Federal Rules of Civil Procedure. Where respondent testified that he had been disciplined by federal court as result of rule 11 matter, and federal court had suspended respondent from practice before it as part of relief granted in ruling on rule 11 motion, federal court's action constituted discipline. However, State Bar must prove aggravating circumstances by clear and convincing evidence. Where record before review department did not reveal factual underpinnings of federal court discipline, and review department was therefore unable to examine nature and chronology of respondent's prior discipline to determine impact it should have on current discipline recommendation, review department gave no weight to respondent's federal discipline as factor in aggravation. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[11]**

The State Bar Court may take judicial notice of the records of any California court. (See Evid. Code, § 452, subd. (d)(1); Trans. Rules Proc. of State Bar, rule 556.) Such notice may include the facts stated in court orders, findings of fact, conclusions of law, and judgments. Although civil findings bear a strong presumption of validity if supported by substantial evidence, they must be assessed independently under the more stringent standard of proof applicable to disciplinary proceedings. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[4]**

The Supreme Court order in a probation revocation matter can become effective earlier than the Supreme Court order in an original discipline matter. (Cal. Rules of Court, rule 952(a), (b).) Accordingly, where a probation revocation matter and an original discipline matter were consolidated, the review department made a separate disciplinary recommendation for each matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[1]**

As officers of the court, sworn to uphold the law, attorneys have a duty to honor legislative mandate that government-funded health care expenses be entitled to reimbursement from any and all private funds available. By statute, it is a disciplinable offense to violate this duty unless the violation is the result of a negligent good faith mistake. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[16]**

The Business and Professions Code section requiring attorneys to support federal and California constitution and laws proscribes attorney conduct which violates any federal or California statute. However, such Business and Professions Code section may be used to charge violation of another statute only if that statute is specifically identified in the notice to show cause. Otherwise, the attorney is not given adequate notice of the particular statute allegedly violated. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[17]**

An attorney retained by a parent to represent the parent's child in a personal injury matter is thereby put on notice that the injured client may be a minor, a fact of critical importance. Statutes requiring court approval of compromise of minors' claims are intended for protection of minors. Respondent's failure to ascertain client's age after being retained by client's parent was grossly negligent as a matter of law and constituted reckless failure to perform legal services competently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[20]**

Where statutory scheme requires tribunal to approve fees charged by counsel, it is professional misconduct for an attorney to secure or attempt to secure fees in excess of those allowed by tribunal. Respondent's collection of any fee from minor client without court approval, regardless of amount charged, violated prohibition against charging or collecting an illegal fee. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[21]**

Statute requiring attorneys to uphold law does not provide basis for discipline except where it serves as conduit to charge violation of state or federal statute other than disciplinary provisions of Business and Professions Code. Where no such statutory violation was charged in matter involving failure to honor contractual lien, no violation could be found as a matter of law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[22]**

Because time to seek Supreme Court review is shorter for probation revocation matters than for original disciplinary matters, it is necessary to make separate discipline recommendations when such cases are consolidated. (Cal. Rules of Court, rule 952(a), (b).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[1]**

Notice to show cause under rule 550 of Transitional Rules of Procedure of State Bar is not required in conviction referral proceeding. Pursuant to Supreme Court's delegation of authority to State Bar Court in conviction referral matters (Cal. Rules of Court, rule 951(a)), only State Bar Court referral order and notice of time and place of hearing are needed to initiate a conviction referral proceeding. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[2]**

Nothing in the California Rules of Court delegates to the State Bar Court the Supreme Court's general review power over decisions of the State Bar Board of Governors and its committees. However, in the exercise of its inherent authority to regulate the legal profession, the Supreme Court could order the State Bar Court to adjudicate or make findings and recommendations regarding a motion for a protective order regarding a State Bar disciplinary investigation, or could adopt a rule of court giving the State Bar Court jurisdiction over such motions generally. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[10]**

In order to promote membership understanding of lawyers' professional obligations and to enhance public awareness of review department dispositions, review department initially followed policy of publishing its opinions in all public matters in which oral argument was held. After reaching point at which automatic publication of all such matters no longer appeared necessary, review department began to publish its opinions in public matters generally in accordance with standards governing other intermediate appellate courts in California. (Cal. Rules of Court, rule 976(b).) *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[1]**

Where respondent was a creditor of a client's bankruptcy estate and also represented the client in the bankruptcy, and where the only evidence about the bankruptcy proceeding showed that the claims of two other creditors were found non-dischargeable, there was no clear and convincing evidence to sustain a charge that respondent's representation of the client was improper under bankruptcy law. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[8]**

Rules of evidence in civil cases are generally applicable in State Bar proceedings (Trans. Rules Proc. of State Bar, rule 556) and include taking judicial notice of records of any federal court of record. Where neither party specifically requested augmentation of record with federal court's opinion on appeal in related matter, but respondent attached copy of such opinion to review brief, review department took judicial notice of such opinion. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[3]**

In State Bar disciplinary proceedings, the formal rules of evidence apply as in civil cases, with the proviso that no error in admitting or excluding evidence invalidates a finding or decision unless the error deprived the party of a fair hearing. (Trans. Rules Proc. of State Bar, rule 556.) Accordingly, hearsay evidence is not admissible unless the opposing party agrees to its admission or otherwise waives any hearsay objections, or the evidence is subject to an exception to the hearsay rule. Where facts needed to establish past recollection recorded exception were shown, hearsay statements in witness's notebooks were properly admitted, and admission of notebooks themselves, even if error, did not prejudice opposing parties. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[8]**

Where respondent settled a personal injury claim, without filing suit, on behalf of a client who was a Medi-Cal beneficiary, respondent's failure to notify the Department of Health Services of the settlement did not violate a statute which only required such notice if an action had been filed (Welfare and Institutions Code section 14124.79). *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[2]**

An attorney's obligation to his or her client is limited by the attorney's and the client's obligation to third parties. Where respondent's client, a Medi-Cal beneficiary, had a statutory obligation (Welfare and Institutions Code section 14124.76) to notify the Department of Health Services (DHS) of the impending settlement of a personal injury matter in which DHS claimed a lien, respondent had a fiduciary obligation under decisional law to provide the required notice on his client's behalf. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[3]**

Where a statute (Welfare and Institutions Code section 14124.76) required Medi-Cal beneficiaries to notify the Department of Health Services (DHS) regarding the impending settlement of matters in which no suit had been filed and DHS claimed a lien, the review department construed the statute to require that attorneys representing such beneficiaries must also give the required notice, because to construe the statute otherwise would frustrate the Medi-Cal third party liability recovery system and be in derogation of an attorney's general fiduciary responsibility to lienholders. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[4]**

The statute providing that attorneys have a duty to support the constitution and laws of California and the United States constitutes a conduit whereby attorneys may be disciplined for violating laws which are not otherwise disciplinable under the State Bar Act. However, a negligent mistake made in good faith does not constitute a violation of this statute. Thus, where respondent believed he had satisfied his obligation to a statutory medical lienholder by informing it of a source of insurance coverage, and thus believed that his client was entitled to all of the settlement funds obtained from a different source of coverage, respondent's failure to notify the lienholder of the impending settlement, as required by statute, did not violate his statutory duty to obey California law, because it constituted a negligent mistake, based on the good faith, erroneous belief that he was entitled to distribute all the settlement funds to the client and let the client deal with the statutory lien. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[5]**

No method of enforcement of settlement agreements in disciplinary proceedings is set forth in the Transitional Rules of Procedure, but an express provision governing this subject is not essential to the court's inherent jurisdiction to exercise reasonable control over proceedings before it in order to avoid unnecessary delay. Where one party refused to abide by a settlement agreement, the other party could have made a motion to compel enforcement of the agreement, by analogy with the statutory motion permitted by Code of Civil Procedure section 664.6, or could have asserted the agreement as an affirmative defense in the pending proceeding. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[6]**

It is well established that an aggrieved party may properly bring to the court's attention the alleged breach of a settlement agreement arrived at before a judge and reflected in an ensuing court order. Rule 1231 of the Provisional Rules of Practice and Evidence Code sections 1152, subdivision (a) and 1154 only preclude evidence

of settlement offers and negotiations that do not result in an agreement. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[7]**

Because section 1013 of the Code of Civil Procedure applies by rule in State Bar Court proceedings, service of a hearing department decision by mail to an address within California extends by five days the 30-day period for filing a request for review. (Rule 450, Trans. Rules Proc. of State Bar; rule 1111(b), Provisional Rules of Practice.) *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[3]**

A determination whether a disciplinary proceeding should be abated on the ground of inability of the respondent to assist in the defense resembles a competency hearing in a criminal matter. In the law of attorney discipline, the respondent is presumed competent. Inability to assist in the defense of a disciplinary proceeding suggests a more serious form or degree of mental illness than inability to practice competently without endangering clients or the public. Therefore, facts sufficient to institute inactive status proceedings under section 6007(b) may not be sufficient to support abatement of a disciplinary proceeding. The appropriate standard for abatement is proof by a preponderance of the evidence that the attorney is incompetent to assist in the defense. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[6]**

Under California civil evidence rules, which apply generally in State Bar proceedings, a hearing judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice. Undue consumption of time alone is not in itself grounds for exclusion. Nor is unfair surprise, where the fairness if the trial may otherwise be ensured, if necessary by a continuance. Where evidence is cumulative or remote, however, there is discretion to exclude it. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[10]**

Compliance with the time limitations set forth in the Probate Code is not a defense to a charge that the attorney failed to act competently, nor does noncompliance with such time limitations establish per se a failure to act competently. The focus of the inquiry on a charge of failure to act competently is whether the attorney intentionally, recklessly, or repeatedly failed to apply the learning, skill, and diligence necessary to discharge the duties arising from the attorney's employment or representation. Compliance with the time limitations of the Probate Code is but one factor to be considered in making this determination. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[11]**

Normally, discovery objections not raised in a timely fashion will not be considered, and this provision applies in discovery in moral character proceedings even though the Civil Discovery Act has not been made applicable to such proceedings in its entirety. However, where a claim of privilege from discovery had been belatedly presented to the hearing judge without objection and raised an important issue, the review department considered its applicability on review. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[5]**

The State Bar is a public entity within the scope of the statutory official information privilege (Evid. Code, § 1040). The procedure to be followed in State Bar Court proceedings where the official information privilege is asserted is the same as in civil cases. In a moral character proceeding, where the information sought was the identities of persons whom the State Bar had reserved the right to call as impeachment or rebuttal witnesses at trial, the official information privilege did not apply to such information, either because the consent exception was applicable, or because the reservation of the right to call such persons reduced the Committee of Bar Examiners' need for secrecy to the interest of a party in the outcome of the proceeding, which is not protected under section 1040 and which was outweighed by the interests of the public and the applicant in a fair trial. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[6]**

The Civil Discovery Act has not been adopted in its entirety in the conduct of State Bar proceedings. The imposition of monetary costs as discovery sanctions is precluded under rule 321, Trans. Rules Proc. of State Bar. Authorized discovery sanctions include orders precluding a party from supporting or opposing designated claims or defenses or from introducing evidence or testimony. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[14]**

The California Professional Responsibility Examination, when appropriately ordered, does assist in the rehabilitation of an errant attorney and, as a general proposition, the examination is an effective tool to measure an attorney's understanding and appreciation of the rules and statutes which are designed to protect the public and the best interests of the profession. However, when imposed as a condition of a reproval, the examination may

only be required based on a finding that the protection of the public and the interests of the attorney will be served thereby. (Cal. Rules of Court, rule 956(a).) *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181. **[2]**

Where there is no precedent regarding the standard of review to be applied in a matter coming before the review department in a certain procedural posture, the review department proceeds by analogy to the closest civil and criminal rules. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[2]**

The Transitional Rules of Procedure of the State Bar, unlike equivalent California and federal rules, provide for review as of right following the denial of a motion to dismiss, as well as the grant of such a motion. However, this does not affect the type of review to be afforded on the merits. (Trans. Rules Proc. of State Bar, rule 554.1.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[3]**

Rule 951(a), California Rules of Court, delegating certain powers to the State Bar Court regarding the discipline of attorneys convicted of crimes, limits the State Bar Court to recommending summary disbarment to the Supreme Court, rather than imposing it directly. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[9]**

Where a standard for judicial disqualification in the State Bar's Rules of Procedure was drawn from a similar provision in the Code of Civil Procedure, case law under the statute could be looked to in applying the State Bar rule. (Rule 230, Rules Proc. of State Bar.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[10]**

The rules of evidence in civil cases in courts of record, including applicable sections of the Code of Civil Procedure and judicial decisions as well as the Evidence Code, are followed in State Bar disciplinary proceedings. (Rule 556, Rules Proc. of State Bar.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[27]**

Evidence Code section 776, providing for calling the opposing party as an adverse witness, does not empower the State Bar to require the respondent's presence at a disciplinary hearing. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[29]**

In State Bar Court proceedings, the court acts as an administrative arm of the Supreme Court, and State Bar Court judges and referees function as "judicial officers." Therefore, under Code of Civil Procedure section 1990, any person present at a State Bar Court hearing may be compelled to take the witness stand by the judge or referee. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[31]**

The California Rule of Court regarding reinstatement requires petitioners for reinstatement to pass a professional responsibility examination, and to establish their learning and ability in the law, rehabilitation and present moral qualifications. Applicants who fail to show sufficient learning in the law may be required to pass the examination required of initial applicants for admission. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[3]**

Where respondent did not agree in writing that statutory attorney-client fee arbitration would be binding, arbitration award was not binding even though it recited that it was. However, the award became binding when respondent failed to seek a post-arbitration trial within the statutory time limit. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[3]**

Even if the procedure for a motion for judgment at the close of the moving party's case, as set forth in Code of Civil Procedure section 631.8, does apply in State Bar proceedings, it was not error for the hearing referee to take respondent's motion under submission and rule on it after respondent had presented the defense case, and the motion was impliedly ruled on when the referee made initial rulings as to culpability. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[20]**

In general, State Bar disciplinary proceedings are governed exclusively by the State Bar's rules of procedure, and the provisions of the Code of Civil Procedure do not apply unless expressly incorporated by reference. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[21]**

It is not clear that the statute regarding inadmissibility of evidence regarding diversion proceedings (Penal Code section 1000.5), and related case law, applies in attorney disciplinary proceedings, since such proceedings are conducted in the judicial branch of government by the State Bar Court, acting as an arm of the Supreme Court, and are aimed at assessing the attorney's fitness to practice law. Even if such authorities are applicable, evidence of

respondent's arrest which resulted in diversion was properly used to show that respondent had a long history of involvement with marijuana. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[2]**

Although attorney disciplinary proceedings are sui generis and not criminal in nature, rules of criminal law may provide guidance in appropriate circumstances; case law and statutes in criminal law indicate that lack of wilfulness constitutes a reason not to revoke probation. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[7]**

As with the treatment of failure to pay restitution in reinstatement and criminal probation cases, in a disciplinary proceeding for failure to make timely restitution as a condition of attorney disciplinary probation, due process requires an examination of the probationer's ability to make restitution and the sufficiency and good faith of the probationer's efforts to acquire the resources to pay. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[11]**

Section 6068(a) is a conduit by which attorneys may be charged and disciplined for violations of other specific laws which are not otherwise made disciplinable under the State Bar Act, including a violation of: (1) a statute not specifically relating to the duties of attorneys; (2) a section of the State Act which is not, by its terms, a disciplinable offense, and (3) an established common law doctrine which is not governed by any other statute. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[15]**

Discovery in State Bar proceedings must be completed within 90 days after service of notice to show cause, subject to reasonable extension. (Trans. Rules Proc. of State Bar, rule 316.) Where examiner noticed and took deposition well after 90-day cutoff, and did not seek extension of discovery period, deposition was clearly discovery, even though examiner's purpose in taking it was to preserve evidence for trial. However, provision of Civil Discovery Act governing time to object to deposition notice on certain grounds did not apply, because respondent's objection was not based on grounds set forth in Civil Discovery Act but on examiner's failure to comply with State Bar rules of procedure. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[17]**

Even if respondent waived procedural objection to deposition by appearing and participating, deposition transcript should not have been admitted in evidence, because examiner failed to show that State Bar had been unable to procure deponent's attendance at trial despite reasonable diligence, as required by provision of Civil Discovery Act governing use of depositions at trial. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[18]**

The rules governing the proceedings for the transfer of an attorney to inactive status incorporate by reference Code of Civil Procedure section 2032(d). (Rules 315, 321, 643, Trans. Rules Proc. of State Bar.) Proceedings to obtain an order for a mental examination under section 6053 must comply with the procedural and substantive requirements of Code of Civil Procedure section 2032(d). *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[7]**

Where no evidence or finding indicated that a compulsory mental examination constituted the least intrusive means of determining a respondent's mental condition, the issuance of mental examination orders violated not only the applicable statutory requirements but also the respondent's California constitutional right of privacy. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[8]**

The facts of each case will determine whether a particular rule of civil or criminal law should be applied in State Bar proceedings to ensure due process. This principle applies in involuntary inactive enrollment proceedings as well as disciplinary proceedings. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[12]**

An attorney may not endorse a client's name to a check without express authority to perform that particular act. However, under Commercial Code section 3403, no specific form of authorization is required from a principal to an agent in order for the agent to sign the principal's name to a negotiable instrument, such as a settlement check. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[3]**

Sections 2450, et seq., of the Civil Code did not mandate a different format for special powers of attorney than the one which the respondent used, where those statutes were not enacted until two years after the power of attorney was executed by the client and one year after it was acted upon by the respondent, and where section 2456 of the Civil Code, enacted simultaneously with section 2450, expressly provides that any form that complies with the requirements of any other law may be used in lieu of the form set forth in section 2450. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[13]**

Under Commercial Code section 3403, a properly authorized agent may simply sign the principal's name on a check endorsement rather than indicating that the agent is signing as agent. Absent evidence to the contrary, the expectations of the bank must be presumed to be in accord with this statute. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[16]**

In a reinstatement proceeding, the petitioner bears the burden of establishing rehabilitation, present moral qualifications for readmission and present ability and learning in the general law. (Rule 952(d), Cal. Rules of Court; rule 667, Trans. Rules Proc. of State Bar.) *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[4]**

Rule 232 of the California Rules of Court contemplates preparation of a tentative decision after the completion of the trial, not in midstream, as a preliminary stage in the procedure for requesting a statement of decision. Therefore, rule 232 does not support the legitimacy of issuing a tentative decision when only one side has presented evidence. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[3]**

In finding respondent culpable of misappropriating trust funds and of knowingly issuing a check drawn on insufficient funds, the referee's statement that respondent's acts constituted crimes involving moral turpitude was improper since the criminal statutes were not charged in the notice to show cause. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[16]**

Under applicable provisions of Commercial Code, handwritten notation on attorney's check stating that it was issued "subject to verbal confirmation" destroys its negotiability and prevented attorney from being criminally liable for issuance of check drawn on insufficient funds. Dishonor of such check due to insufficient funds was not an aggravating factor, because check was issued in non-negotiable form and there was no clear evidence that payee was misled regarding nature of check. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[1]**

In administrative mandamus proceedings where the court is authorized to exercise independent judgment on the evidence, abuse of discretion by the lower tribunal is established if the court determines that the findings are not supported by the weight of the evidence. Where the court is not authorized to exercise independent judgment, then it must determine whether the findings are supported by substantial evidence in the light of the whole record. In such cases, due process requires that the body deciding the case must at least review a transcript of the evidence. The argument that this standard had been violated on earlier review by the former review department was mooted by the full-time review department's de novo review of the record on a second review after the former review department's remand for further hearing. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[1]**

State Bar proceedings are sui generis, and are not governed by the principles of administrative mandamus applicable to ordinary administrative proceedings. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[2]**

As a formal proceeding of the State Bar Court, a reinstatement hearing is governed by the formal rules of evidence applicable in civil proceedings. (Rule 556, Trans. Rules Proc. of State Bar.) More liberal evidentiary standards applicable in certain other types of statutory proceedings do not apply in State Bar proceedings. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[7]**

In ruling on a motion to set aside default under Rule of Procedure 555.1(a), State Bar Court interprets and applies terms "mistake, inadvertence, surprise or excusable neglect" in same manner as in civil cases under section 473 of the Code of Civil Procedure. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[4]**

Respondent's fear, panic, or aversion to formal charges alone would not show abuse of discretion in failure to grant relief from default, but specific showing regarding preoccupation with mother's serious illness raised

doubts as to proper exercise of discretion, which review department resolved in respondent's favor. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[8]**

In proceedings to set aside default under Rule of Procedure 555.1(a), the terms "mistake, inadvertence, surprise or excusable neglect" are interpreted and applied in the same manner as in motions in civil cases pursuant to section 473 of the Code of Civil Procedure. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[8]**

Appellate review under section 473 of the Code of Civil Procedure is for abuse of discretion, the test being whether the trial court exceeded the bounds of reason. The Supreme Court has applied a similar abuse of discretion standard in reviewing procedural motions in State Bar proceedings. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[10]**

It is the policy of the law under section 473 of the Code of Civil Procedure to favor a hearing on the merits; any doubts in applying section 473 must be resolved in favor of the party seeking relief from default. A trial court order denying relief is scrutinized more carefully than an order permitting trial on the merits. Nonetheless, it is the moving party's responsibility to recite facts that meet the burden of proving mistake, inadvertence, surprise or excusable neglect. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[11]**

An attorney is ordinarily justified in relying on communications from the clerk as a basis for relief under section 473 of the Code of Civil Procedure. *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192. **[13]**

Neither civil nor criminal rules of procedure govern State Bar disciplinary proceedings. However, the right to practice one's profession is sufficiently precious to be surrounded by a panoply of legal protection, including invocation of civil and criminal procedural rules when necessary to insure administrative due process. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[3]**

Contention by State Bar that respondent violated attorney's duty to obey state and federal laws by failing to pay payroll taxes as required by penal and civil statutes was rejected by review department, despite respondent's admission that taxes were not paid, because notice to show cause did not charge violation of employer withholding statutes, and no evidence was introduced to prove they were violated, thus depriving respondent of opportunity to defend. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[10]**

An attorney's prior record of discipline is a record of the Supreme Court and also of the State Bar, and as such it is the proper subject of judicial notice. (Evid. Code, §4,06 451 et seq.) Even when judicial notice is taken of such records, the documents composing them should be identified, introduced in evidence, and made part of the record in the proceeding. (Rule 571, Rules Proc. of State Bar; rules 1260-1262, Prov. Rules of Practice of State Bar Ct.) *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[5]**

Government Code section 68081 does not apply to the review department of the State Bar Court, which has a different standard of review than that of a court of appeal. However, opportunities are afforded to the parties under State Bar Court procedure which parallel those provided by Government Code section 68081. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[6]**

195 Effect of Discipline in Other Jurisdictions

The State Bar was not barred from relying on Michigan proceedings to impose discipline in California under the authority of Business and Professions Code section 6049.1 notwithstanding that, at the time of a prior California disciplinary case in which the State Bar and respondent entered into a stipulation disposing of the charges, the State Bar knew of disciplinary proceedings pending in Michigan but nevertheless advised respondent in writing pursuant to Rules of Procedure of the State Bar, rule 133(a)(12) that there were no additional State Bar investigations pending against him. The clear purpose of Rules of Procedure of the State Bar, rule 133(a)(12) is to require the State Bar to give notice to respondents before the State Bar Court or to attorneys being investigated by the State Bar of the pendency of other complaints lodged with the State Bar against such attorneys, and to expand that requirement to include complaints lodged in other jurisdictions would impose a far greater burden than that contemplated. At the time of the stipulation, both respondent and the State Bar knew of the Michigan proceedings, yet the stipulation did not in any way deal with the California consequences of the Michigan matter, there was no evidence that the Michigan proceedings were included in discussions leading to the stipulation, respondent entered into the stipulation without inquiring about including the Michigan matter in the stipulation, and the State

Bar had no way to evaluate the seriousness of the Michigan proceedings. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[1]**

Where respondent asserted for the first time at oral argument that Business and Professions Code section 6049.1 was being unconstitutionally applied because a Michigan disciplinary action required only a preponderance of the evidence for a finding of culpability and that California reliance on that lower standard deprived him of due process and equal protection of the law, respondent's failure to have raised the issue before the hearing department or in his briefs on review constituted a waiver of the issue. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[2]**

A certified copy of a final disciplinary order of the State of Michigan finding respondent culpable of misconduct conclusively established that respondent was culpable of professional misconduct in California. Such misconduct, which included misappropriation of client funds, failure to account, failure to respond to a client's reasonable inquiries, failure to pay to a client funds to which she was entitled, moral turpitude, failure to take necessary legal action to protect a client's interest, failure to respond to a client's inquiries concerning the status of her funds, and failure to respond to investigations, warranted discipline in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[3]**

In a proceeding under Business and Professions Code section 6049.1, once it had been conclusively established that respondent was culpable of professional misconduct in California, the remaining issue for consideration in California was the degree of discipline. Where the only evidence in the record consisted of the final record of discipline in Michigan, no portion of the underlying evidentiary record from the Michigan proceedings was placed in evidence, and the Michigan final record of discipline indicated that each of the findings of fact in Michigan was made under a preponderance of the evidence standard of proof, a purported showing of the facts and circumstances found in Michigan to surround the misconduct could not be weighed under the required California standard of clear and convincing evidence. Instead, the misconduct found in Michigan was weighed with only the aggravation and mitigation separately shown in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[4]**

Business and Professions Code section 6049.1 provides that, with exceptions not applicable here, the Illinois Supreme Court disciplinary order imposed on respondent conclusively established his culpability in California. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213. **[1]**

Respondent's Illinois misconduct, involving misappropriation of client funds, repeated commingling of trust funds with personal funds, settling a case without authority, issuing an insufficiently funded check, and forging a client's name to settlement documents, was serious and a clear ground for imposing lawyer discipline in California. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213. **[2]**

In a proceeding under Business and Professions Code section 6049.1, the appropriate degree of discipline is not presumed by the other state's discipline, but is open for determination in this state. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213. **[3]**

Respondent's argument that res judicata bars this disciplinary proceeding because a similar matter was dismissed by the state bar of another state was rejected. First, res judicata is applicable with respect to only final judgements rendered on the merits. Second, the State Bar was not a party to the other disciplinary proceeding. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[4]**

Attorney's out-of-state discipline was not entitled to preclusive effect under California statute providing for expedited disciplinary proceeding based on discipline in other jurisdictions where State Bar did not proceed pursuant to procedures set forth in such statute. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[9]**

Possible collateral estoppel effect of attorney's out-of-state discipline could not be addressed where record did not reveal factual underpinnings of such discipline and did not permit determination as to what issues were actually litigated in out-of-state disciplinary matter. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[10]**

Attorney discipline is an available sanction for violation of rule 11 of Federal Rules of Civil Procedure. Where respondent testified that he had been disciplined by federal court as result of rule 11 matter, and federal court had suspended respondent from practice before it as part of relief granted in ruling on rule 11 motion, federal court's action constituted discipline. However, State Bar must prove aggravating circumstances by clear and convincing evidence. Where record before review department did not reveal factual underpinnings of federal court discipline, and review department was therefore unable to examine nature and chronology of respondent's prior discipline to determine impact it should have on current discipline recommendation, review department gave no weight to respondent's federal discipline as factor in aggravation. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[11]**

Seven years of law practice in California prior to respondent's misconduct was worth only slight weight in mitigation. Respondent's additional years in practice in a foreign jurisdiction were not shown by clear and convincing evidence to be mitigating because the record lacked information on the similarities and differences between the attorney discipline systems in the United States and the foreign jurisdiction. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[11]**

196 Comparison to ABA Model Code and/or Model Rules

Respondent violated seven states' UPL rules of professional conduct, which are either identical or substantially similar to the American Bar Association's Model Rules of Professional Conduct, rule 5.5(b), prohibiting a lawyer not licensed in a state from either: 1) establishing an office or other systemic and continuous presence in the state; or 2) holding out to the public or otherwise representing that the lawyer is admitted to practice law in the state. The form of communications used by respondent—specifically the use of the term "The Law Offices of" on Legal Services Agreements and cease and desist letters, and representations that the office acted as a "law firm" for clients and provided "legal services"—was evidence that he held himself out as entitled to practice law in states where he was unlicensed. By implying he was licensed in these seven states, respondent gave the false impression to clients and creditors that he held an advantage over a non-attorney debt negotiator. He also explicitly represented to clients he would perform legal services, and informed creditors that he was representing each client using law office letterhead. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250. **[3 a-c]**

Respondent's conduct did not fall under any safe harbor provision under American Bar Association's Model Rules of Professional Conduct, rule 5.5(b), which allows out-of-state attorneys to practice temporarily in states where they are not licensed without committing UPL. First, applying the factors defined by the model rule, respondent's contact with out-of-state clients was not reasonably related to his practice in California. Likewise, his contentions that the Model Rule enabled him to provide legal services related to bankruptcy law failed where his proposed legal services were not limited to issues of bankruptcy and he was not admitted to practice law in the federal courts or any of the seven states at issue. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250. **[4 a-c]**

Where it was not clear, given federal case law interpreting similar ABA ethics rule, that county employees contacted by respondent's office came within definition of "party" in rule prohibiting direct contact with opposing party represented by counsel, and where it was possible that such contact came within exception for communications with public officials or otherwise authorized by law, record did not establish by clear and convincing evidence that such contact violated rule. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[3]**

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

Violent criminal behavior that does not rise to the level of moral turpitude may result in the imposition of discipline under both California case law and the ABA model ethics rules. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[11]**

Normally, a respondent who has recently been ordered to take a professional responsibility examination is not required to do so in connection with subsequent discipline. Where respondent had not been ordered to take any professional responsibility examination in connection with prior discipline, review department recommended that respondent be ordered to take the California Professional Responsibility Examination, focusing on the California Rules of Professional Conduct, which is now routinely ordered in discipline cases involving suspension

in lieu of the national Professional Responsibility Examination, which focuses on the ABA rules. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[18]**

Under both ABA model ethics rules and California law, lawyers convicted simply of a single misdemeanor offense of driving under the influence may receive a disciplinary reprimand, but for the most part are treated like under citizens and sanctioned under the criminal law. Their suitability to practice law is called into question, however, where the incident is compounded by serious injury or death or is coupled with other aggravating behavior. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[10]**

In the Matter of Tady (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121.

The whereabouts of a fugitive client known to an attorney constituted privileged communications which the attorney cannot disclose. (Bus. & Prof. Code, § 6068 (e); ABA Model Rules, rule 1.6.) The attorney must advise the client to surrender and must not assist or facilitate the fugitive in avoiding capture or committing a crime. Thus, respondent's knowledge that his fugitive client was in California and his meetings with the client to discuss the progress of negotiations with the authorities regarding the outstanding criminal charges were client confidences which respondent was obligated to preserve. However, an attorney's ethical duty not to disclose client confidences does not extend to affirmative acts which further a client's unlawful conduct, and respondent's guilty plea constituted conclusive proof that he committed all the acts necessary to commit the charged offense of harboring his fugitive client with the intent of preventing the client's discovery and arrest by federal authorities. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[11]**

Wording of California rule governing post-trial contact with jurors differs significantly from parallel rules in ABA Model Code and Model Rules. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[10]**

199 Other Miscellaneous General Issues

Where respondent and State Bar stipulated to facts, legal conclusions on culpability, and discipline, but Supreme Court remanded matter for reconsideration of discipline in light of Standards, parties remained bound by stipulation with regard to facts and culpability. State Bar Court permitted parties to present additional evidence on aggravation and mitigation, and reconsidered degree of discipline. However, State Bar was bound by original stipulation that respondent's misconduct was not serious. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr.320. **[1a-d]**

Once the hearing judge who tried this case left the State Bar Court, he became ineligible to take any further action in the case. Of necessity, that judge was unavailable to consider respondent's post-trial motions.*In the Matter of Lindmark* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668.**[1]**

Standards governing an attorney's ethical duties do not vary according to the many areas of practice, even in specialized areas such as immigration law. Nor do those standards vary according to whether the attorney practices alone or in a partnership, small law firm, large law firm, or corporate law department.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[2]**

In attorney discipline, ethical standards for attorneys are primarily established by State Bar Rules of Professional Conduct and State Bar Act. But, when an attorney practices in a specific area or jurisdiction, those standards may be measured by reference to other relevant state and federal statutes, rules of court, regulations, and administrative rules.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[3]**

Respondent's testimony and arguments regarding his customary practices (1) to limit the scope of his representation of clients referred to him by nonattorney immigration services providers to that of an "appearance attorney," which respondent asserts is an attorney who appears in his clients' immigration cases only for the limited purpose of making court appearances, and (2) to rely on or permit referring nonattorney immigration services providers to prepare and file immigration applications, pleadings, and other documents for his clients placed respondent's practices in issue so that any uncharged improprieties in them may appropriately be considered as aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[4 a-c]**

Under controlling federal regulation and Board of Immigration Appeals precedent, respondent could not properly limit the scope of his representation of clients referred to him by nonattorney immigration services providers to that of an "appearance attorney," which respondent asserts is an attorney who appears in his clients' immigration cases only for the limited purpose of making court appearances, and when respondent did so, he effectively provided those clients with no legal representation or services.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[5 a-h]**

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

Facts clients referred to respondent by nonattorney immigration services providers might have had a cultural bias in favor the referring nonattorney immigration services providers or that those clients might have viewed immigration attorneys, like respondent, as less important to their immigration cases than the referring nonattorney immigration services providers did not reduce or limit nature and scope of respondent's professional duties to his immigration clients.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[7]**

Because parties failed to address relevant immigration court and Board of Immigration Appeals rules and procedures that are set forth in the Code of Federal Regulation and have the force and effect of law, hearing judge and review department were required to take and did take judicial notice of those rules and procedures sua sponte. (Rules Proc. of State Bar, rule 214; Evid. Code, §§ 451, subd. (b), 459, subd. (a).)*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[8]**

Respondent's arguments and testimony that almost all hearing judge's findings of misconduct are erroneous because they are based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients placed respondent's methods of practicing law in issue so that any uncharged impropriety in them may appropriately be considered as aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[9 a, b]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

Keeping proper non-financial client files and records is necessary for attorneys to be able to prove their honesty and fair dealings when their actions are called into question such that justice will not permit an attorneys to escape responsibility for his misconduct by simple act of not keeping adequate non-financial client files and records from which his conduct may be reviewed and any misconduct proved. Thus, an attorney's failure to keep such adequate files and records is itself a suspicious circumstance.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[12]**

Attorney's fiduciary duty to develop and maintain adequate management and accounting procedures for proper operation of his law office is fundamental to fulfillment of multiple duties, including duties to competently perform legal services, adequately communicate with clients, protect client confidential information, and properly handle and account for client funds and other property.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[15]**

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

Under State Bar Act and disciplinary case law, respondent had affirmative duty to insure that his answers to interrogatories propounded to him by the State Bar were true and correct even if he had to refresh his recollection of the facts by going to the immigration court and reviewing the court file and listening to the tapes of all relevant court hearings in each client matter that was a subject of the interrogatories.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[27]**

An offer of proof is a summary of proffered evidence excluded by a trial judge, which is presented (1) to the trial judge to insure that he knows what evidence he has excluded and to provide him with an opportunity to reconsider his denial and permit the introduction of the evidence before the end of trial and (2) to an appellate court so that it may effectively review the trial judge's exclusion of the evidence. Thus, where respondent subpoenaed three immigration court judges to testify on his behalf in State Bar Court disciplinary proceeding, but U.S. Department of Justice greatly restricted the scope of the testimony one immigration court judge could give and refused to permit the other two judges to testify at all, the declaration regarding the immigration judges' testimonies that was executed by respondent's counsel and filed in hearing department was not an offer of proof because hearing judge did not restrict or excluded immigration court judges' testimonies, Department of Justice did, and State Bar Court lacked jurisdiction to review Department's actions. Accordingly, review department struck all statements in respondent's brief based on the declaration of respondent's attorney.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[29 a-c]**

An attorney's lack of experience is not a mitigating circumstance. It is when an attorney is newly licensed or begins to practice in a new area of law that he should take proper steps necessary to learn governing law, rules, and regulations.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[30]**

Civil verdicts and judgments have no disciplinary significance apart from the underlying facts. Nevertheless, civil findings made under a preponderance of the evidence test are entitled to a strong presumption of validity in disciplinary proceedings if they are supported by substantial evidence. Where the trial judge in a civil proceeding found that respondent knew prior to filing a lawsuit that he had not been defamed, that his law firm had not been disparaged, and that his retainer contract with his clients had not been interfered with at all, and those findings were supported by substantial evidence in the record, the hearing judge's conclusion in the disciplinary proceeding that respondent filed the lawsuit based on his honest and reasonable belief in its validity was contrary to the civil findings and did not appear to have accorded the civil findings the strong presumption of validity to which they were entitled. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[1]**

As respondent did not appeal the dismissal of a civil lawsuit, he could not assert in the discipline proceeding that the dismissal was in error, as collateral attack is not available to challenge non jurisdictional error in a judgment. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. **[3]**

Right to recover costs is purely statutory. That is courts have no discretion to award costs that are not statutorily authorized. However, because Supreme Court retains inherent and original jurisdiction over attorney disciplinary proceedings, Supreme Court might well adopt rules providing for or regulating recovery of costs in State Bar Court proceedings, but has not yet done so. Accordingly, right of attorneys to recover costs from the State Bar is granted solely by statute, which statute State Bar Court must strictly construe. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[1]**

Statutory provision granting attorneys the right to recover costs from State Bar provides that attorneys who have been exonerated of all disciplinary charges following a trial are entitled to reimbursement from the State Bar "in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparing for [trial]" without defining "reasonable expenses" (other than expressly excluding fees for attorneys and experts) and without prescribing the method by which State Bar is to determine what they are. Accordingly, State Bar Board of Governors properly exercised its statutory rule making authority and adopted State Bar Rule of Procedure 283 to define what expenses (or costs) are allowable as "reasonable expenses" for which exonerated attorneys may obtain reimbursement under statute and to provide the procedure by which exonerated attorneys are to seek reimbursement from the State Bar for those expenses. In absence of Supreme Court authority to the contrary, the State Bar Court may award exonerated attorneys reimbursement from the State Bar for reasonable expenses only if they are specified as allowable expenses in Rule of Procedure 283. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[2]**

Under clear language of State Bar Rule of Procedure 283(b)(5), State Bar Court may award attorneys exonerated of all disciplinary charges after trial reimbursement for expenses incurred in obtaining transcripts of court proceedings only if the court ordered that the transcripts be prepared. Fact that exonerated attorney could not obtain plenary review of hearing judge's decision finding him culpable of professional misconduct without first obtaining and paying for trial transcript is not synonymous with the court ordering the preparation of a transcript. In fact, requirement of obtaining trial transcript for plenary review is not imposed by court, but by State Bar Rule of Procedure 301(a)(2), which makes clear that it is the party seeking review that orders the trial transcript. *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263. **[3]**

State Bar Court does not have authority to conditionally grant standard 1.4(c)(ii) petitions for relief from actual suspension or to impose probation type conditions on attorneys when granting such petitions. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[5]**

Collateral estoppel may be applied in the State Bar Court to deny an attorney the right to relitigate an issue that was litigated and resolved against him or her in a prior civil proceeding only if (1) the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, (2) the civil finding was made under the same burden of proof applicable to the same issue in the State Bar Court, (3) the attorney was a party to civil proceeding, (4) there is final judgment on the merits in the civil proceeding, (5) the attorney fails to demonstrate any unfairness in precluding the relitigation of the issue, and (6) the civil finding was necessary to the judgment in the civil proceeding. The requirement that the civil finding be necessary to the judgment in the civil proceeding is required by procedural fairness to insure that preclusive effect is not given to nonessential prior findings. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[2 a, b]**

Whenever the State Bar relies upon all or part of the record in prior civil proceeding to prove an element of a disciplinary violation or aggravating circumstance independent of the application of collateral estoppel, neither the evidence nor any factual findings in the civil proceeding may be judicially noticed as conclusive or otherwise given preclusive effect in the State Bar Court, but must be independently assessed under the clear and convincing standard of proof. In addition, the attorney must be given a fair opportunity to contradict, temper, or explain the evidence and findings in the civil proceeding with other evidence, including the live testimony of the same witnesses who testified in the civil proceeding. The attorney need not be given free reign to completely retry the civil suit in the State Bar Court. The hearing judge retains the sound discretion to restrict or excluded cumulative evidence and otherwise control the introduction of evidence as in any other case. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[4 a, b]**

Independent of the application collateral estoppel, admissions made by an attorney in a prior civil proceeding are not conclusive and cannot be given preclusive effect in the State Bar Court even if they are admissible in the State Bar Court as party admissions. Such admissions must be independently assessed under the clear and convincing standard of proof.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[5]**

In its answers to the special findings in a prior civil proceeding against respondent, the jury found that respondent was liable to the plaintiff on the plaintiff's claims for, among other things, breach of fiduciary duty and fraud. In a separate special finding on the issues of malice, oppression, and fraud, the jury found by clear and convincing evidence that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of liability for either breach of fiduciary duty or fraud." The use of the disjunctive conjunction "or" in the phrase "malice, oppression or fraud," precluded the review department from determining whether the jury found that respondent was guilty of malice, oppression, fraud, or some combination thereof. And the use of the disjunctive correlative conjunction "either . . . or" in the phrase "finding of liability for either breach of fiduciary duty or fraud" precluded the Review Department from determining whether the jury found that respondent was guilty of "malice, oppression or fraud" when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both. Nonetheless, regardless of whether the jury based its answer against respondent on the malice, oppression, and fraud special finding on a finding that respondent was guilty of malice, oppression, fraud, or some combination thereof when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both, the jury's answer against him on the malice, oppression, and fraud special finding established, under collateral estoppel principles, that he committed acts involving moral turpitude in violation of statute proscribing acts of moral turpitude, but did not establish the nature and extent of those acts. An attorney who breaches a fiduciary duty (whether to a client or non-client) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law. Similarly, an attorney who commits an act of fraud (whether in the capacity as of an attorney or not) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[6 a-f]**

Even though the hearing judge properly admitted and judicially noticed the record in a prior civil proceeding in which respondent was a party, the hearing judge erred in making factual findings regarding the nature and extent of respondent's violations of the moral turpitude statute based upon the evidence in the civil record independent of the application of collateral estoppel because he did not first give respondent a fair opportunity to attempt to contradict, temper, or explain the evidence in it with other evidence. That error required the reversal of the hearing judge's findings as to the nature and extent of respondent's statutory violations and precluded the review department from exercising its authority to reweigh the evidence and independently make appropriate findings regarding the nature and extent of respondent's violations.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[7]**

The requisite elements of a violation of the first subdivision of the former rule of professional conduct governing business transactions with clients (i.e., subdivision (A) of former rule 3-300) were that the transaction was unfair to the client or that the terms of the transaction were not disclosed and transmitted to the client in writing in a manner that the client should have been able to understand. The requisite elements of a violation of the second subdivision of that former rule (i.e., subdivision B of former rule 3-300) were that the client was not advised, in writing, of the right to seek advice from an independent attorney of the client's choice or that the client was not given a reasonable opportunity to exercise that right. None of these elements are addressed in the special finding under which the jury in a prior civil proceeding in which respondent was a party found, by clear and convincing evidence, that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of [respondent's] liability for either breach of fiduciary duty or fraud." Thus, collateral estoppel does not establish that respondent violated the former rule governing business transactions with clients.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[8]**

In making his factual findings with respect to charged violations of the former rule of professional conduct governing business transactions with clients, the hearing judge erred in reweighing and relying upon the evidence in a prior civil proceeding in which respondent was a party without first giving respondent a fair opportunity to attempt to contradict, temper, or explain that evidence. That error required the reversal of the hearing judge's findings that respondent committed multiple violations of the former rule governing business transactions with clients and precluded the review department from exercising its authority to reweigh the evidence and indepen-

dently make appropriate findings regarding the charged violations of that former rule.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[9 a, b]**

Principles of collateral estoppel may be applied to preclude a respondent from relitigating an issue that was actually litigated and resolved against him in a prior civil proceeding. In State Bar Court proceedings, principles of collateral estoppel may be applied with respect to an adverse prior civil finding if (1) the issue resulting in the civil finding is substantially identical to that in the State Bar Court proceeding, (2) the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, (3) the respondent was a party to the civil proceeding, (4) there is a final judgment on the merits in the civil proceeding, and (5) the respondent does not establish that it would be unfair to bind him to the prior adverse civil finding.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[1]**

Where the only evidence presented in the hearing department to support the contention that it would be unfair to prohibit relitigation of harassment and emotional distress claims was respondent's own testimony without corroborating evidence, respondent's reiteration of his testimony on review does not provide a basis to disturb the hearing judge's rejection of respondent 's testimony. The review department gives great weight to hearing judges' factual findings resolving issues pertaining to credibility of witnesses.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[2 a, b, c]**

Introducing into evidence the pleadings and exhibits from a civil matter without also introducing the trial transcript from the civil proceeding provides little evidence as to the nature and extent of respondent's conduct underlying the adverse civil findings of harassment and intentional infliction of emotional distress on a client or the resulting harm to the client. Such evidence may have had a material effect on the measure of the appropriate level of discipline.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[3]**

Hearing judge erred as a matter of law in finding that petitioner for reinstatement had not previously resigned from State Bar with disciplinary charges pending where petitioner's resignation was entitled "resignation with charges pending;" stated that charges were pending against him; was in form prescribed by California Rule of Court 960; was accepted by Supreme Court without prejudice to further proceedings; and where petitioner stated in his petition for reinstatement that, at time he resigned from State Bar, no formal charges were filed against him by State Bar, but only a number of minor client complaints that he had responded to, taken adequate measures to deal with, and answered State Bar in writing denying any misconduct. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.91.**[3]**

Even though Rules of Procedure adopted by State Bar's Board of Governors are not legislative acts, it is appropriate to construe them using rules for statutory interpretation/construction. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.91.**[4]**

State Bar Court must interpret State Bar Rule of Procedure 665(a) that requires all petitioners for reinstatement to take and pass professional responsibility examination within frame work of California Rule of Court 951(f) dealing with reinstatement because State Bar's rule making authority is subject to Supreme Court's inherent authority over attorney regulatory matters. And State Bar Court should endeavor to construe State Bar rule as consistent Rules of Court. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.91.**[5]**

Applying rules of statutory interpretation to language of State Bar Rule of Procedure 665(a) requiring all petitioners for reinstatement to take and pass professional responsibility examination, review department held (1) that rule sets the earliest time to pass examination at one year before filing of petition, but does not set latest time to pass examination and (2) that rule does not require proof of passage as condition precedent to filing petition, but only as condition to precedent to State Bar Court recommendation of reinstatement. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.91.**[6 a-b]**

Even though respondent was not entitled to any mitigating credit for five years of discipline free practice under standard 1.2(e)(i) and case law, there was no error in hearing judge's giving respondent mitigating credit for discipline free practice because weight assigned to such mitigation by hearing judge was nominal (i.e., "exists in name only;" not real or substantial). *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.**[2]**

Retroactive law is one that affects rights, obligations, acts, transactions, or conditions performed or existing before adoption of law. Even though respondent's criminal convictions occurred after January 1, 1997, effective

date of present version of the summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)), respondent committed criminal acts underlying those convictions before January 1, 1997, effective date. Thus, respondent's summary disbarment under present version of statute would be improper retroactive application of statute because, but for amendments to statute effective January 1, 1997, respondent would not be subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.51.**[2 a-c]**

In two situations, applying statute to acts before statute's effective date are not retroactive application of statute: when statute merely clarifies, rather than substantially changes law; and when statute changes trial procedure, but does not change legal consequences of parties' past conduct. Amendments effective January 1, 1997, to summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)) are not clarifying or procedural because they significantly broadened scope of crimes for which attorneys are subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.51.**[3 a-c]**

To apply amendments to Business and Professions Code section 6007, subdivision (c)(4), effective January 1, 1997, against an attorney whose disciplinary proceeding began before January 1, 1997, effective date of amendments would be impermissible retroactive application of amendments. That is because amendments had dramatic effect on attorney's legal ability to practice law and deprived attorney of right to request hearing on inactive enrollment and because amendments neither clarified prior law nor merely changed procedure of trial. *In the Matter of Phillips* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.47.**[1 a-f]**

Even though respondent received extensive trial on disciplinary charges, he was never formally notified that outcome of trial could result in his immediate and automatic inactive enrollment under amendments to Business and Professions Code section 6007, subdivision (c)(4), effective January 1, 1997. Reasonable notice is crucial to a meaningful hearing. Thus, disciplinary trial itself could not have provided respondent with minimal protection on issue of inactive enrollment because issues can differ from case to case between the appropriate level of discipline for misconduct compared to the need for immediate public protection to protect existing or future clients from additional risk of harm. And disciplinary hearing did not fulfill explicitly recognized right to request hearing on the propriety of inactive enrollment provided for under former version of section 6007, subdivision (c)(4) before its amendment effective January 1, 1997. *In the Matter of Phillips* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.47.**[2 a-b]**

Disciplinary rules governing legal profession cannot punish activity protected by First Amendment, but neither false statements made knowingly nor false statements made with reckless disregard for truth are protected by First Amendment. Thus, because respondent's statements in pleadings, which she filed in superior court action and this disciplinary action, that her opposing counsel in superior court action was "well-known racist," "champion of the Emeryville pedophile ring," "operated by organized crime," "intent upon avoiding his own criminal indictment," and "motivated by racial hatred," and described young children as "niggers, hood and scums" were proved false at trial; because those statements were not mere rhetorical hyperbole, incapable of being proved true or false; and because respondent either knew statements were false or made them with reckless disregard of truth as there was no objective evidence that statements were true, hearing judge properly found respondent culpable of violating professional rules requiring attorneys to employ only such means as are consistent with truth and not to seek to mislead courts and judicial officers as well as statute proscribing acts involving moral turpitude. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[2 a-i]**

Hearing judge properly had respondent physically removed from courtroom upon respondent's repeated failure to comply with hearing judge's orders and warning with respect to respondent's disruptive conduct. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[15 a-b]**

Even though hearing judge is required to give respondent the benefit of all reasonable doubts, she was not required to devalue evidence she found stronger than that of respondent. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.**[3]**

The hearing judge's discussion of his concerns over petitioner's actions in terms of according her a "reasonable doubt" made review somewhat difficult. It is clear that in a disciplinary proceeding, where the State Bar has the burden of proving charges by clear and convincing evidence, the accused is entitled to the exercise of reasonable doubts. However, in a reinstatement proceeding, where the petitioner unquestionably has the burden of presenting clear and convincing evidence of her qualifications, petitioner can not be given the benefit of

reasonable doubts. However, by reading the decision in its entirety, the review department construed the hearing judge's decision finding reasonable doubts in favor of petitioner to not invoke the normal meaning of the term "reasonable doubt" as used in this area of law, but rather, such narrow doubt that would be acceptable in a satisfactory showing for reinstatement. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1. **[3 a-b]**

The terms judges and judicial officers as used in Business and Professions Code section 6068(d) and rule 5-200(B) of the Rules of Professional Conduct are limited to those individuals who are officers of a state or federal system and who perform judicial functions. Thus, the review department reversed the hearing judge's determination that respondent attempted to mislead judicial officers, in violation of section 6068(d) and rule 5-200(B), when he told an arbitration panel that he had represented his clients previously. The local bar association's arbitration panel was not composed of judges or judicial officers as required under both section 6068(d) and rule 5-200 and the local bar association's arbitration panel was not court-appointed. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[6]**

Even after respondent's private reproval became final, the State Bar Court retained jurisdiction over the conditions attached to it under the Former Transitional Rules of Procedure of the State Bar (now the Rules of Procedure of the State Bar, title II, State Bar Court Proceedings). Thus, when the hearing judge extended the time for respondent to comply with the conditions attached to the reproval after the time to comply had expired, the hearing judge did not act without jurisdiction; but in excess of jurisdiction. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[2]**

When a party seeks or consents to a court's action that is in excess of the court's jurisdiction, the party may be estopped to complain of the court's action as long as the court had subject matter jurisdiction. Respondent was estopped from collaterally attacking a final order extending the time in which he was required to comply with conditions attached to a reproval where he consented to the order and where the court had jurisdiction of the subject. The review department concluded that the application of estoppel was in harmony with the primary goals of attorney discipline. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[3]**

An attorney's criminal conviction based on a plea of nolo contendere is deemed a conviction for attorney disciplinary purposes and is conclusive proof of the attorney's guilt on each of the essential elements of the offense of which the attorney was convicted. Thus, respondent cannot collaterally attack his conviction in the State Bar Court even though the victim of respondent's crime lost her civil lawsuit against respondent for damages. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[4]**

Disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment. However, because attorneys are officers of the court with a special responsibility to protect the administration of justice, reasonable speech restrictions may be imposed on them. To survive judicial scrutiny such a restriction must (1) further an important or substantial governmental interest unrelated to the suppression of expression and (2) be no greater than is necessary or essential to the protection of that important or substantial governmental interest. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[1]**

An attorney may be disciplined for making a false statement that attacks the honesty, motivation, integrity, or competence of a judicial officer without violating the attorney's First Amendment guarantee of free speech so long as the attorney knew the statement was false when he made it or made it with a reckless disregard for its truth or falsity. Truth is an absolute defense. The State Bar has the burden of proving the falsity of the statement. The issue of whether a false statement was made with reckless disregard for its truth or falsity is governed by an objective standard under which the court must determine what a reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[2]**

An essential element to establishing an attorney's violation of his statutory duty to maintain the respect due the courts and judicial officers by making a statement that impugns the honesty or integrity of a court or judicial officer is the falsity of the disparaging statement. Even though the State Bar has the burden of proving the essential element of falsity, it did not proffer any evidence to establish the falsity of the respondent's disparaging statements regarding various judicial officers because the hearing judge made a erroneous pre-trial ruling relieving the State Bar of its burden to prove falsity. Therefore, the review department remanded the matter to the hearing department to allow the State Bar an opportunity to prove that respondent's statements were false. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[3]**

An attorney's statement impugning the honesty or integrity of a court or judicial officer is not disciplinable if it constitutes rhetorical hyperbole, or uses language only in a loose, figurative sense, or if it is not capable of being proved true or false. The statement is not disciplinable unless it implies or is based upon a false assertion of fact. In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[4]**

The relationship between an attorney and client is of the highest order of fiduciary relation. Even where the attorney no longer represents the client, the attorney continues to owe the client a fiduciary duty of utmost good faith and fair dealing with respect to, at least, the subject matter of the attorney's prior representation of the client, including any express lien for attorney's fees. Respondent did not violate this duty by refusing to sign a settlement check which was in the possession of the former client's new attorney, and which was made payable to the former client, the former client's new attorney, and respondent. Respondent's fee agreement provided for a lien on any recovery, he perfected his lien as to part of the former client's recovery, he suggested, among other alternatives, that the disputed portion of the recovery be placed in his trust account or, alternatively, in a separate blocked account requiring both his and his former client's signatures, and he took prompt action to judicially resolve the competing claims to the settlement proceeds. Respondent's duty of good faith and fair dealing did not require that he abandon his lawfully perfected lien by endorsing the settlement draft when it was under the client's control, as doing so would have immediately extinguished the lien as to the client's creditors and thereafter subjected the lien to extinguishment if the client spent the money. *In the Matter of Feldsott* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754. **[1]**

A hearing judge properly applied collateral estoppel and denied respondent the right to relitigate the issue of dishonest billing in a disciplinary proceeding where respondent had fully litigated the issue in a superior court action; where the jury in the prior action had determined by clear and convincing evidence that respondent had acted with oppression, fraud, and malice; and where no unfairness resulted from precluding the relitigation of the issue. *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. **[1]**

Generally, it is in the public interest to dispose of disciplinary charges on the merits. However, the public interest and the interests of justice would not be served by permitting the State Bar to maintain specified charges for possible later prosecution by dismissing the charges without prejudice when respondent relied on the charges to his detriment in preparation for and during trial and in doing so exposed his defense case. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[4]**

In its opinion remanding a petition for reinstatement for further proceeding not inconsistent with the opinion, the review department held, on the record then before it, that the petitioner had demonstrated his moral reform from the acts which lead him to resign from the Bar with disciplinary charges pending. Accordingly, under law of the case, it would be improper for hearing department to reconsider petitioner's moral reform on remand in the absence of additional evidence. As to events that predated the petition, and were disclosed on the petition, it is clear that reopening would be impermissible. The same would be true of events about which the State Bar had a reasonable opportunity to investigate and present at a hearing. However, one of the underlying purpose of reinstatement proceedings is to insure that only persons of present good moral character are reinstated to the practice of law in this state. Accordingly, with the exceptions noted, the State Bar Court may consider any act or conduct that is relevant to a petitioner's moral character regardless of when or where the act or conduct occurred. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[1]**

A petitioner establishes that he possesses the requisite present moral qualifications for reinstatement by presenting clear and convincing evidence that he possesses good moral character and has been rehabilitated. Any act or conduct bearing on the petitioner's qualities of honest, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and nation, and respect for the rights of others and the judicial process is relevant in a reinstatement proceeding. Unlike a petitioner's rehabilitation from prior bad acts, a petitioner's present moral qualifications for reinstatement is not capable of being conclusively determined for all time and is subject to re-evaluation on the State Bar's motion at least until the effective date of the Supreme Court's reinstatement order. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[2]**

The rule is well settled in California that a void order cannot be the basis for a valid contempt judgment. A person affected by an injunctive order may challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by (1) complying with the order while seeking a judicial determination as to its jurisdictional validity or (2) disobeying it and then raising the jurisdictional challenge if and when he is

sought to be punished for his disobedience. If a person affected by an injunctive order chooses to challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by disobeying it and then raising the jurisdictional challenge as a defense against any contempt charges brought against him, his violation of the order constitutes no punishable wrong if it is ultimately determined that the order was issued without or in excess of jurisdiction. However, the contempt order here was final and there was no valid reason to go behind a now-final order. The State Bar Court properly defers to the judgements of the courts of record that rendered contempt judgements against respondent and that considered respondent's subsequent appeals, requests for reconsideration, and certiorari. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[2]**

Review department is very reluctant to consider State Bar's request for a holding that respondent's failure to comply with the terms of a civil settlement agreement was an aggravating circumstance because the State Bar did not request such a holding from the hearing judge, but requested it for the first time on review. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[3]**

Where the recommended period of actual suspension was less than 90 days, State Bar's request for a recommendation that respondent be required to comply with rule 955 of the California Rules of Court as a means of forcing respondent to demonstrate submission to the disciplinary authority of the State Bar and the courts was rejected as no authority was found to support imposing a rule 955 requirement for this reason. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[5]**

Where the recommended period of actual suspension was less than 90 days and the respondent had continuously been on administrative suspension for failing to pay bar dues for more than five years and on involuntary inactive enrollment for more than a year, there was no identifiable preventative benefit sufficient to recommend that respondent be required to comply with rule 955 of the California Rules of Court. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[6]**

Respondent's claim that the State Bar Court is an entity created, owned, and run by the prosecuting party was frivolous. The current State Bar Court is modeled after courts of record. State Bar Court judges are appointed for specified terms by the Supreme Court and are subject to discipline by the Supreme Court upon the same grounds as judges of courts of record. The prosecution does not assign cases to State Bar Court judges, nor do their salaries depend upon finding attorneys culpable of misconduct. Although the Board of Governors of the State Bar is responsible for paying the salaries of State Bar Court judges, these salaries are set by law to equal those of judges of courts of record and come from annual membership fees. Thus, respondent provided no evidence that the State Bar Court is improperly dependent on, or controlled by, the prosecution. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[2]**

A disciplinarily suspended attorney does not have to pay the costs of the disciplinary proceeding as a condition of reinstatement where the attorney has not also been administratively suspended for failure to pay such costs as part of the attorney's next annual bill for membership fees. No such automatic administrative suspension occurred here and therefore, respondent was not culpable of the unauthorized practice of law for appearing in court as counsel for a client after the date that his actual suspension terminated but before he had paid the disciplinary costs and was reinstated. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[8]**

The only prerequisite to initiating a conviction referral proceeding against an attorney in the State Bar Court is a guilty plea by the attorney or a guilty verdict rendered against the attorney. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[1]**

Respondent waived any due process violation resulting from the State Bar's failure to notify him in the notice of hearing that the cancellation of his license to practice law would be an issue at the trial where he did not allege in his appellant's brief, with supporting references to the record, that he presented his lack of notice objection to, and obtained a ruling on it from, the hearing judge. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[8]**

Even though statutes authorizing conviction referral proceedings authorize only the disbarment or suspension of attorneys convicted of crimes, the State Bar Court still had jurisdiction in conviction matter to recommend to the Supreme Court that it cancel respondent's license to practice law. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[9]**

An applicant's continuing duty to update his answers to the moral character questions in his initial application for admission is an absolute duty that requires a high degree of frankness and truthfulness on the applicant's part. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[11]**

Respondent's willful failure to disclose his arrest and pending trial on felony charges by updating his answers to the moral character questions on his initial application for admission to practice law was a fraud upon the Supreme Court because it allowed him to admitted without adequate consideration of his moral character. Thus, the State Bar Court may recommend that his license to practice be revoked without addressing the nature of his crimes or the facts and circumstances surrounding them. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[12]**

Where respondent contended that California's disciplinary process violates the commerce clause of the United States Constitution, respondent failed to recognize that the judiciary of each state has the right to regulate the practice of law in that state. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[2]**

No merit was found to respondent's claim that California's disciplinary process violates due process because of the alleged financial interest of State Bar Court judges and State Bar staff in the outcome of disciplinary proceedings and in the collection of disciplinary costs. California provides attorneys subject to discipline with more than constitutionally sufficient procedural due process. The Supreme Court has inherent and plenary authority to regulate and discipline attorneys, and the State Bar serves as its administrative arm to assist with these matters. The Supreme Court appoints the judges of the State Bar Court, and the Legislature sets their salaries comparable to judges of courts of record. The State Bar Court judges are subject to discipline on the same grounds as a judge of any other state court. The annual membership fees of attorneys who belong to the State Bar, not the costs assessed upon the imposition of discipline, pay the salaries of the State Bar Court judges and State Bar staff. Thus, personal financial interest does not dictate the outcome of disciplinary proceedings or the imposition of disciplinary costs. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[3]**

Respondent's argument that res judicata bars this disciplinary proceeding because a similar matter was dismissed by the state bar of another state was rejected. First, res judicata is applicable with respect to only final judgements rendered on the merits. Second, the State Bar was not a party to the other disciplinary proceeding. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[4]**

Neither the Supreme Court nor the State Bar Court is bound by civil findings that exculpate a respondent of charged misconduct, or by an attorney's acquittal in a criminal case, or by the dismissal of criminal charges against an attorney. The reasons the State Bar is not bound by exculpatory civil findings or criminal acquittals in disciplinary proceedings are that the parties are different, the quantum of proof required in each proceeding is virtually always different, and the purposes of each proceeding are vastly different. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[10]**

Neither the Supreme Court nor the State Bar Court will bind an applicant or a respondent to an adverse civil finding made upon the usual civil standard of proof of a preponderance of the evidence when the standard of proof in the State Bar proceeding is clear and convincing evidence. When civil findings are made under a preponderance of the evidence standard, they must be independently assessed under the more stringent standard of proof applicable to disciplinary proceedings of clear and convincing evidence. It is only in this context that civil findings have no disciplinary significance apart from the underlying facts. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[11]**

The State Bar Court may apply collateral estoppel principles to preclude an applicant from relitigating an issue that was actually litigated and resolved adversely to him or her in a prior civil proceeding, provided that the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, that the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, that the applicant was a party to the civil proceeding, that there is a final judgment on the merits in the civil proceeding, and that no unfairness in precluding relitigation of the issue is demonstrated by the applicant. An applicant may demonstrate that it would be unfair to bind him or her to an adverse civil finding by showing, among other things, that he or she had less incentive or motive to litigate the issue in the civil proceeding, that the civil finding or judgment is itself inconsistent with some other finding or judgment, or that he or she was required to litigate under

different and less advantageous procedures in the civil proceeding. Where applicant's fraud judgment met the above criteria and no unfairness was demonstrated, the hearing judge appropriately applied the doctrine of collateral estoppel to the underlying fraud issue in this moral character proceeding. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[12]**

Where respondent's first actual suspension ended in December 1991, and his second actual suspension, which was ordered to be "consecutive" to the first, did not take effect until June 1992, hearing judge did not err in finding that respondent could have practiced law during the interval, and fact that respondent did not in fact practice law during such time did not entitle him to "credit for time served" and was neither a mitigating nor an aggravating circumstance in subsequent proceeding for probation violation and failure to comply with rule 955, California Rules of Court. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[7]**

Discipline imposed in separate disciplinary proceedings may be "concurrent" without either starting together or ending at same time, in sense that periods of probation and actual suspension imposed in different proceedings run together only during time periods that they overlap. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[17]**

Under applicable provisions of the State Bar Act, read together, costs of a disciplinary proceeding need not be paid by a disciplinarily suspended member of the State Bar as a condition of reinstatement of active membership unless the member has also been administratively suspended for failure to pay such costs as part of the member's next annual bill for membership fees. (Bus. & Prof. Code, §§ 6140(b), 6140.7, 6142, 6143.) *In the Matter of Langfus* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161. **[1]**

An attorney's wilful failure to cite controlling authority squarely contradicting the attorney's position could be held to violate statute and rule prohibiting attorneys from misleading judges. However, attorneys as advocates are under no duty to reveal decisions which do not constitute controlling precedent. In State Bar Court, only decisions of review department, subject to relevant Supreme Court case law, are considered controlling precedent. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[15]**

Statute providing for respondents to pay costs of disciplinary proceeding upon determination of sanction of public reproval or greater discipline, and also providing for assessment of costs against State Bar in case of complete exoneration of attorney, is neutral in its application. Moreover, since salaries of State Bar Court judges are set by statute and are unaffected by assessment or collection of costs by State Bar, and State Bar Court's ruling on costs is only a recommendation to Supreme Court that costs be assessed, cost statute does not provide basis for alleging bias of State Bar Court judges based on alleged personal financial interest. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[6]**

In the statute establishing the State Bar Court (Business and Professions Code section 6086.5), the reference to "committees" which are replaced by the State Bar Court does not include the standing Discipline Committee of the Board of Governors. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[4]**

Former disciplinary structure under which local administrative committees had both investigative and fact-finding powers raised due process concerns. Under volunteer State Bar Court system which superseded it, investigative and prosecutorial functions were separated from fact-finding and adjudicative functions. This separation was strengthened and institutionalized by reforms which created independently appointed State Bar Court. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[5]**

Statutory scheme regarding State Bar discipline system does not provide for State Bar Court judges to report to Board of Governors or any of its committees, nor does it require Chief Trial Counsel to report to State Bar Court. Consistent with separation of prosecutorial and judicial roles, State Bar Court has no administrative oversight role with respect to functions of Chief Trial Counsel, and does not have general, plenary authority to supervise the conduct of investigations. Board of Governors and its Discipline Committee have general statutory authority over Chief Trial Counsel and Office of Investigations, subject to review by California Supreme Court. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[6]**

Review department declined to adopt construction of statute giving State Bar Court jurisdiction over motions to quash subpoenas (Business and Professions Code section 6051.1) which would do violence both to plain

meaning of statute and to necessary separation of powers within disciplinary system. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[8]**

Nothing in the California Rules of Court delegates to the State Bar Court the Supreme Court's general review power over decisions of the State Bar Board of Governors and its committees. However, in the exercise of its inherent authority to regulate the legal profession, the Supreme Court could order the State Bar Court to adjudicate or make findings and recommendations regarding a motion for a protective order regarding a State Bar disciplinary investigation, or could adopt a rule of court giving the State Bar Court jurisdiction over such motions generally. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[10]**

Where words used in a rule are unambiguous, there is no need to go beyond the plain language to extrinsic aids. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[6]**

Where administrative proceeding in which respondent had not appeared had resulted in revocation of respondent's real estate license, and record of such administrative proceeding was relevant in State Bar disciplinary proceeding, hearing judge and parties should have addressed issues regarding whether administrative decision had preclusive weight; if not, whether it was admissible under any hearsay exception, and whether respondent should be permitted to introduce evidence concerning culpability or mitigation with respect to the license revocation. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[10]**

Even though a disciplinary proceeding is a public matter, the respondent's name is not publicized in the review department's opinion when the disposition at the hearing level was dismissal and the review department cannot determine what the ultimate disposition of the proceeding will be. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[1]**

Where respondent settled a personal injury claim on behalf of a Medi-Cal beneficiary without ensuring the payment of the applicable Medi-Cal lien, an issue to be addressed on remand was the effect, if any, on the appropriate degree of discipline of the policy adopted by the Office of the Chief Trial Counsel, with the approval of a committee of the Board of Governors, against prosecuting future health care provider "collection" cases, at least for private lienholders. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[15]**

Respondents in public proceedings should anticipate that their names will be published in any opinion except those resulting in dismissal or private reproval or, in the case of remanded proceedings, those which may potentially result in dismissal or private reproval. Accordingly, where respondent was on notice that petition for review of order denying relief from costs would probably be referred to review department in bank, and where respondent had already been required to notify clients, courts and opposing counsel of his suspension, review department declined to omit respondent's name from published opinion in relief from costs matter. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[1]**

Negotiations regarding an agreement ordinarily result in a binding contract when all of the essential terms are definitely understood, even if a formal writing is to be executed later and even if there is uncertainty in a minor, nonessential detail. Where all elements of a stipulation settling a disciplinary proceeding were resolved at a settlement conference, and the settlement judge's ensuing order indicated that a final compromise had been reached, the settlement agreement was binding even though no formal written stipulation had yet been signed. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[4]**

Prosecutors must be held to the ethical standards which regulate the legal profession as a whole. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[10]**

The law of the case doctrine is one of policy and does not preclude the relitigation of issues already determined in a prior appeal. However, strong reasons should be put forward for seeking to relitigate an issue already fully litigated and decided on a prior appeal. Where a party sought reconsideration, on a second appeal, of the review department's determination of an issue on an earlier appeal in the same proceeding, without offering any justification for its failure to seek reconsideration earlier, and relying on no new case law or statute, the review department had no cognizable reason to reconsider its prior conclusion. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[2]**

Both the Legislature, by statute, and the Supreme Court, by case law, have recognized that the Supreme Court has inherent authority over regulation of the practice of law. The Supreme Court has not felt constrained by lack of authorizing legislation to exercise this inherent power, and has concerned itself with comparable treatment of respondents in comparable situations. Accordingly, Supreme Court case law constituted appropriate authority for review department recommendation that a disbarred respondent be permitted to credit time spent on inactive enrollment toward waiting period to apply for reinstatement, just as an interimly suspended attorney-felon can do by rule (rule 662, Trans. Rules Proc. of State Bar). *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[5]**

By rule, convicted felons are always entitled to credit for time spent on interim suspension against the waiting period for seeking reinstatement. (Rule 662, Trans. Rules Proc. of State Bar.) Inactive enrollment has the same effect as interim suspension in banning the practice of law pending a final order of discipline, and is similarly designed to protect the public during the pendency of a disciplinary case against the malfeasant attorney. Giving credit for interim suspension against the waiting period for reinstatement reflects the decision that five years removal from practice is a sufficient minimum opportunity for rehabilitation, even if the time period precedes the order of disbarment. No policy interest would be served by treating inactively enrolled attorneys differently from interimly suspended attorneys in this regard. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[6]**

Normally, no published opinion results from a petition to set aside an interim suspension order based on a criminal conviction. Where final discipline had not been entered and might not be warranted, the review department could not determine whether it was appropriate to publicize respondent's name in connection with opinion and order vacating interim suspension. Opinion therefore did not name respondent, although proceeding remained public. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[1]**

Because hearings and records regarding inactive enrollment under Business and Professions Code section 6007(b) are confidential, respondent was not identified in review department's opinion regarding issues raised by such inactive enrollment. However, where such issues arose during a disciplinary proceeding, the record in that proceeding remained public, subject to the hearing judge's discretion to seal specific portions of the record where proper grounds appeared. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[1]**

Given the severe consequences of inactive enrollment, public protection supports inactive enrollment of an attorney who intentionally makes a claim of mental incompetence, even if the attorney was actually rational and was misguidedly making the claim as a strategy to impede disciplinary prosecution. Any issue of bad faith may be addressed in the context of the requested abatement of the disciplinary case. The mere enrollment of the attorney inactive does not dictate abatement of the underlying disciplinary proceeding. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[4]**

Judges are required under canon 2B of the California Code of Judicial Conduct not to testify voluntarily as character witnesses, but where subpoenas were issued to compel judges to testify, their declarations regarding good character of disciplinary respondent could be considered by State Bar Court. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[3]**

Where a municipal court judge and a state appellate justice were subpoenaed as witnesses, it was proper for them to testify in a reinstatement proceeding. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[10]**

Judges should not testify voluntarily as character witnesses. Judges should respond to requests from the State Bar, but absent such a request, should not write a letter of reference for an attorney facing discipline or a petitioner seeking reinstatement. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[14]**

Admission of attorneys to practice law is an exercise of one of the inherent powers of the California Supreme Court, which relies on the Committee of Bar Examiners of the State Bar to administer and carry out the bar admission process, including examining applicants for admission and investigating their fitness. An applicant who is denied certification by the Committee may seek independent adjudication by the State Bar Court. The determination of moral character made by that court is final and binding, subject to review by the Supreme Court. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[1]**

In 1990, the majority of the California Supreme Court expressly declined to determine whether a nexus between criminal conduct and the practice of law is required in order to impose professional discipline based on a criminal conviction. The Court unanimously agreed, however, that it would be unreasonable to hold attorneys to such a high standard of conduct that every violation of law, however minor, would constitute a ground for professional discipline. Thus, the integrity of the profession does not require professional discipline in addition to criminal sanctions for every violation of law by an attorney. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[2]**

Where probation conditions required that respondent abstain from intoxicants and non-prescribed drugs, and respondent stated under penalty of perjury that respondent had complied with all "valid, legally reasonable and enforceable" probation conditions, then even if State Bar proved respondent had consumed alcohol, respondent could have avoided perjury conviction by contending he did not consider abstinence condition to be valid, legally reasonable, and/or enforceable. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[5]**

In a contingent fee matter, the client has the power to discharge the attorney at any time, with or without cause, subject to the obligation to pay the discharged attorney the reasonable quantum meruit value of services rendered up to the time of discharge. If the discharged attorney has a lien it may be enforced in the quantum meruit amount. However, unless there is adequate proof that a lien for the discharged attorney's fees was created, the attorney does not enjoy the status of a lienholder with an interest in the client's recovery. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[8]**

The Office of Trial Counsel has discretion whether or not to file formal charges in a matter eligible for disposition by admonition. The State Bar Court cannot dismiss a proceeding prior to hearing on the ground that it meets the criteria for admonition, unless a case for selective prosecution is established. (Trans. Rules Proc. of State Bar, rule 415.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[5]**

Review department adopted parties' stipulated facts, noting that the Supreme Court ordinarily will hold an accused attorney to stipulated facts even in a matter arising from a stipulation as to facts and disposition. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[3]**

Whether or not review department adopted parties' stipulated legal conclusions, the Supreme Court would not be bound by them in its independent review. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[5]**

The State Bar Court acts as the administrative arm of the Supreme Court on attorney disciplinary matters and acts pursuant to its mandate. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[8]**

Language used in an opinion is to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[5]**

A statute should be interpreted so as to produce a result that is reasonable and if two constructions are possible, that construction which leads to the more reasonable result should be adopted. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[7]**

Focusing on technicalities in the law is a very shortsighted approach to the ethical obligations of attorneys; such technical approaches to the body of law regulating attorneys' ethics may be described as undermining the moral fiber of the profession. Evidence of good character does not rest on technicalities. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[9]**

The Rules of Professional Conduct are binding on attorneys, but are not the equivalent of statutes; they merely supplement the statutory provisions. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[4]**

Protection of the public, its confidence in the legal profession, and the maintenance of high professional standards are the greatest concerns of the State Bar Court. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[10]**

A proceeding for involuntary inactive enrollment is not disciplinary in nature. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[3]**

Absent unconscionable circumstances in its creation, an agreement granting an attorney express authority to sign a client's name on documents is clearly not contrary to public policy. Indeed, it is essential that express authority be obtained by an attorney seeking the power to sign the client's name to documents on the client's behalf. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[10]**

The review department's overriding concern is the same as that of the Supreme Court: the protection of the public, preservation of public confidence in the profession and the maintenance of high professional standards. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[2]**

Respondent's withdrawal of his resignation with charges pending should not have been relied on as an aggravating factor. Respondents should be permitted to submit their resignations without fear that if a resignation is subsequently withdrawn, the respondent will be penalized by the court's reliance on that fact as an aggravating factor. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[15]**

The doctrine of law of the case did not preclude the full-time review department from reconsidering a decision of the former, volunteer review department. Due to the non-finality of recommendations of the former State Bar Court review department, law of the case did not apply to them. Upon its independent de novo review, review department was not bound to follow earlier factual determinations made prior to remand. Review department was also free to reconsider prior review department's legal interpretation of rule of professional conduct, given flexibility of law of the case doctrine in California appellate courts. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[3]**

The difference in wording between the rules governing pretrial and mid-trial contact with jurors, and the rule governing post-trial contact, reflects a difference in the intent of the drafters as to the elements of each rule. In order to establish a violation of the rule governing post-trial contact, the State Bar must prove by clear and convincing evidence that the respondent subjectively had the specific intent to harass or embarrass the jurors or to influence the jurors' actions in future jury service. Where no such subjective intent was established, based on referee's findings as to witnesses' credibility, review department found no violation and dismissed proceeding without addressing question of rule's constitutional validity. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[5]**

The State Bar Office of Trial Counsel was bound by the ruling of the Supreme Court in a matter in which its counsel, the State Bar Office of General Counsel, did not request a rehearing before the Supreme Court. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[3]**

200 Substantive Issues in Disciplinary Matters Generally

203 Culpability

204 General substantive issues re culpability

204.10 Wilfulness requirement

Where respondent was unable to access client contact information because his former office staff locked him out of his office, hearing judge properly found respondent not culpable of failing to communicate with clients in violation of Business and Professions code section 6068(m). *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296 **[5]**.

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing

judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Even if an attorney of record did not have actual knowledge of a trial setting, if a notice of trial setting was properly served on him, his failure to appear at trial will not be excused for State Bar disciplinary purposes unless he establishes that he had office procedures in place that, at a minimum, required his staff (1) to promptly inform him each time a notice of court or administrative trial or hearing is delivered to office, (2) to promptly record date of the trial or hearing in attorney's court calendaring system and in client's file, and (3) to promptly give client actual notice of date, time, and location of the trial or hearing. Respondent did not have any such proper office procedures in place. Thus, where record established that a notice of a hearing was properly served on him in an immigration court case in which he was attorney of record for the alien, respondent's failures to inform client of hearing, to prepare himself for the hearing, and to counsel and prepare client for the hearing could not be excused even if respondent did not learn of the hearing until the day of the hearing.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[23 a-d]**

Principle that, in the normal course of operation of a law office, an attorney should not be at risk of discipline for failure to have knowledge of every item of information that comes in his office is based on presumptions that the attorney has adequate office procedures in place for the proper operation of his office, trains his staff on those procedures; employs safeguards to insure that procedures are followed, and supervises staff to insure they perform their jobs.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[24]**

Even if respondent failed to appear at an immigration court hearing because he simply forgot to record the date of the hearing in his calendar, his failure to appear must be viewed in light of the record as a whole because, even if an attorney does not act intentionally or recklessly, he violates the rule of professional conduct regarding attorneys' duty to competently perform legal services if he repeatedly fails to competently perform. Respondent's failure to appear at the hearing could not be excused for disciplinary purposes because, under record as a whole, his failure to appear was not isolated, but one of many such failures.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[25]**

While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, the law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[3]**

Respondent violated statute proscribing acts of moral turpitude through her gross negligence in fulfilling her trust account duties. Even though respondent had an agreement with her husband and law partner that he would manage their client trust account, there was no evidence of established or agreed on procedures for the operation of trust account. And respondent overextended herself in the handling landmark litigation cases and in advocating for legislation dealing in that specialized area of law, allowed herself to be disconnected from management of law office over extended period of time during a period when her husband (whom respondent knew was abusive and controlling) was grossly mismanaging their trust account, and made no inquiry as to operation of the trust account even after she heard of specific complaint regarding the underpayment of trust funds to clients.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[4]**

Because respondent allowed herself to be disconnected from management of her law office over extended period of time and did not undertake any effort to fulfill her personal and nondelegable duty to monitor client funds and her trust account, hearing judge properly accepted parties' stipulation and correctly found, on respondent's plea of nolo contendere, that respondent was culpable of violating trust account rules even though respondent relied on her husband and law partner to manage the trust account.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[6]**

Respondent's failure to perform any substantive work on client's workers' compensation case for more that five years was clearly repeated and reckless failure to competently perform legal services and violated rule regarding attorneys' duty of competence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[6]**

The wilful violation of Business and Professions Code section 6068(0)(3)'s reporting requirement does not require a bad purpose or an evil intent. All that is required for a wilful violation of section 6068(o)(3) is a general purpose of willingness to commit the act or omission. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[4]**

The failure to disclose a material fact on an application for admission is deemed willful whenever the application calls for disclosure with reasonable clarity. Respondent's arrest on felony charges of conspiracy to commit theft (which occurred after he filed his initial application for admission to practice law, but before he admitted to practice) and his pending trial on those charges were material facts that respondent was required to disclose, under the plain language of his initial application by updating his initial application. Thus, respondent's failure to do so was willful. eof. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[10]**

The statutory duty to report to the State Bar any judicial sanction of more than $1,000 not imposed for failure to make discovery applies to a sanction incurred by an attorney during self-representation. Violation of this duty may serve as a basis for discipline even though the court imposing the sanction is also required to report the sanction. Knowledge of the reporting requirement is not necessary to find a violation thereof. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[11]**

Respondent's ignorance of statute requiring attorneys to report court-ordered sanctions to State Bar was not a defense to violation of such statute, but respondent's awareness that court itself had reported sanctions to State Bar substantially mitigated such violation. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[4]**

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

Rule requiring prompt payment of client funds on request also applies to obligation to pay third parties, including holders of medical liens, out of funds held in trust. Failure to pay a medical lien can violate such rule even if attorney acts in good faith. Even where respondent believed he had permission from medical lienholder to use settlement funds, such belief was not a defense to violation of rule. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[3]**

As officers of the court, sworn to uphold the law, attorneys have a duty to honor legislative mandate that government-funded health care expenses be entitled to reimbursement from any and all private funds available. By statute, it is a disciplinable offense to violate this duty unless the violation is the result of a negligent good faith mistake. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[16]**

Where hearing judge found that respondent acted with reckless disregard in failing to honor rights of statutory lienholder, and where in one matter respondent intentionally did not honor known statutory lien based on incorrect legal theory without any legal research, advice, or inquiry, and in two other matters respondent made no effort to determine whether clients' health care providers might have statutory liens, and where respondent took no steps to ascertain the law as to his obligations to statutory lienholder, respondent's failure to honor statutory liens was product of gross negligence rather than of good faith, negligent mistake, and thus constituted violation of statute requiring attorneys to support the law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[18]**

Rule requiring prompt payment of entrusted funds on demand requires no special state of mind to establish violation; mere fact that payment was not made is sufficient to constitute wilfulness for purpose of finding wilful violation of rule. Without justification, failure to pay third party lien on demand violates such rule. Where attorney negotiates with lienholder to reduce lien amount, and it becomes clear negotiations will not be productive, attorney violates rule if attorney neither promptly pays lien in full nor takes appropriate steps to resolve dispute promptly. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[24]**

The statute providing that attorneys have a duty to support the constitution and laws of California and the United States constitutes a conduit whereby attorneys may be disciplined for violating laws which are not otherwise disciplinable under the State Bar Act. However, a negligent mistake made in good faith does not constitute a violation of this statute. Thus, where respondent believed he had satisfied his obligation to a statutory medical lienholder by informing it of a source of insurance coverage, and thus believed that his client was entitled to all of the settlement funds obtained from a different source of coverage, respondent's failure to notify the lienholder of the impending settlement, as required by statute, did not violate his statutory duty to obey California

law, because it constituted a negligent mistake, based on the good faith, erroneous belief that he was entitled to distribute all the settlement funds to the client and let the client deal with the statutory lien. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[5]**

Unlike the proof of a violation of the State Bar Act, the proof of a wilful violation of the Rules of Professional Conduct merely has to demonstrate that the person charged acted or omitted to act purposely, that is, that he knew what he was doing or not doing and that he intended either to commit the act or to abstain from committing it. Where respondent knew he was settling a personal injury claim without ensuring the payment of an applicable Medi-Cal lien and intended to do so, he acted wilfully; and a determination of culpability under the rule requiring proper payment of entrusted funds was appropriate even if he acted in good faith. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[10]**

Respondent's carelessness and confusion concerning the requirements of rule 955 did not obviate culpability of wilful failure to file a rule 955 affidavit timely, where respondent did not seek relief based on good cause for his late filing. All that is necessary for a wilful violation of rule 955 is a general purpose or willingness to commit the act or make the omission. However, respondent's credible evidence of carelessness was properly considered in considering respondent's good faith attempts at timely compliance. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[4]**

Wilfulness with regard to a rule of professional conduct violation does not require proof of an evil intent or bad purpose, but merely proof that the attorney intended to do that which the rule prohibits. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[3]**

Where respondent established a law practice in total disregard of the principles of the rule requiring client funds to be held in trust accounts, respondent could have been charged with and found culpable of violating that rule based on mishandling of trust funds by non-lawyer who ran practice, at least as to cases which respondent was aware were being handled in respondent's name. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[1]**

Where an attorney permitted a non-lawyer to misuse the attorney's name to conduct a large personal injury practice, the attorney could not be held separately culpable for each item of harm that resulted, without proof of his or her actual knowledge. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[3]**

Bad faith is not a prerequisite to a finding of wilful failure to comply with rule 955. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[4]**

An attorney has an obligation to perform services diligently and if the attorney knows he or she does not have or will not acquire sufficient time to do so, the attorney must not continue representation in the matter. Reckless or repeated inattention to client needs need not involve deliberate wrongdoing or purposeful failure to attend to duties in order to constitute wilful violation of duty to perform competently. Fact that respondent performed some services for a probate estate did not excuse his misconduct in delaying closure of the estate, especially where respondent's asserted justification for delay was that he was busy on other matters. Respondent's repeated failure to perform acts needed to distribute assets and close estate for five years, knowing that beneficiaries desired earliest possible distribution, constituted wilful violation of the duty to perform services competently. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[12]**

Violations of probation require the same mental state to justify discipline as violations of rule 955, Cal. Rules of Court. For such purposes, wilfulness need not involve bad faith; a general purpose or willingness to comment an act or permit an omission is sufficient. Accordingly, despite respondent's asserted good faith belief that probation reports were sufficient, respondent's intentional failure to include a required statement in such reports was wilful for purposes of a probation violation. Respondent's subjective intentions were relevant only with regard to aggravation and mitigation. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[6]**

Although the term "moral turpitude" has been defined very broadly, the Supreme Court has always required a certain level of intent, guilty knowledge, wilfulness, or, at the very least, gross negligence before labelling an attorney's conduct moral turpitude. Where respondent reasonably and in good faith believed that he had the authority to endorse his clients' former attorney's name to settlement drafts, and there was no evidence that respondent misused funds intended for clients or medical providers and no evidence of fraud, hearing judge

correctly concluded that there was no clear and convincing evidence of moral turpitude. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[3]**

In order to find an attorney culpable of a rule violation, the attorney's misconduct must be found to have been wilful. Where no such finding was expressly set forth in hearing judge's decision, review department deemed it to have been made based on hearing judge's conclusions. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[3]**

A finding of a wilful violation of a Rule of Professional Conduct does not necessarily indicate intent to violate ethical guidelines, but merely an intent to perform an act which results in a violation. Even where there was no evidence of intentional misconduct, evidence of repeated acts of negligence justified finding respondent culpable of wilfully violating the rule regarding failure to perform services competently. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181. **[1]**

An attorney's failure to communicate with and reckless or repeated inattention to the needs of a client have long been grounds for discipline. Such misconduct need not involve deliberate wrongdoing or a purposeful failure to attend to the duties due to a client, and the attorney's acts need not be shown to be wilful where there is a repeated failure of the attorney to attend to the needs of the client. Where respondent received several notices regarding the inheritance taxes owed by his client in a probate matter, and did not notify his client of any of them, and the client was reasonably relying on respondent to provide her with such notice, respondent failed to perform legal services competently in wilful violation of the applicable Rule of Professional Conduct. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175. **[1]**

Although an attorney cannot be held responsible for every detail of office operations, the attorney violates the trust account rules if the attorney does not manage funds as required by the rules, regardless of the attorney's intent or the absence of injury to anyone. Violations resulting from serious and inexcusable lapses in office procedure may be deemed wilful despite the absence of deliberate wrongdoing. If an attorney's trust account balance drops below the necessary amount, an inference of misappropriation may be drawn. The burden then shifts to the attorney to show that office procedures were adequate. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[7]**

Although attorneys cannot be held responsible for every detail of office operations, fiduciary violations resulting from serious and inexcusable lapses in office procedure may be deemed wilful for disciplinary purposes even in the absence of deliberate wrongdoing. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[7]**

The analysis of gross negligence in cases decided before the adoption of the Standards for Attorney Sanctions for Professional Misconduct is not affected by the adoption of the standards, but the discipline imposed now takes into account guidelines provided by the standards, although they are not rigidly applied. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[8]**

Misappropriation resulting from serious, inexcusable violation of a lawyer's duty to oversee trust funds is deemed wilful even in the absence of deliberate wrongdoing. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[10]**

Wilfulness, for the purpose of finding a violation of the Rules of Professional Conduct, is defined as having acted or omitted to act purposely to do the act forbidden by the rule or not to do the act required by the rule. Where there was no evidence that respondent was incapable of forming the requisite purpose or intent, the review department upheld a finding that respondent was capable of the wilfulness necessary to commit the charged rule violation (accepting employment without resources to perform competently.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[24]**

A transaction whereby a client signs a promissory note secured by the client's property to serve as security for the payment of an attorney's fees is subject to the provisions of the rule regulating business transactions with clients. However, where the failure to comply with the requirements of that rule resulted from the negligence of the attorney's employee, and the evidence clearly and convincingly established that the attorney had taken appropriate actions to guide office personnel as to proper steps to comply with the rule, the attorney was properly found not culpable of violating the rule. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[8]**

Notwithstanding omission of term "wilful" from statute and rule governing imposition of discipline for probation violations, wilfulness is a necessary element to establish culpability in a probation revocation case alleging failure to pay restitution. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[6]**

In disciplinary cases arising from violations of rule 955, Cal. Rules of Court, a showing of wilfulness requires only a "general purpose or willingness" to commit the act or suffer the omission, and need not involve bad faith. The same definition of wilfulness applies to the mental state required to justify discipline for violations of probation conditions. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[8]**

Wilfulness is established by proof that the attorney acted or omitted to act purposely. No rational relationship exists between an attorney's years in practice and the attorney's ability to act or omit to act purposefully on a specified occasion. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[12]**

Misconduct which is technically wilful may be less culpable if committed through negligence than if committed deliberately; term "wilful misappropriation" as used in attorney discipline cases covers broad range of conduct varying significantly in degree of culpability. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[6]**

There is a distinction between the proof necessary to establish a rule violation where the only intent necessary is the intent to do the act, and the proof necessary to establish culpability of a disciplinary offense which requires proof of specific (i.e., subjective) intent. To prove a "wilful" breach of the Rules of Professional Conduct, it is only necessary to prove that the person charged acted or omitted to act purposely, that is, intended to commit the act. With respect to charges of which subjective intent is an element, however, such intent must be proven convincingly and to a reasonable certainty. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[6]**

Only violations of the Rules of Professional Conduct that are wilful are grounds for discipline. Where hearing referee's decision did not expressly state that respondent's rule violation was wilful, but referee's comments indicated conclusion of wilfulness, review department regarded referee as having found violation to be wilful. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[1]**

204.20 Intent requirement

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Principle that, in the normal course of operation of a law office, an attorney should not be at risk of discipline for failure to have knowledge of every item of information that comes in his office is based on presumptions that the attorney has adequate office procedures in place for the proper operation of his office, trains his staff on those procedures; employs safeguards to insure that procedures are followed, and supervises staff to insure they perform their jobs. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[24]**

Even if respondent failed to appear at an immigration court hearing because he simply forgot to record the date of the hearing in his calendar, his failure to appear must be viewed in light of the record as a whole because, even if an attorney does not act intentionally or recklessly, he violates the rule of professional conduct regarding attorneys' duty to competently perform legal services if he repeatedly fails to competently perform. Respondent's failure to appear at the hearing could not be excused for disciplinary purposes because, under record as a whole,

his failure to appear was not isolated, but one of many such failures.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[25]**

Respondent violated statute proscribing acts of moral turpitude through her gross negligence in fulfilling her trust account duties. Even though respondent had an agreement with her husband and law partner that he would manage their client trust account, there was no evidence of established or agreed on procedures for the operation of trust account. And respondent overextended herself in the handling landmark litigation cases and in advocating for legislation dealing in that specialized area of law, allowed herself to be disconnected from management of law office over extended period of time during a period when her husband (whom respondent knew was abusive and controlling) was grossly mismanaging their trust account, and made no inquiry as to operation of the trust account even after she heard of specific complaint regarding the underpayment of trust funds to clients.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[4]**

Because respondent allowed herself to be disconnected from management of her law office over extended period of time and did not undertake any effort to fulfill her personal and nondelegable duty to monitor client funds and her trust account, hearing judge properly accepted parties' stipulation and correctly found, on respondent's plea of nolo contendere, that respondent was culpable of violating trust account rules even though respondent relied on her husband and law partner to manage the trust account.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[6]**

Respondent's deliberate and unjustified failure to attend a status conference in client's workers' compensation case was reckless failure to competently perform legal services and violated rule regarding attorneys' duty of competence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[4]**

At least in absence of admission by attorney, proving that an attorney borrowed money without intending to repay it is rarely capable of being proved with direct evidence. Circumstantial evidence is sufficient, however, if it is clear and convincing. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[1]**

Objective inferences drawn from consideration of the 12 factors often considered in bankruptcy proceedings to determine whether a debtor incurred credit card debts with fraudulent intent are also highly probative in determining whether attorney incurred credit card debts without intending to repay them. But 12 factors are not exclusive, none is dispositive, and attorney's conduct need not satisfy a minimum number to find that attorney lacked intent to repay debts. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[2]**

Because attorney's act of borrowing money without intending to repay it involves dishonesty and moral turpitude as a matter of law, State Bar need only prove that attorney borrowed money without intending to repay it to establish that attorney violated statutory duty not to engage in acts of dishonesty or involving moral turpitude. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[4]**

Intent to repay debt requires some factual underpinning that would lead person to a degree of certainty that he or she would have ability to repay. Mere hope and unrealistic or speculative sources of income are insufficient. This is particularly true where respondent obtained large cash advances on the same day he was repaying gambling debts in the form of casino markers. And it is particularly true where respondent did not proffer any documentary evidence to support his claims that he was an experienced and successful or winning blackjack player. Moreover, in light of the fact that respondent never kept any records of his gambling winnings and losses, any hope of repaying any portion of his credit card debts with gambling winnings was unreasonable. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[6]**

Hearing judge's findings that attorney incurred credit card debts totaling $19,327 without intending to repay them and thereby committed acts of dishonesty and moral turpitude were supported by clear and convincing circumstantial evidence where, despite his meager and unpredictable income, and monthly living expenses in excess of $2,200, respondent continued to obtain cash advances totaling $32,054 on his four credit cards in the face of staggering gambling losses and lack of adequate liquid assets to repay his debts. Respondent could not have possibly have failed to perceive the hopelessness of repaying his mounting cash advances in the face of his gambling losses and lack of assets and current income. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[7]**

The review department's duty to independently review the record is settled. At the same time, the review department must give great weight to the hearing judge's determination that turns on credibility to be assigned to witness testimony. The department was reluctant, therefore, to ascribe to respondent a specific intent to deceive when the hearing judge who considered respondent's testimony and that of other witnesses found none. This does not exonerate respondent from moral turpitude charges as to his false statement in his motion to disqualify a superior court judge. The hearing judge's conclusion that respondent violated statute and rule of professional conduct requiring attorneys to use only means consistent with truth must be read to find culpability by respondent's gross negligence, as simple neglect would not be sufficient for a statutory violation. Gross negligence is a well-established basis for finding an act of moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[1]**

In broad terms, any act contrary to honesty and good morals involves moral turpitude. Although an evil intent is not necessary for moral turpitude, some level of guilty knowledge or at least gross negligence is required. Where respondent's failure to comply with a court order was either intentional or grossly negligent, this failure involved moral turpitude. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[7]**

Hearing judge's credibility findings based on respondent's demeanor while testifying are entitled to great weight. Where hearing judge found that respondent did not mislead court about applicability of statutory fee limitation because respondent had honest but unreasonable belief that statute did not apply, but review department concluded that respondent's failure to disclose fee limitation was unreasonable under circumstances, review department found that respondent violated duty not to mislead courts and committed act of dishonesty, but that such misconduct occurred through gross negligence rather than intentional dishonesty. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[14]**

Where there was no evidence that respondent acted intentionally in failing to notify statutory medical lienholder of settlement or in failing to honor statutory lien, but rather, respondent's state of mind was that he was not actually aware of existence of lien or his duties in regard to it because he took no steps to investigate his client's medical coverage or his obligations under law, respondent's conduct evidenced reckless disregard rather than intentional violation of law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[1]**

Where respondent did not intend to deliberately defy a court order and did not have any dishonest or wrongful intent, and where respondent's improper conduct was based on beliefs and understandings which, although not only mistaken but also objectively unreasonable, were honestly held, respondent did not commit acts involving moral turpitude, dishonesty or corruption. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[9]**

An attorney's gross negligence in handling his clients' funds, which resulted in the issuance of several trust account checks that were not honored due to insufficient funds, involved moral turpitude even though there was no evidence of intentional wrongdoing or dishonest motive. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[13]**

Even though an attorney's individual acts did not involve moral turpitude, the attorney's pattern of misconduct amounted to moral turpitude; habitual disregard of client interests, even where grossly negligent or careless rather than wilful or dishonest, constitutes moral turpitude and justifies disbarment. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[1]**

The rule regarding prejudicial withdrawal from representation applies when an attorney ceases to provide services, even absent formation of an intent to withdraw as counsel. Whether or not an attorney's ceasing to provide services amounts to an effective withdrawal depends on the surrounding circumstances. Where time is of the essence, failure to provide services constitutes an effective withdrawal even if the attorney's period of inaction is relatively brief. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[7]**

An attorney's total cessation of services to a client for a period of two years, standing alone, and even though unintentional, was clear and convincing evidence that the attorney effectively withdrew from employment without taking steps to protect the client's interests. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[9]**

In order to violate the statute prohibiting seeking to mislead a judge, or its parallel Rule of Professional Conduct, an attorney must knowingly make a false, material statement of fact or law to a court, with the intent to mislead. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[5]**

Intent is a necessary element of an assignment. Where the physical transfer of an assignment of a promissory note and deed of trust from client to attorney was not intended to transfer an interest in the promissory note to the attorney, the transfer did not result in an acquisition by the attorney of an interest in the client's property, and thus did not violate the rule governing attorneys' business transactions with clients. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[14]**

Rule prohibiting prejudicial withdrawal from representation may reasonably be construed to apply when attorney ceases to provide services, even in absence of intent to withdraw as counsel. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[5]**

Appearing in court while suspended or enrolled inactive does not inherently involve moral turpitude; nor does it necessarily involve deception of the court, if the attorney is unaware of his or her inactive status. Evidence that an attorney made a single court appearance while ignorant of his or her inactive status is insufficient to establish clearly and convincingly that the attorney acted with moral turpitude or intent to deceive the court. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[22]**

The difference in wording between the rules governing pretrial and mid-trial contact with jurors, and the rule governing post-trial contact, reflects a difference in the intent of the drafters as to the elements of each rule. In order to establish a violation of the rule governing post-trial contact, the State Bar must prove by clear and convincing evidence that the respondent subjectively had the specific intent to harass or embarrass the jurors or to influence the jurors' actions in future jury service. Where no such subjective intent was established, based on referee's findings as to witnesses' credibility, review department found no violation and dismissed proceeding without addressing question of rule's constitutional validity. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[5]**

There is a distinction between the proof necessary to establish a rule violation where the only intent necessary is the intent to do the act, and the proof necessary to establish culpability of a disciplinary offense which requires proof of specific (i.e., subjective) intent. To prove a "wilful" breach of the Rules of Professional Conduct, it is only necessary to prove that the person charged acted or omitted to act purposely, that is, intended to commit the act. With respect to charges of which subjective intent is an element, however, such intent must be proven convincingly and to a reasonable certainty. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[6]**

The mere fact that the balance in an attorney's trust account falls below the amounts deposited and purportedly held in trust therein supports a conclusion of misappropriation. The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[6]**

204.90 Other General Substantive Issues re Culpability

The opinion of another attorney is not a defense to a violation of the rules or statutes governing attorney ethics. Where respondent claimed to have followed the advice of ethics counsel regarding permissible conduct during his suspension, but in fact continued to use his designation as an attorney in advertisements and on his website and stationery, totality of evidence left no doubt that respondent engaged in the unauthorized practice of law while suspended. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[3]**

Attorney may not rely on opinion of another attorney as a defense to violating the rules or sections governing attorney ethics. Attorney did not act in good faith when he chose interpretation of Civil Code section 2944.7, subdivision (a) that ignored a new statute's plain language and legislative history as well as his own knowledge of a State Bar ethics alert interpreting it. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[2]**

Standards governing an attorney's ethical duties do not vary according to the many areas of practice, even in specialized areas such as immigration law. Nor do those standards vary according to whether the attorney

practices alone or in a partnership, small law firm, large law firm, or corporate law department.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[2]**

In attorney discipline, ethical standards for attorneys are primarily established by State Bar Rules of Professional Conduct and State Bar Act. But, when an attorney practices in a specific area or jurisdiction, those standards may be measured by reference to other relevant state and federal statutes, rules of court, regulations, and administrative rules.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[3]**

Facts clients referred to respondent by nonattorney immigration services providers might have had a cultural bias in favor the referring nonattorney immigration services providers or that those clients might have viewed immigration attorneys, like respondent, as less important to their immigration cases than the referring nonattorney immigration services providers did not reduce or limit nature and scope of respondent's professional duties to his immigration clients.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[7]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Even if an attorney of record did not have actual knowledge of a trial setting, if a notice of trial setting was properly served on him, his failure to appear at trial will not be excused for State Bar disciplinary purposes unless he establishes that he had office procedures in place that, at a minimum, required his staff (1) to promptly inform him each time a notice of court or administrative trial or hearing is delivered to office, (2) to promptly record date of the trial or hearing in attorney's court calendaring system and in client's file, and (3) to promptly give client actual notice of date, time, and location of the trial or hearing. Respondent did not have any such proper office procedures in place. Thus, where record established that a notice of a hearing was properly served on him in an immigration court case in which he was attorney of record for the alien, respondent's failures to inform client of hearing, to prepare himself for the hearing, and to counsel and prepare client for the hearing could not be excused even if respondent did not learn of the hearing until the day of the hearing.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[23 a-d]**

Principle that, in the normal course of operation of a law office, an attorney should not be at risk of discipline for failure to have knowledge of every item of information that comes in his office is based on presumptions that the attorney has adequate office procedures in place for the proper operation of his office, trains his staff on those procedures; employs safeguards to insure that procedures are followed, and supervises staff to insure they perform their jobs.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[24]**

Because an attorney who is a general partner of a California limited partnership owes the limited partners fiduciary obligations, including the duty of good faith and fair dealing and the duty to safeguard funds to which the limited partners are entitled, the attorney is held to the high standards of the legal profession whether or not he or she acts in the capacity of an attorney. Moreover, the attorney is subject to discipline if he or she assumes a fiduciary relationship and violates a fiduciary duty in a way that would justify disciplinary action if the relationship were that of attorney and client. Thus, respondent was subject to discipline where the evidence established that respondent, as general partner, (1) breached his fiduciary duty to a limited partner by taking his share of profits in two different distributions without having first distributed to the limited partner his capital contribution and share of profits, contrary to both the applicable statute and the partnership agreement, and (2) misappropriated funds which the limited partner was entitled to receive. *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[1a-f]**

Because Rules of Professional Conduct 3-700(A)(2) (prohibiting prejudicial withdrawal from employment) and 3-700(D)(1) (mandating return of client property) have not been amended or modified since they were first adopted and became effective on May 27, 1989, there are no "former" versions of those rules. Thus, the review department deemed the charged and found violations that State Bar and the hearing judge incorrectly described as violations of "former" rules 3-700(A)(2) and 3-700(D)(1) to be charged and found violations of rules 3-700(A)(2) and 3-700(D)(1), which became effective on May 27, 1989. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[1]**

Because respondent failed to competently perform legal services both before and after the September 14, 1992, effective date of the revised version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110), he violated both the "former" and the "current" versions of that rule. Thus, State Bar erred when it amended the charges to "conform to proof" by deleting the charge that respondent violated the "current" rule and replacing it with a charge that he violated the "former" rule. State Bar should not have deleted the charge that respondent violated the "current" rule, but should have added to it a charge that respondent also violated the "former" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[2]**

Even though State Bar erroneously amended the charges to "conform to proof" by deleting the charge that respondent violated the revised (i.e., "current") version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110 as amended eff. Sept. 14, 1992) and replacing it with a charge that respondent violated the "former" version of that rule instead of correctly amending the charges by adding, to the charged violation of the "current" rule, a charge that respondent also violated the "former" rule, no due process violation occurred when review department held that respondent was culpable of violating both the "former" rule and the "current" rule because (1) the text of both rules was virtually identical, (2) respondent did not argue lack of notice, and (3) the trial in hearing department covered respondent's conduct during the time period in which the "former" rule was in effect and after the effective date of the "current" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[3]**

Rule prohibiting prejudicial withdrawal from employment (rule 3-700(A)(2)) is more comprehensive than rule requiring an attorney whose employment has been terminated to release the client's file upon the client's request (rule 3-700(D)(1)). Rule prohibiting prejudicial withdrawal, mandates compliance with rule requiring release of client files. Thus, attorney's failure to properly release a client's file in accordance with rule requiring release of client files may be a portion of the conduct disciplinable as a violation of rule prohibiting prejudicial withdrawal. Because respondent's failure to release the client's file in accordance with the client's request was relied on as part of the basis for finding that respondent violated rule prohibiting prejudicial withdrawal, review department rejected the use that same failure to find a separate violation of rule requiring release of client files. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[7]**

Disciplinary rules governing legal profession cannot punish activity protected by First Amendment, but neither false statements made knowingly nor false statements made with reckless disregard for truth are protected by First Amendment. Thus, because respondent's statements in pleadings, which she filed in superior court action and this disciplinary action, that her opposing counsel in superior court action was "well-known racist," "champion of the Emeryville pedophile ring," "operated by organized crime," "intent upon avoiding his own criminal indictment," and "motivated by racial hatred," and described young children as "niggers, hood and scums" were proved false at trial; because those statements were not mere rhetorical hyperbole, incapable of being proved true or false; and because respondent either knew statements were false or made them with reckless disregard of truth as there was no objective evidence that statements were true, hearing judge properly found respondent culpable of violating professional rules requiring attorneys to employ only such means as are consistent with truth and not to seek to mislead courts and judicial officers as well as statute proscribing acts involving moral turpitude. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[2 a-i]**

The review department's duty to independently review the record is settled. At the same time, the review department must give great weight to the hearing judge's determination that turns on credibility to be assigned to witness testimony. The department was reluctant, therefore, to ascribe to respondent a specific intent to deceive when the hearing judge who considered respondent's testimony and that of other witnesses found none. This does not exonerate respondent from moral turpitude charges as to his false statement in his motion to disqualify a superior court judge. The hearing judge's conclusion that respondent violated statute and rule of professional

conduct requiring attorneys to use only means consistent with truth must be read to find culpability by respondent's gross negligence, as simple neglect would not be sufficient for a statutory violation. Gross negligence is a well-established basis for finding an act of moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[1]**

Even though hearing judge expressly found that respondent's violation of statute and rule of professional conduct was based on respondent's gross negligence, she inexplicably declined to apply that gross negligence to find that respondent's conduct involved moral turpitude in violation of statute prescribing attorneys from engaging in acts of moral turpitude. Gross negligence is a well-established basis for finding moral turpitude. Accordingly, review department independently found respondent culpable of act involving moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[2]**

A client's acceptance of respondent's offer to advance costs and to pursue a complaint established an attorney-client relationship between them if such a relationship did not already exist. *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907. **[1]**

Disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment. However, because attorneys are officers of the court with a special responsibility to protect the administration of justice, reasonable speech restrictions may be imposed on them. To survive judicial scrutiny such a restriction must (1) further an important or substantial governmental interest unrelated to the suppression of expression and (2) be no greater than is necessary or essential to the protection of that important or substantial governmental interest. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[1]**

An attorney may be disciplined for making a false statement that attacks the honesty, motivation, integrity, or competence of a judicial officer without violating the attorney's First Amendment guarantee of free speech so long as the attorney knew the statement was false when he made it or made it with a reckless disregard for its truth or falsity. Truth is an absolute defense. The State Bar has the burden of proving the falsity of the statement. The issue of whether a false statement was made with reckless disregard for its truth or falsity is governed by an objective standard under which the court must determine what a reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[2]**

Illegal use of the Great Seal of the State of California on respondent's letterhead was inherently inappropriate even if no one was misled. Fact that no one was misled was only a mitigating circumstance. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[2]**

Respondent violated his duty to obey court orders when he intentionally failed to comply with two bankruptcy court orders directing him and his client to produce various documents to an examiner appointed by the bankruptcy court. It was no defense that the documents were ultimately determined to be of no use to the examiner. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[2]**

Respondent violated his duty to maintain only just causes and abused the bankruptcy process by filing and maintaining a Chapter 11 bankruptcy proceeding for an insolvent client when he knew that the client's only assets were nine residential lots in which there was no equity and that the client had neither the ability nor the intention of making adequate protection payments to the lienholders on the nine lots in accordance with the law. Even if respondent was unaware of these facts, he would still be culpable. Under applicable federal rules of procedure, respondent's signature on the Chapter 11 petition as attorney of record for debtor was a certification that to the best of his knowledge and belief, formed after a reasonable inquiry, the petition was well founded in fact and warranted by either existing law or a good faith argument for the modification of existing law. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[3]**

Respondent violated his duty to maintain respect for courts by failing to appear as counsel of record at hearings and court-ordered meetings in his client's bankruptcy proceeding. Respondent's repeated failures to appear were not tantamount to a voluntarily dismissal of his client's bankruptcy petition. Once respondent signed and filed his client's Chapter 11 petition, he submitted to the bankruptcy court's jurisdiction and had a duty to appear and participate at hearings and court-ordered meetings in good faith, withdraw as counsel of record, or have the bankruptcy court dismiss the petition. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[4]**

In broad terms, any act contrary to honesty and good morals involves moral turpitude. Although an evil intent is not necessary for moral turpitude, some level of guilty knowledge or at least gross negligence is required. Where respondent's failure to comply with a court order was either intentional or grossly negligent, this failure involved moral turpitude. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[7]**

Non-clients may be treated as an attorney's clients for purposes of discipline where the attorney assumes a fiduciary relationship with the non-clients. Thus, where respondent was the trustee of a testamentary trust, and thus assumed a fiduciary relationship with the beneficiaries of that trust, the rule regulating attorneys' business transactions with their clients applied to respondent's dealings with the trust, as if the trust beneficiaries were respondent's clients. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[4]**

Clients may not waive statutory limit on contingent fees in medical negligence cases, and superior court award of such fees in excess of statutory limits is erroneous. Where attorney did not reveal material issue of potential applicability of such statutory fee limit to superior court in connection with approval of settlement and award of fees, such award did not constitute res judicata, because attorney and client were not adversaries in proceeding. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[9]**

Conclusion that violations of statutes requiring written fee agreements and specified disclosures are not disciplinable offenses does not preclude consideration of attorney's failure to comply with such statutes as aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[12]**

Once violation of ethical duties is found, hearing judge should not disregard culpability finding, but must examine surrounding circumstances and may consider either good or bad faith of respondent in mitigation or aggravation. Where respondent was found culpable of wilful failure to return illegal fees on demand, such culpability should have been considered in making discipline recommendation despite respondent's good faith belief in entitlement to funds, which was properly considered as mitigating factor. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[13]**

An attorney's concealment of material facts is just as misleading as explicit false statements and constitutes misconduct warranting discipline. Where respondent had superior expertise regarding statutory fee limits in medical negligence cases, respondent had duty both to court and client to disclose material fact that such statutory limit might apply in particular case, even if respondent thought he had reasonable grounds to distinguish case from ambit of statute. Respondent's grossly negligent failure to disclose such material fact violated his duties to respect courts, not to commit acts of dishonesty or moral turpitude, and not to mislead judges by artifice or false statements. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[15]**

Dishonest acts by an attorney are grounds for suspension or disbarment even if no harm results. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[4]**

An attorney's disobedience of a court order involves moral turpitude for disciplinary purposes only if the attorney acted in either objective or subjective bad faith. Review department declined to find respondent culpable of moral turpitude for failure to appear as ordered at settlement conference, where such culpability was argued for first time on review, notice to show cause did not allege that failure to appear was in bad faith, and hearing judge made no findings regarding respondent's objective or subjective bad faith in failing to obey order to appear. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[6]**

Attorney disciplinary proceedings are not decided on principles of contract law, but where, due to vagueness of terms of purported agreement allowing attorney to use client's funds, contract law principles would not permit court to find any binding contract, such purported agreement could not provide defense to charges of professional misconduct. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[2]**

Where record clearly and convincingly established that respondent had not kept client's settlement check in safe place, but did not specify whether respondent lost check before or after effective date of revised Rules of Professional Conduct, respondent violated either former or current version of rule requiring attorneys to keep client property in place of safekeeping. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[18]**

Where respondent's failure to supervise his personal injury practice and fulfill trust fund responsibilities was so remiss as to be reckless, and his mismanagement of his trust account included repeated failure to provide competent

legal services by promptly paying medical liens, respondent violated rule regarding reckless or repeated failure to perform competently. However, where misconduct forming basis for such violation also underlay charge of moral turpitude supporting identical or greater discipline, review department gave violation of competence rule no additional weight in determining discipline. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[2]**

Where respondent failed to file required at-issue memorandum at time when former Rules of Professional Conduct were in effect, but such failure was not intentional or reckless, and respondent failed to perform several other required acts in same litigation after revised Rules of Professional Conduct became effective, review department held that respondent repeatedly failed to perform competently in violation of revised rule precluding intentional, reckless, or repeated failure to perform legal services competently, and did not reach question whether initial failure to file at-issue memorandum constituted duplicative violation of earlier version of same rule. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[8]**

Where respondent was charged with violating both former Rules of Professional Conduct and their current equivalents, but charged misconduct occurred prior to effective date of current rules, current rules were inapplicable. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[4]**

An attorney retained by a parent to represent the parent's child in a personal injury matter is thereby put on notice that the injured client may be a minor, a fact of critical importance. Statutes requiring court approval of compromise of minors' claims are intended for protection of minors. Respondent's failure to ascertain client's age after being retained by client's parent was grossly negligent as a matter of law and constituted reckless failure to perform legal services competently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[20]**

Where same misconduct was found in each of two consolidated matters, review department dismissed allegations of such misconduct in one matter, because disciplining respondent for same misconduct in both matters would not be appropriate. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[7]**

Regardless of an attorney's belief that a court order was issued in error, the attorney is obligated to obey the order unless the attorney takes steps to have it modified or vacated. The attorney's belief as to the validity of the order is irrelevant to a charge of violating the statute requiring attorneys to obey court orders. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[5]**

Respondent's simultaneous representation of a client and of respondent's father during the time that respondent arranged real property transactions between the client and the father was an aggravating circumstance in that the dual representation was rife with potential and actual conflicts of interest that could have been, if charged, the basis for additional culpability for violating the rule regarding representation of conflicting interests. The fact that respondent was not found culpable of any misconduct involving the real property transactions did not preclude treating respondent's conduct therein as an aggravating factor, because other related misconduct involving the same client was surrounded by and followed by the attorney's conduct in the real property transactions. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[11]**

Attorneys are not permitted to set their fees unilaterally. If a client contests fees charged or paid, the disputed fees must be placed in a trust account until the conflict is resolved. The duty to account for client funds includes a duty to maintain adequate records of fees drawn against an advanced fee and of fee payments made thereafter, and to provide clients with an appropriate accounting. In evaluating the promptness and adequacy of such an accounting, it was appropriate to look to the standards set forth in the statute governing attorneys' bills for fees and costs, even where a violation of that statute was not charged. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[3]**

Where words used in a rule are unambiguous, there is no need to go beyond the plain language to extrinsic aids. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[6]**

Due to difference in applicable standards of proof, a civil court finding is not binding on the State Bar Court for purposes of discipline. Where, upon evidence presented to civil court plus additional testimony, hearing judge concluded, contrary to civil court's decision, that respondent's loan to a client was not a sham transaction, then, resolving all reasonable doubts in respondent's favor, it was appropriate to dismiss charges that the loan transaction violated statutory duties to counsel only legal or just actions and to employ only truthful means of

maintaining clients' causes; constituted act of moral turpitude; and violated rule against advising violations of law. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[1]**

Attorneys have a personal duty to obey the State Bar Act and Rules of Professional Conduct and to reasonably supervise their agents and employees to that end. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[4]**

Culpability can be established in attorney disciplinary proceedings either by direct or circumstantial evidence, and circumstantial evidence has been considered on a regular basis in cases involving improper client solicitation by an attorney's agents. Culpability findings regarding charge of improper client solicitation were proper where, in addition to circumstantial evidence, there was inculpatory direct evidence in the record, and hearing judge properly evaluated and weighed witness testimony. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[10]**

An attorney's obligation to his or her client is limited by the attorney's and the client's obligation to third parties. Where respondent's client, a Medi-Cal beneficiary, had a statutory obligation (Welfare and Institutions Code section 14124.76) to notify the Department of Health Services (DHS) of the impending settlement of a personal injury matter in which DHS claimed a lien, respondent had a fiduciary obligation under decisional law to provide the required notice on his client's behalf. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[3]**

An attorney holding funds for a person who is not the attorney's client must comply with the same fiduciary duties in dealing with such funds as if an attorney-client relationship existed. Where an attorney represents a Medi-Cal beneficiary in a personal injury matter and has received notice of the Medi-Cal lien, the attorney has a fiduciary obligation toward the Department of Health Services as to its advancement of funds for the beneficiary and the Medi-Cal lien. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[8]**

Where respondent settled a personal injury claim on behalf of a Medi-Cal beneficiary without ensuring the payment of the applicable Medi-Cal lien, an issue to be addressed on remand was the effect, if any, on the appropriate degree of discipline of the policy adopted by the Office of the Chief Trial Counsel, with the approval of a committee of the Board of Governors, against prosecuting future health care provider "collection" cases, at least for private lienholders. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[15]**

Although the former rule of professional conduct governing representation of clients with conflicting interests did not expressly state that it encompassed potential as well as actual conflicts of interest, once the rule had been interpreted in case law to make it clear that potential conflicts between clients required written consent for a single attorney to represent them in civil litigation, and in light of the prophylactic intent of the rule, an attorney had a duty to obtain the clients' informed consent before agreeing to represent both driver and passenger in an automobile accident case where there was no bar to a claim by the passenger against the driver. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[6]**

In a disciplinary proceeding, a culpability determination must not be debatable. Accordingly, where the applicable rule of professional conduct did not expressly require written consent to joint representation of clients with potentially conflicting interests, the issue for the court was whether the case law at the time of an attorney's alleged violation of the rule made it clear that such consent was required in civil litigation. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[7]**

Once a trust account balance has fallen below the appropriate amount, an inference of misappropriation may be drawn, and the burden shifts to the attorney to show that misappropriation did not occur. Where there were numerous instances over several years in which funds were depleted or nearly depleted from respondent's trust account; respondent delayed in making repayment until the client complained to the State Bar or was sued, and respondent's explanations lacked credibility, the evidence supported the conclusion that respondent's repeated acts of misappropriation were due to dishonesty rather than negligence. The distinction between negligent and dishonest misappropriation can be very significant in determining appropriate discipline. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[11]**

Prosecutors must be held to the ethical standards which regulate the legal profession as a whole. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[10]**

Where respondent was not charged with failure to return an unearned advance fee, no finding of culpability for such misconduct could be entered absent an amendment of the charges. Where evidence was insufficient to support such charge, motion to amend was properly denied as an idle act. However, where, despite a clear directive as to the need to amend and an opportunity to move for such amendment in advance of trial, deputy trial counsel waited until after evidence was in to move to amend to conform to proof, motion to amend could also have been denied simply for inexcusable delay in seeking amendment. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[3]**

An attorney is responsible for the reasonable supervision of the attorney's staff. Where a client repeatedly demanded her file from respondent's office over a six-month period, this was sufficient to establish respondent's lack of reasonable supervision. Respondent's ignorance of the client's demands and lack of prior notice of his staff's failure to inform him of client communications did not absolve respondent from culpability absent additional evidence demonstrating his reasonable supervision of his staff. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[2]**

Where respondent received two letters from client's new counsel after respondent claimed to be confused as to whether client was discharging him, respondent's confusion did not excuse his delay in contacting successor counsel and forwarding client's file. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[3]**

Where hearing judge concluded that respondent misappropriated a portion of client's cost advance under trust account rule, and violated moral turpitude statute by gross negligence in supervising client trust funds, it was unnecessary for review department to amend hearing judge's conclusions to establish that those sections were violated, and review department declined to adopt additional conclusion that respondent acted dishonestly in misappropriating client's funds. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[6]**

Claim that respondent's failure to give required notice of suspension in four different client matters should not have been charged as four separate violations was relevant to degree of discipline but not to culpability. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[8]**

Respondent's bitterness and disaffection over his prior disciplinary suspension might explain some misconduct toward his clients thereafter, but it could not excuse his misconduct, especially since the suspension and its terms were designed to seek respondent's rehabilitation. Also, respondent's evidence of rehabilitation was depreciated by his inability to comply with his probation conditions, which was relatively recent and occurred after respondent had time to become familiar with his responsibilities. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[21]**

An attorney owes the same fiduciary obligations to all clients, paying or nonpaying. Impecunious clients are ill-served by well-meaning attorneys who fail to deliver the services for which they were engaged. Nor are the courts or public served by litigation brought without likelihood it can be realistically be prosecuted to completion. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[4]**

Where record established that respondent agreed to handle litigation and thereafter abandoned case; former and current Rules of Professional Conduct were virtually identical regarding duties imposed on an attorney who wishes to withdraw from employment; both rules were charged in notice to show cause, and violation clearly occurred during period when either one rule or the other was in effect, review department found respondent culpable of improper withdrawal despite lack of evidence regarding exactly when relevant events occurred. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[2]**

Uncharged misconduct relied upon to enhance discipline in one proceeding cannot later constitute grounds for additional discipline in an independent disciplinary proceeding. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[7]**

Evidence that respondent paid court-ordered sanctions with a trust account check, and that the client had not provided the funds, established respondent's improper use of the trust account, either by commingling trust

and personal funds or by misappropriating funds belonging to other clients. Weighing all reasonable doubts in respondent's favor, a finding of commingling, the less serious offense, was appropriate. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[13]**

Attorneys who engage in an extended practice of inattention to official actions should not be allowed to create the risk that it will extend to clients resulting in inevitable and grievous harm to them. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[10]**

An attorney's failure to comply with successive orders of the Supreme Court is of concern to the State Bar Court because it repeatedly burdens the resources of the State Bar Court and the disciplinary system. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[11]**

Where an attorney occupies a dual capacity, performing, for a single client or in a single matter, along with legal services, services that might otherwise be performed by a lay person, the services the attorney renders in the dual capacity all involve the practice of law, and the attorney must conform to the Rules of Professional Conduct in the provision of all of them. This rule applies to an attorney who is appointed both attorney and executor of a probate estate. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[1]**

Compliance with the time limitations set forth in the Probate Code is not a defense to a charge that the attorney failed to act competently, nor does noncompliance with such time limitations establish per se a failure to act competently. The focus of the inquiry on a charge of failure to act competently is whether the attorney intentionally, recklessly, or repeatedly failed to apply the learning, skill, and diligence necessary to discharge the duties arising from the attorney's employment or representation. Compliance with the time limitations of the Probate Code is but one factor to be considered in making this determination. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[11]**

The amount of client trust funds that an attorney mishandles goes to the issue of discipline, not culpability, and the mishandling of even an insignificant amount can constitute a disciplinable offense. No de minimis exception applies to the determination of culpability for mishandling trust funds. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[7]**

A hearing judge should scrutinize with care any evidence bearing the earmarks of private spite. Nevertheless, any instigating factor or personal motive in the initiation of a State Bar proceeding is not a matter of controlling concern where the facts disclosed justify disciplinary action. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[11]**

In addressing the constitutionality of imposing professional discipline for criminal conduct not involving moral turpitude, the State Bar Court must endeavor to interpret the "other misconduct warranting discipline" standard to render its application in the particular case constitutional. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[6]**

A due process challenge to a discipline proceeding based on vagueness is appropriate where the misconduct involved is not clearly within the scope of a disciplinary standard and the standard is so broad that people of common intelligence must necessarily guess at its meaning and differ as to its application. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[7]**

Evidence that an attorney has taken steps to deal with an alcohol problem is mitigating evidence that may properly be taken into account in determining the degree and nature of discipline, but does not eliminate the initial misconduct as an appropriate basis for discipline. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[11]**

Review department did not need to reach respondent's challenges to hearing judge's evidentiary rulings in order to uphold hearing judge's ultimate findings, where all essential elements of charged violation were established by evidence to which respondent did not object, and any evidentiary errors did not result in denial of a fair hearing. Where factual findings based on challenged evidence were not necessary to decision, remand for new hearing was not necessary even if evidentiary errors underlay some non-essential findings. (Rule 556, Trans. Rules Proc. of State Bar.) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[1]**

Where probation conditions required that respondent abstain from intoxicants and non-prescribed drugs, and respondent stated under penalty of perjury that respondent had complied with all "valid, legally reasonable and enforceable" probation conditions, then even if State Bar proved respondent had consumed alcohol, respondent could have avoided perjury conviction by contending he did not consider abstinence condition to be valid, legally reasonable, and/or enforceable. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[5]**

A disciplinary proceeding is seldom the proper forum for attorney fee disputes. In a matter arising from a dispute between attorneys, where respondent did not mishandle any sum that could be considered trust funds and respondent's instruction to staff to endorse the other attorney's name to settlement drafts was not dishonest, corrupt, or reflective of bad moral character, the review department affirmed the dismissal of the proceeding. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[1]**

Although the term "moral turpitude" has been defined very broadly, the Supreme Court has always required a certain level of intent, guilty knowledge, wilfulness, or, at the very least, gross negligence before labelling an attorney's conduct moral turpitude. Where respondent reasonably and in good faith believed that he had the authority to endorse his clients' former attorney's name to settlement drafts, and there was no evidence that respondent misused funds intended for clients or medical providers and no evidence of fraud, hearing judge correctly concluded that there was no clear and convincing evidence of moral turpitude. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[3]**

In matter where record lacked any evidence of impropriety of respondent or respondent's staff in dealing with clients, case law requiring all reasonable inferences to be resolved in respondent's favor supported attribution of no base motives to respondent. Thus, in deciding to dismiss charges, hearing judge properly saw case as one involving a dispute between two attorneys over clients, files, and the first attorney's fee, and did not improperly fail to consider totality of respondent's conduct. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[4]**

Where complaining witness testified credibly that an attorney-client relationship existed between himself and respondent, respondent himself had filed pleadings in civil litigation acknowledging such relationship, and respondent's counsel conceded that respondent had held himself out as complaining witness's attorney, respondent's argument in disciplinary proceeding that complaining witness was not his client was without merit. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[2]**

An attorney holding funds for a person who is not a client is held to the same fiduciary duties in dealing with those funds as if there were an attorney-client relationship. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[4]**

Violations of standards of professional conduct not yet clarified by case law are less reprehensible than violations of more clear-cut and well-established rules. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[5]**

A broad scope of activities may be held to constitute the practice of law, but the unauthorized practice of law outside of court appearances is difficult to define. Where respondent, while on inactive status, allegedly referred to a family member as respondent's client in a letter to another lawyer and expressed an intention to seek statutory fees in a probate matter involving the family member, respondent was properly charged with unauthorized practice of law. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[8]**

Hearing department findings that were based on evidence admitted in discipline phase of trial were considered by review department solely with respect to discipline and not culpability. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[3]**

Restitution of client funds taken by an attorney is no defense to disciplinary charges of misappropriation. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[3]**

Where respondent, who had been previously suspended from practice, described his legal career to a prospective employer in such a way as to indicate that respondent's practice of law had been uninterrupted, it was sufficient to establish culpability of misrepresentation to show that respondent knowingly presented a statement which itself tended to mislead. It was not material that the employer did not rely on the application or was not in fact deceived. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[6]**

Where the stipulation of the parties did not preclude a conclusion that respondent's misappropriations were acts of moral turpitude, and given the number and similarity of the matters in which respondent admitted to misappropriating trust funds, the burden shifted to respondent to rebut the conclusion that moral turpitude was involved. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[4]**

A nexus between an attorney's criminal misconduct and the practice of law might have been established if the State Bar had proven that the attorney's present criminal conduct had violated the terms of the attorney's previously imposed criminal probation. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[8]**

A nexus between an attorney's criminal misconduct and the practice of law may be established where the circumstances surrounding the attorney's conviction indicate that the attorney has problems with alcohol abuse. However, an attorney's ingestion of normal doses of legal medications for appropriate symptoms did not demonstrate a substance abuse problem. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[9]**

Where the original notice to show cause alleged misappropriation, and the examiner amended the notice to charge respondent with commingling resulting from his bookkeeper's negligence, and there was no evidence that respondent's defense was thereby prejudiced, respondent had sufficient notice of the charges to satisfy his due process rights, because the duty to keep client funds safe is a personal obligation of the attorney and nondelegable, and the attorney was therefore on notice that he could be culpable if his staff's conduct resulted in a violation of that duty. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[2]**

The duty to keep clients' funds safe is a personal, nondelegable obligation of an attorney. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[4]**

Where respondent failed to inform a client that the five-year statute was about to run on the client's case, respondent violated the statutory duty to keep clients reasonably informed of significant developments in their cases; the fact that the failure to communicate resulted from the loss of the client's file did not render respondent any less culpable. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[11]**

While attorneys have a duty to reasonably supervise their staffs, they cannot be held responsible for every event which takes place in their offices. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[9]**

In a default proceeding, ambiguous evidence that can be interpreted as consistent with allegations of the notice to show cause does not negate the deemed admissions of the notice to show cause. Where evidence introduced at default hearing fell short of clear and convincing proof of charged violations, but was not inconsistent with charging allegations, defaulting respondent should have been found culpable of violations properly charged. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[3]**

Evidence of additional uncharged acts of misconduct could not constitute an independent basis for culpability. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[7]**

Where the State Bar chooses to present evidence in a default hearing that undercuts or negates the allegations of the notice to show cause, it is the evidence, and not the allegations, that controls the findings of fact. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[2]**

A notice to show cause which alleged that an attorney was hired by a father to represent his son and that the attorney thereafter failed to perform services for, communicate with, and return unearned fees to, the father was sufficient to put the attorney on notice that he was charged with the specified misconduct in his dual representation of the father and son, because the attorney would not have had a duty to communicate with the father if he were not representing the father. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[22]**

Statute which requires that if a party is represented by counsel, papers must be served on counsel rather than on the party, does not apply to the service of a summons or a writ. Therefore, respondent did not have to serve alternative writ and petition for writ on opposing party's counsel, but could serve opposing party personally. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[1]**

Where a municipal court order finding an appeal frivolous and awarding sanctions did not explain the basis for such finding or the statutory basis for awarding sanctions, and no additional evidence was introduced to establish that the appeal was substantively without merit, the record did not clearly and convincingly establish for disciplinary purposes that the appeal was frivolous or pursued in bad faith. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[7]**

Civil verdicts and judgments have no disciplinary significance apart from the underlying facts. While civil findings bear a strong presumption of validity if supported by substantial evidence, the disciplinary court must assess them independently under the more stringent standard of proof applicable to disciplinary proceedings. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[8]**

Respondent's decision not to send a copy of a writ petition to counsel who was representing the opposing party in a related appeal appeared to have been a breach of normally expected professional courtesy and was not a model of good practice; nonetheless, because allegations of notice to show cause failed to give respondent reasonable notice of charge of which he was found culpable, review department dismissed proceeding. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[10]**

Focusing on technicalities in the law is a very shortsighted approach to the ethical obligations of attorneys; such technical approaches to the body of law regulating attorneys' ethics may be described as undermining the moral fiber of the profession. Evidence of good character does not rest on technicalities. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[9]**

The mere fact that an attorney has been held in contempt of court is not grounds for discipline. The State Bar must establish that the contempt resulted from bad faith noncompliance with a court order, or that the underlying facts present other independent grounds for discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[4]**

The Rules of Professional Conduct are binding on attorneys, but are not the equivalent of statutes; they merely supplement the statutory provisions. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[4]**

Where notice to show cause charged respondent with making misrepresentations to opposing counsel and at trial, and respondent testified at disciplinary hearing that similar misrepresentations were also made to court of appeal and to State Bar investigator, this later conduct was properly treated not as bearing on substantive culpability, but on the issue of discipline. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[1]**

Attorneys are expected to be forceful advocates for clients' legitimate causes, but role played by attorneys in honest administration of justice is critical. Attorneys, by adherence to their high fiduciary duties and the truth, can sharply reduce or eliminate clashes and ease the way to dispute settlement. Where parties to marital dissolution matter agreed to allow husband's counsel to hold community funds in trust pending resolution of dispute regarding property settlement, relying on counsel's duty as an attorney to honor the trust nature of the money, attorney's misconduct in improperly disbursing funds and then misrepresenting to wife's counsel and courts that funds were still held in trust account was especially regrettable. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[19]**

Where attorney's alleged failure to perform competently occurred after effective date of revised version of rule governing duty of competence, and notice to show cause charged attorney only with violating previous version of rule and notice was not amended, attorney was properly found not culpable of violating earlier version of rule. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[6]**

Where attorney's decision not to pursue client's damages action was not made until after effective date of revised rule regarding duty to perform competently, attorney's conduct in deciding not to pursue damages was covered by revised rule and attorney could not be found culpable of violating earlier version of rule. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[7]**

Statutory duty to communicate with clients is not an appropriate basis for discipline for failure to communicate which occurred well before effective date of statute. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[9]**

Attorney was properly found not to be culpable of violating statutory duty to cooperate with State Bar investigation where alleged violation predated effective date of statute. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[16]**

A justifiable and reasonably certain belief that a check will be paid by the bank despite insufficient funds is a valid defense to a charge of issuing checks drawn against insufficient funds. Where respondent had an oral agreement with a bank officer to pay all his checks automatically, which would not have been terminated without notice to respondent, and where all checks he wrote were honored and no creditor was put at risk, respondent's repeated issuance of insufficient funds checks did not constitute misconduct. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[1]**

Although an attorney is culpable for misconduct committed by inadequately supervised office staff, the degree of the attorney's personal involvement in the misconduct is relevant to the degree of culpability and the appropriate discipline to be imposed. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[5]**

While gross negligence is not a defense to a charge of misappropriation, the absence of evidence of intentional misappropriation is a substantial factor in mitigation. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[19]**

Absent unconscionable circumstances in its creation, an agreement granting an attorney express authority to sign a client's name on documents is clearly not contrary to public policy. Indeed, it is essential that express authority be obtained by an attorney seeking the power to sign the client's name to documents on the client's behalf. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[10]**

If violations of the Rules of Professional Conduct were automatically also violations of the statute governing an attorney's duty to obey the law, the statute limiting the discipline for rule violations to a maximum of three years' suspension would be rendered meaningless; such a construction of the statutory scheme would be illogical. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[16]**

An attorney's deliberate use of dishonesty to further attempts to gain employment, particularly as a lawyer, is very serious. An attorney is not just another job-holder or job-seeker. Attorneys in this state are charged with high duties of honesty and professional responsibility. Any act of dishonesty by an attorney is an act of moral turpitude, and ground for serious professional misconduct, whether or not arising in the course of attorney-client relations; an attorney's dishonesty in seeking to further his or her career is simply inexcusable. An attorney's statements in a resume, job interview or research paper should be as trustworthy as that professional's representation to a court or client. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[13]**

If respondent's only breach, in relation to a charge of filing a false declaration, was a lack of care in ascertaining the truth of the facts presented in the declaration, then it was incumbent on the hearing referee to determine whether that lack of care or diligence was culpable within the charges and fell below the level of conduct required of members of the State Bar. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[10]**

When an attorney presents statements to a judicial tribunal while appearing in pro per as a party to litigation, the rule against misleading courts and judicial officers applies to him as an attorney. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[12]**

In finding respondent culpable of misappropriating trust funds and of knowingly issuing a check drawn on insufficient funds, the referee's statement that respondent's acts constituted crimes involving moral turpitude was improper since the criminal statutes were not charged in the notice to show cause. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[16]**

In a default matter, to the extent that evidence negates allegations of notice to show cause, it is evidence and not allegations that controls findings of fact. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[19]**

False statements made with reckless disregard of the truth do not enjoy constitutional protection under the First Amendment. Attorneys may be disciplined for making defamatory or disrespectful statements in pleadings or court papers which have no basis in fact and which are made with conscious disregard of their falsity or with

intent to be maliciously contemptuous. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[8]**

Where all of attorneys' acts of dishonesty were encompassed in charge of committing acts of moral turpitude, there would be no added value in straining to find in the same conduct a violation of another statute prohibiting misrepresentations to tribunals. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[5]**

Whether an attorney's misconduct involved moral turpitude is a question of law ultimately decided by the Supreme Court. The test is the same whether or not the act was a criminal offense. Where respondent failed to pay payroll taxes due to financial difficulty, such conduct did not constitute moral turpitude, because Supreme Court did not find moral turpitude in case involving similar but more egregious misconduct. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[9]**

Where entry of attorney's default for failure to appear at disciplinary hearing resulted in the admission of all allegations in the notice to show cause, but certain of those allegations were in conflict with evidence adduced at hearing, examiner properly requested reconsideration of hearing decision to delete findings contrary to evidence adduced at hearing, and hearing referee properly deleted such findings from the decision, based on their conflict with the evidence. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[1]**

210 State Bar Act Violations

211.00 Section 6002.1 (address and reporting requirements)

By maintaining a post office box as his State Bar address of record, respondent violated statute requiring attorneys to maintain, on the State Bar's official membership records, their current office addresses and telephone numbers. It is only when an attorney does not have offices that he is permitted to maintain some other address and telephone number as his official State Bar address. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[19 a-b]**

In addition to multiple State Bar administrative and investigative purposes, purpose of statute and State Bar rules and regulations requiring attorneys to maintain their current office addresses and telephone numbers on State Bar's official membership records is to establish a bar-wide database of every attorney's office address and telephone number from which clients may locate their attorneys should they lose contact with them. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[20]**

Unless no office is maintained, every attorney has statutory duty to maintain his or her current office address on State Bar's official membership records (official address). Attorney violated this duty by maintaining his home address on State Bar's official membership records instead of maintaining his office address. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[10]**

Respondent's highly generalized argument regarding inadequate notice of certain hearings warranted no relief, where respondent had been made aware of duty to keep State Bar informed of current address and given opportunity to correct the official State Bar record thereof, and notices had been served on respondent at another address in addition to the address of record. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[1]**

Section 6068(a) is not a proper basis for charging a violation of 6002.1, because section 6068(j) specifically makes it a duty of each State Bar member to comply with section 6002.1, and makes such compliance the subject of discipline. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[12]**

The failure to charge a violation of section 6068(j) in the notice to show cause was harmless error, where the notice clearly charged an alleged violation of section 6002.1. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[13]**

Respondent's claimed alcoholism did not excuse him from his statutory duties to notify the State Bar promptly of any change of his address of record, and to participate in State Bar disciplinary proceedings against him. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[4]**

211.01 Found

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

211.05 Not Found

213.10 Section 6068(a) (support Constitution and laws)

Where an attorney's actions, taken as a whole, create a false impression of ability to practice law while on suspension, this constitutes unauthorized practice of law in violation of Business and Professions Code sections 6125 and 6126, upon which is predicated a violation of section 6068, subdivision (a). Here, respondent paid for television advertisements, recorded voice messages for the law office, failed to provide a disclaimer in the advertisements and voice messages that he was not entitled to practice law, failed to identify any other attorney as working for the law office, maintained a website for the law office that described his abilities and qualifications as an attorney, took no steps to correct the false impression of an insurance company and chiropractor as to his status as an attorney, and failed to ensure that no stationary identifying him as an attorney was used by the law office where he worked. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[1 a-c]**

The practice of law embraces a wide range of activities, including giving legal advice and preparing documents to secure legal rights. Where, during disciplinary suspension, respondent told a client he would take her case; communicated with Medicare and an insurance company on the client's behalf; negotiated a settlement, and endorsed a settlement check, these actions constituted the practice of law, and established respondent's culpability of unauthorized practice. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[2]**

Attorney violated section Business and Professions Code, section 6106.3 in eight client matters by charging each client for preliminary financial analysis before all mortgage loan modification services were complete. Civil Code section 2944.7, subdivision (a) plainly prohibits any person, including a legal professional, from collecting any fee related to a loan modification until each and every service contracted for has been completed. Attorney was not allowed to charge unbundled fees for individual financial analysis services until he had completed all other loan modification services listed in his retainer agreement. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[1]**

Attorney was culpable of violating Business and Professions Code section 6106.3 by failing to provide a separate statement that it was not necessary for the client to retain a third party mortgage loan modification negotiator as required by Civil Code section 2944.6, subdivision (a) when he charged his client for loan modification services without first providing the client the retainer agreement which contained the separate statement. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[3]**

Attorney was not culpable of violating Business and Professions Code section 6106.3 by failing to provide a separate statement that it was not necessary for the client to retain a third party mortgage loan modification negotiator as required by Civil Code section 2944.6, subdivision (a) when he the client received the retainer agreement containing that section's mandatory language the same day she authorized payment. Civil Code section 2944.6, subdivision (a) requires the information be provided as a separate statement, but does not mandate that it be in a separate document. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[4]**

Attorney's failure to timely disclose defendant's jail interview was a violation of Penal Code sections 1054.1(b) and (f) and 1054.7 which sufficiently established a failure to obey the law. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[6 a, b]**

Attorney failed to obey the law when he informed the jury during closing argument what would happen to a defendant if the jury found the defendant to be a sexually violent predator. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[8]**

Respondent violated his duty as an attorney to comply with the law by violating his duties as a civil trial juror. The Judicial Council has recognized that jury service is an "important civic responsibility," requiring court and staff use of all necessary and appropriate means to ensure that citizens fulfill this duty, and it is the accepted duty of citizens to serve, subject to the statutory provision for excuse for undue hardship. The harm to the parties

and to the fair administration of justice is clear and serious when respondent disregarded his duty to vote as the facts and judge's instructions guided him, and instead voted as the convenience of his law practice swayed. Respondent's change of vote to avoid continuing to serve as a juror voided the verdict he rendered and required the parties, their counsel and the courts to bear the additional costs, time and burdens of appellate and further trial court proceedings. *In the Matter of Fahy* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141 **[2 a, b]**

In State Bar Court proceedings any reasonable doubts must be resolved in respondent's favor. Where construction of law prohibiting recording of confidential communications without consent was uncertain at the time respondent surreptitiously recorded a telephone conversation, it could have been possible to determine that respondent's conduct did not violate the law. Thus, the charge that respondent failed to support the laws of California was dismissed with prejudice. *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 **[2]**

Where respondent wrote letters to negotiate claims on behalf of clients while suspended from the practice of law, respondent was still culpable of engaging in the unauthorized practice of law despite having filed a motion to stay his suspension. *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966. **[2]**

Where the record contains clear and convincing evidence that respondent led a witness to believe they had a special relationship of trust and confidence and that his interests would be protected by respondent, respondent assumed a fiduciary duty towards the witness, who was a vulnerable criminal defendant, when he used his superior knowledge and position as an attorney to create a confidential relationship of trust and dependency. In so doing, respondent caused the witness to reject his attorney's advice and accede to respondent's wishes thereby breaching his common law fiduciary duty to the witness in wilful violation of section 6068, subdivision (a). *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[7 a–c]**

Where respondent's failure to provide his client with a statutorily required disclosure statement when selling residential real property to the client was one of the factors used to determine that respondent entered into a business transaction with a client without disclosing all terms of the transaction and transmitting them in writing to the client in a manner that the client should reasonably understand, it would not be proper to again rely on that identical failure in order to establish respondent's culpability of failing to support the laws of this state. *In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[6]**

Sections 6125 and 6126 of the Business and Professions Code, which prohibit practicing law or holding oneself out as entitled to practice law by anyone other than an active attorney, are not of themselves disciplinary offenses. The appropriate method of charging disciplinary violations of those sections is by way of adding a charge of a violation of section 6068, subdivision (a), which imposes upon an attorney the duty to support state laws, to sections 6125 and 6126. Even though section 6068, subdivision (a), was not charged, the review department upheld the hearing judge's findings that respondent violated sections 6125 and 6126 where the amended charges made it clear both by text and citation to sections 6125 and 6126 that respondent was being charged with accepting employment from and holding himself out as entitled to practice law while respondent was suspended, and where respondent failed to object and show any evidence of specific prejudice arising from the failure to add section 6068, subdivision (a), to the underlying charges. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[7]**

Illegal use of the Great Seal of the State of California on respondent's letterhead was inherently inappropriate even if no one was misled. Fact that no one was misled was only a mitigating circumstance. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[2]**

Where respondent violated rule of professional conduct which prohibits an attorney from improperly obtaining an interest in a client's property and/or entering into a business transaction with a client, and that misconduct was the same misconduct underlying the charge that respondent violated statutory duty to uphold law on account of his violation of provisions of the Probate Code which prohibit self-dealing by trustees, and where discipline did not depend on whether respondent violated both rule and statute, statutory violation was cumulative and review department did not address it. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[1]**

Violation of State Bar Act section that is not, by its terms, disciplinable offense may be grounds for finding violation of statute requiring attorneys to uphold law. Where respondent was charged with violating statutory fee limitations and written fee agreement and disclosure requirements which are not, by their terms, disciplinable offenses, charge of violating statute requiring attorneys to uphold law was required as conduit to allege other violations, and such charge should not have been dismissed as unnecessary. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[4]**

Statutory limit on attorneys' contingent fees for representation of plaintiffs in medical negligence actions applies whether person represented is responsible adult, infant or person of unsound mind and regardless of whether recovery is by settlement, arbitration or judgment. Where respondent failed to reveal potential applicability of such statute to incompetent client's representative and superior court ruling on respondent's fee application, such conduct frustrated court's function in passing upon fee request and client's interest in receiving all of recovery to which she was entitled, and violated attorney's duty to uphold law and rule against charging or collecting illegal fees. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[8]**

Statute requiring attorneys to uphold law is not always proper vehicle for charging violation of State Bar Act when statute is already covered as a disciplinable offense in another part of the Act. Because statutes requiring written attorney fee agreements containing certain information specify non-disciplinary remedies for attorneys' failure to comply with them, and because failure to comply with such statutes may be charged as violations of Rules of Professional Conduct regarding illegal fees, competence, and communication with clients, violation of such statutes is not disciplinable under statute requiring attorneys to uphold law. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[11]**

As officers of the court, sworn to uphold the law, attorneys have a duty to honor legislative mandate that government-funded health care expenses be entitled to reimbursement from any and all private funds available. By statute, it is a disciplinable offense to violate this duty unless the violation is the result of a negligent good faith mistake. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[16]**

The Business and Professions Code section requiring attorneys to support federal and California constitution and laws proscribes attorney conduct which violates any federal or California statute. However, such Business and Professions Code section may be used to charge violation of another statute only if that statute is specifically identified in the notice to show cause. Otherwise, the attorney is not given adequate notice of the particular statute allegedly violated. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[17]**

Where hearing judge found that respondent acted with reckless disregard in failing to honor rights of statutory lienholder, and where in one matter respondent intentionally did not honor known statutory lien based on incorrect legal theory without any legal research, advice, or inquiry, and in two other matters respondent made no effort to determine whether clients' health care providers might have statutory liens, and where respondent took no steps to ascertain the law as to his obligations to statutory lienholder, respondent's failure to honor statutory liens was product of gross negligence rather than of good faith, negligent mistake, and thus constituted violation of statute requiring attorneys to support the law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[18]**

Statute requiring attorneys to uphold law does not provide basis for discipline except where it serves as conduit to charge violation of state or federal statute other than disciplinary provisions of Business and Professions Code. Where no such statutory violation was charged in matter involving failure to honor contractual lien, no violation could be found as a matter of law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[22]**

Where respondent was culpable of one instance each of collection of an illegal fee and intentional failure to perform competently, and of multiple instances each of violating his duty to uphold the law; reckless failure to perform competently; withdrawing from employment without protecting clients from foreseeable prejudice; and failure to pay trust funds on demand, and where most severe applicable standard proposed three-month minimum actual suspension for non-misappropriation trust fund offenses, and where respondent's mitigating evidence was not sufficient to justify deviating from applicable standard given respondent's record of numerous violations over extended time period, review department increased hearing judge's recommended actual suspension to 90 days, as condition of three-year probation, with one-year stayed suspension as justified by case law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[29]**

Where respondent settled a personal injury claim, without filing suit, on behalf of a client who was a Medi-Cal beneficiary, respondent's failure to notify the Department of Health Services of the settlement did not violate a statute which only required such notice if an action had been filed (Welfare and Institutions Code section 14124.79). *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[2]**

Where a statute (Welfare and Institutions Code section 14124.76) required Medi-Cal beneficiaries to notify the Department of Health Services (DHS) regarding the impending settlement of matters in which no suit had been filed and DHS claimed a lien, the review department construed the statute to require that attorneys representing such beneficiaries must also give the required notice, because to construe the statute otherwise would frustrate the Medi-Cal third party liability recovery system and be in derogation of an attorney's general fiduciary responsibility to lienholders. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[4]**

The statute providing that attorneys have a duty to support the constitution and laws of California and the United States constitutes a conduit whereby attorneys may be disciplined for violating laws which are not otherwise disciplinable under the State Bar Act. However, a negligent mistake made in good faith does not constitute a violation of this statute. Thus, where respondent believed he had satisfied his obligation to a statutory medical lienholder by informing it of a source of insurance coverage, and thus believed that his client was entitled to all of the settlement funds obtained from a different source of coverage, respondent's failure to notify the lienholder of the impending settlement, as required by statute, did not violate his statutory duty to obey California law, because it constituted a negligent mistake, based on the good faith, erroneous belief that he was entitled to distribute all the settlement funds to the client and let the client deal with the statutory lien. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[5]**

Where an attorney had been suspended from practice and had been contacted by new counsel retained by his former client, the attorney's subsequent negotiation with an insurance company on the client's behalf without the new counsel's consent constituted unauthorized practice of law and violated the statute prohibiting attorneys from appearing without authority. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[3]**

Where respondent did not respond to client's reasonable inquiries and missed appointments with client both before and after effective date of statute regarding duty to communicate with clients, respondent was culpable of violating attorney's oath and duties, as to conduct before such effective date, and of violating statutory duty to communicate, after such effective date. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[5]**

It is not inherently inconsistent to conclude that an attorney who withdrew from employment and failed to perform legal services competently is also culpable of failing to communicate with the client thereafter. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[7]**

Under section 6125 of the Business and Professions Code, members of the State Bar who are on inactive status may not practice law in California. Section 6068(a) makes violation of section 6125 a disciplinable offense. A member on inactive status who is alleged to have committed acts constituting the practice of law is properly charged with violating sections 6125 and 6068(a). *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[6]**

For a failure to communicate with a client which occurred prior to the enactment of the statute requiring such communication, grounds for discipline remain under the common law doctrine underlying this duty. However, where the information the attorney most significantly failed to convey was notice of the attorney's withdrawal from representation, the attorney's conduct violated former the rule against prejudicial withdrawal, and finding culpability of a common law failure to communicate would be unnecessarily duplicative. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[10]**

Section 6106, in contrast to sections 6068(a) and 6103, does state a chargeable offense for which discipline may be imposed. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[10]**

Where an attorney's failure to communicate with a client occurred prior to the effective date of the statute specifically requiring communication with clients, a violation of the underlying duty predating this statute may be charged as a violation of the attorney's oath and duties generally. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[15]**

Where hearing judge accepted respondent's testimony that respondent's prolonged failure to file personal income tax returns resulted from problems with respondent's accountants, and examiner did not object to hearing judge's determination that there was no clear and convincing evidence of misconduct in connection with respondent's failure to file tax returns, review department adopted judge's findings and conclusion of non-culpability. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[3]**

An attorney may be found culpable of professional misconduct, based on charges of failing to obey state law by failing to file tax returns, even if the attorney has not been convicted of a crime based on that conduct. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[4]**

Charging an attorney with a violation of the duty to support the Constitution and laws, by reason of the attorney's violation of the statutes prohibiting practicing law while suspended, provides the basis for imposition of professional discipline for unauthorized practice. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[12]**

The Supreme Court has rejected the contention that the duty to uphold the laws of this state, as set forth in section 6068(a), is violated by an attorney's violation of the Rules of Professional Conduct. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[2]**

Duplicative allegations of misconduct serve little purpose; if misconduct violates a specific disciplinary provision of the State Bar Act or a Rule of Professional Conduct, there is no need to charge the same misconduct as a violation of sections 6068(a) and 6103. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[3]**

Sections 6068(a) and 6103 were not intended to refer to the Rules of Professional Conduct or to make disbarment available for violations of such rules. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[5]**

Section 6068(a) is not a proper basis for charging a violation of 6002.1, because section 6068(j) specifically makes it a duty of each State Bar member to comply with section 6002.1, and makes such compliance the subject of discipline. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[12]**

Charging a violation of section 6068(a) without specifically identifying the underlying provision of law allegedly violated not only fails to put the attorney on sufficient notice of the alleged violation, but also undermines meaningful review of any decision based on such general charging allegation. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[14]**

Section 6068(a) is a conduit by which attorneys may be charged and disciplined for violations of other specific laws which are not otherwise made disciplinable under the State Bar Act, including a violation of: (1) a statute not specifically relating to the duties of attorneys; (2) a section of the State Act which is not, by its terms, a disciplinable offense, and (3) an established common law doctrine which is not governed by any other statute. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[15]**

Discipline may appropriately be imposed based on an attorney's unauthorized practice of law when the attorney is charged with violating sections 6068(a) and sections 6125 or 6126. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[16]**

An attorney who failed to communicate adequately with a client prior to 1987 cannot be charged with a violation of section 6068(m), but can be charged with a violation of section 6068(a). *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[17]**

Prior to enactment of statute establishing attorney's duty to communicate with clients, Supreme Court had long held that failure to communicate was a proper ground for discipline. This common law duty to communicate falls within the parameters of an attorney's oath and duties, under attorney's general duty to uphold the law. Where attorney failed to inform client of attorney's decision not to pursue fruitless damages claim, finding of violation of duty to uphold the law by failing to communicate with client was appropriate basis for culpability. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[10]**

Where respondent was found culpable of violating statutory duty to uphold the law by failing to adhere to common law duty to communicate with client, additional charge that respondent violated attorney's "oath and duties" under separate statute was duplicative, and resolution of case would not be affected by finding such violation. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[11]**

Where respondent successfully performed services for which he was retained, and his sole culpability was for single act of failing to inform client of respondent's entirely proper exercise of judgment not to pursue damages, and both harm to client and extent of misconduct were minimal, appropriate discipline would have been private reproval. However, in light of attorney's many years of practice without prior disciplinary record, and other extenuating circumstances, discipline would be punitive and would not further purposes of attorney discipline. Since finding of culpability precluded dismissal, admonition was an appropriate disposition. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[20]**

It would not have been proper to find an attorney culpable of violating his duty to uphold the law, where there was no such violation separate and distinct from other charged statutory violations or violations of the Rules of Professional Conduct. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[4]**

Where respondent's failure to respond to letters sent by another attorney whom clients had contacted occurred before enactment of specific statute requiring response to clients' reasonable status inquires, respondent could not be found culpable of violating that statute. Nevertheless, a longstanding common-law duty to communicate with clients was recognized by the Supreme Court prior to the adoption of the specific statute. Thus, for failures to communicate with clients occurring prior to the addition of the new statute, it is not duplicative nor otherwise inappropriate to charge an attorney with violating his general duties as an attorney. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[14]**

Little, if any, purpose is served by duplicative allegations of misconduct; if misconduct violates a specific Rule of Professional Conduct or statute, there is no need for the State Bar to allege the same misconduct as a violation of an attorney's duty to obey the law. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[15]**

If violations of the Rules of Professional Conduct were automatically also violations of the statute governing an attorney's duty to obey the law, the statute limiting the discipline for rule violations to a maximum of three years' suspension would be rendered meaningless; such a construction of the statutory scheme would be illogical. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[16]**

In matter charging attorney with filing false declaration and assisting in preparation of fraudulent documents, hearing referee's conclusions that respondent violated statutory duty to uphold the law (Bus. & Prof. Code, § 6068(a)) and statute regarding attorneys' violations of their oath and duties (*id.*, § 6103) were inappropriate. Section 6068(a) charge was duplicative since same misconduct was charged as violation of specific Rule of Professional Conduct. Section 6103 does not define a duty or obligation, but rather provides grounds for discipline for violation of an oath or duty defined elsewhere. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[3]**

Respondent's violation of statutes prohibiting unauthorized practice of law was established by unanswered charges and uncontroverted evidence showing that respondent appeared in court after the effective date of his involuntary inactive enrollment. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[20]**

When misconduct violates a specific Rule of Professional Conduct, it is unnecessary to allege the same misconduct as a violation of the attorney's statutory duty to uphold the law. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[4]**

Sections 6125 and 6126 together, when coupled with a section 6068(a) charge, create a basis for discipline for unlawful practice of law by a member of the State Bar. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[4]**

Accepting fees for services rendered while suspended from practice does not violate sections 6068(a) or 6103. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[7]**

Finding of culpability of violating attorney's duty to uphold the law was proper, where attorney was found to have violated criminal provision of Business and Professions Code as charged in notice to show cause. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[8]**

Contention by State Bar that respondent violated attorney's duty to obey state and federal laws by failing to pay payroll taxes as required by penal and civil statutes was rejected by review department, despite respondent's admission that taxes were not paid, because notice to show cause did not charge violation of employer withholding statutes, and no evidence was introduced to prove they were violated, thus depriving respondent of opportunity to defend. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[10]**

Where the notice to show cause did not allege a violation of the Penal Code, the alleged violations of sections 6068(a) and 6103 could not be construed as putting the attorney on notice of a possible Penal Code violation. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[2]**

The Supreme Court has held that section 6068(a) is inapplicable to alleged violations of the State Bar Act or the Rules of Professional Conduct. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[5]**

The duty to support the Constitution and laws of the United States and of this state is not violated in every case in which a violation of any provision of the Business and Professions Code has occurred. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[4]**

213.11 Found

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

Where the record contains clear and convincing evidence that respondent led a witness to believe they had a special relationship of trust and confidence and that his interests would be protected by respondent, respondent assumed a fiduciary duty towards the witness, who was a vulnerable criminal defendant, when he used his superior knowledge and position as an attorney to create a confidential relationship of trust and dependency. In so doing, respondent caused the witness to reject his attorney's advice and accede to respondent's wishes thereby breaching his common law fiduciary duty to the witness in wilful violation of section 6068, subdivision (a). *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[7 a–c]**

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

213.15 Not Found

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Respondent V (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Respondent P (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

In the Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Respondent D (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

In the Matter of Temkin (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Glasser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

213.20 Section 6068(b) (respect for courts and judges)

Attorney's violation of a judge's explicit instruction is an act of disrespect to the court. Further, where an attorney intentionally does not keep his promise to a judge, he is culpable of an act of moral turpitude and dishonesty. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[5]**

Respondent violated section 6068(b) when he repeatedly made false charges of bribery against an ex officio judge in probate matters. *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 **[4]**

An attorney may be disciplined for making a false statement that attacks the honesty, motivation, integrity, or competence of a judicial officer without violating the attorney's First Amendment guarantee of free speech so long as the attorney knew the statement was false when he made it or made it with a reckless disregard for its truth or falsity. Truth is an absolute defense. The State Bar has the burden of proving the falsity of the statement. The issue of whether a false statement was made with reckless disregard for its truth or falsity is governed by an objective standard under which the court must determine what a reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[2]**

An essential element to establishing an attorney's violation of his statutory duty to maintain the respect due the courts and judicial officers by making a statement that impugns the honesty or integrity of a court or judicial officer is the falsity of the disparaging statement. Even though the State Bar has the burden of proving the essential element of falsity, it did not proffer any evidence to establish the falsity of the respondent's disparaging statements regarding various judicial officers because the hearing judge made a erroneous pre-trial ruling relieving the State Bar of its burden to prove falsity. Therefore, the review department remanded the matter to the hearing department to allow the State Bar an opportunity to prove that respondent's statements were false. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[3]**

An attorney's statement impugning the honesty or integrity of a court or judicial officer is not disciplinable if it constitutes rhetorical hyperbole, or uses language only in a loose, figurative sense, or if it is not capable of being proved true or false. The statement is not disciplinable unless it implies or is based upon a false assertion of fact. In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[4]**

Respondent violated his duty to maintain respect for courts by failing to appear as counsel of record at hearings and court-ordered meetings in his client's bankruptcy proceeding. Respondent's repeated failures to appear were not tantamount to a voluntarily dismissal of his client's bankruptcy petition. Once respondent signed and filed his client's Chapter 11 petition, he submitted to the bankruptcy court's jurisdiction and had a duty to appear and participate at hearings and court-ordered meetings in good faith, withdraw as counsel of record, or have the bankruptcy court dismiss the petition. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[4]**

Hearing judge's credibility findings based on respondent's demeanor while testifying are entitled to great weight. Where hearing judge found that respondent did not mislead court about applicability of statutory fee limitation because respondent had honest but unreasonable belief that statute did not apply, but review department concluded that respondent's failure to disclose fee limitation was unreasonable under circumstances, review department found that respondent violated duty not to mislead courts and committed act of dishonesty, but that such misconduct occurred through gross negligence rather than intentional dishonesty. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[14]**

An attorney's concealment of material facts is just as misleading as explicit false statements and constitutes misconduct warranting discipline. Where respondent had superior expertise regarding statutory fee limits in medical negligence cases, respondent had duty both to court and client to disclose material fact that such statutory limit might apply in particular case, even if respondent thought he had reasonable grounds to distinguish case from ambit of statute. Respondent's grossly negligent failure to disclose such material fact violated his duties to respect courts, not to commit acts of dishonesty or moral turpitude, and not to mislead judges by artifice or false statements. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[15]**

Respondent had duty of candor to superior court approving his fee. Respondent was entitled to urge any creative theory in good faith that statutory fee limitation might not apply to his case, but he could not simply conceal material fact that fee limitation statute might apply and profit sizably thereby at expense of his client. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[22]**

Respect due courts as required of attorneys by statute includes compliance with court orders absent good faith belief in legal right not to comply. Respondent violated statute where respondent did not attend settlement conference, as previously ordered by settlement judge, because he had other work to do and did not believe he was required to attend as he was not an attorney of record. Such facts did not establish good faith belief in legal right not to comply with order to appear. Respondent could not simply ignore order to appear before court because he believed his presence was unnecessary. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[7]**

Respondent did not demonstrate disrespect for court by failing to fully disclose information about client's assets to opposing counsel in course of settlement negotiations, where obligation to disclose such information was based on a promise, not an order, to do so, and where even if failing to comply with a promise could amount to disrespect for court, record lacked clear and convincing evidence that respondent had failed to disclose known assets. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[8]**

Failing to appear as ordered at settlement conference, and intentionally misleading settlement judge regarding client's death, was serious misconduct which threatened public and undermined its confidence in legal profession. However, considering comparable case law, and in view of respondent's many years of practice prior to misconduct, and lack of proven aggravating factors, appropriate discipline was one-year stayed suspension and two years probation with no actual suspension, rather than two-year stayed suspension with two years probation and thirty days actual suspension. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[15]**

By deliberately disobeying court orders, respondent violated an attorney's duty to maintain the respect due to courts of justice. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[6]**

Where, in representing four criminal clients, respondent violated six court orders, was held in contempt four times, failed to appear at scheduled court hearings nine times, and had warrants issued against him three times,

and where respondent had breached two separate disciplinary orders and defaulted in current disciplinary proceeding, respondent's misconduct reflected disdain and contempt for the orderly process and rule of law and inability to conform to the most basic duties of an attorney. These facts, coupled with lack of mitigation, demonstrated that risk of future misconduct was great and indicated that respondent was not a good candidate for probation and/or suspension. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[14]**

Where respondent did not display disrespect for any court except insofar as he violated a court order, charge of violating statute requiring respect for courts was properly disregarded as duplicative of charge of violating statute requiring obedience to court orders, which more directly addressed respondent's specific misconduct. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[4]**

Where an attorney failed to advise a client, the insurer-defendant or the superior court in which the client's lawsuit was filed of his disciplinary suspension, but filed an affidavit with the Supreme Court declaring under penalty of perjury that he had complied with the rule requiring him to notify all clients, courts, and opposing parties of his suspension, his false affidavit constituted an act of moral turpitude and dishonesty, and his failure to comply with the rule violated the statute requiring respect for courts and judges. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[2]**

Where a settlement judge's order following a settlement conference indicated that a final compromise had been reached, the order was binding and an attorney's failure to abide by it, without moving for relief therefrom, constituted a violation of the statutes requiring obedience to court orders and respect for courts and judicial officers. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[5]**

Where an attorney failed to pay court-ordered sanctions, and was charged with violating both the statute requiring respect for courts and the statute requiring obedience to court orders, the misconduct was more specifically addressed under the statute requiring obedience to court orders and that charge was therefore to be preferred. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[7]**

Where respondent had been ordered to give notice of prior disciplinary suspension and to file affidavit of compliance with such order, and respondent failed to give timely notice and failed to notify opposing counsel in three matters, and respondent's affidavit of compliance was filed late and incorrectly stated that all courts and opposing counsel had been notified of his suspension, respondent's gross neglect and lack of diligence in complying with the order to give notice violated the statute requiring respect for courts, but did not constitute an intentional misrepresentation of facts to the Supreme Court in violation of statute prohibiting acts of moral turpitude and dishonesty. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[9]**

In determining appropriate discipline to recommend for respondent found culpable of violating statute requiring respect for courts based on respondent's violation of Supreme Court order requiring him to give notice of his prior disciplinary suspension under rule 955, review department noted that respondent's failure to give timely and complete notice of suspension, and his filing of an affidavit which was untimely and inaccurate, would have warranted a recommendation of disbarment, absent strong mitigating circumstances, in a referral proceeding for violation of rule 955. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[15]**

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

When payment of sanctions is ordered by a court, an attorney is expected to follow the order or proffer a formal explanation by motion or appeal as to why the order cannot be obeyed; the attorney cannot sit back and await contempt proceedings before either complying or explaining his or her noncompliance. Where respondent had personal knowledge of the entry of two orders awarding sanctions against him, but ignored opposing counsel's efforts to secure compliance and failed to take any action to seek relief from the orders, respondent's failure to

comply was not excused by his impecunious status, and constituted a violation of the statutes requiring attorneys to maintain respect for the courts and to obey court orders. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[12]**

Because respondent made a good faith effort to pay court-awarded sanctions so that his client would not be adversely affected by his neglect of the case, and respondent did ultimately pay the sanctions, albeit after a complaint to the State Bar, respondent's initial attempt to pay the sanctions with a trust account check which was valid when written, but which failed to clear due to subsequent closure of the trust account by the bank, did not constitute a violation of statutes requiring attorneys to maintain respect for the courts and to obey court orders. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[14]**

Depending upon the circumstances, a finding of contempt against an attorney may result in no discipline at all or substantial discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[18]**

An attorney's filing a lawsuit in the wrong court, and not paying sanctions awarded against the attorney in the change of venue order, did not support the contention that the attorney failed to maintain the respect due to the courts, when the attorney had no personal knowledge of the sanctions or the failure to pay them. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[10]**

Where notice to show cause did not charge violation of statute requiring attorneys to maintain respect for courts and their officers, and no motion to amend was made at hearing, referee's conclusion that respondent violated the statute was inappropriate. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[2]**

213.21 Found

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

213.25 Not Found

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788.

In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775.

In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Temkin (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321.

213.30 Section 6068(c) (counsel only legal actions/defenses)

Respondent was culpable of maintaining unjust actions where he unreasonably persisted in pursuing numerous lawsuits after unqualified losses at trial and on appeal, repeatedly filed unmeritorious motions, pleadings, and other papers, engaged in tactics that were frivolous or intended to cause unnecessary delay, and acted with disregard for two vexatious litigant rulings. However, charges of violations of rule 3-200(A) based on same facts were properly dismissed as duplicative. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360 **[1 a-d]**

State Bar Court gives strong presumption of validity to superior court's findings if supported by substantial evidence, and may rely on court of appeal opinion in case where attorney was party as conclusive determination of civil matters strongly similar or identical to charged disciplinary conduct. Where respondent had been ruled a vexatious litigant by both trial and appellate courts, and rulings were supported by clear and convincing evidence, respondent was culpable of maintaining unjust actions in violation of section 6068(c). *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[2]**

Respondent was culpable of maintaining an unjust action by filing frivolous appeals, recycling previously rejected arguments, and resubmitting essentially the same complaint as "amended," resulting in wasteful, expensive relitigation of resolved matters. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[4]**

Even though attorneys have duty to zealously represent their clients and assert unpopular position in advancing clients' legitimate objectives, attorneys, as officers of the court, have duty to judicial system to assert only legal claims or defenses warranted by law or supported by good faith belief in correctness. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[5]**

A cause of action in a civil proceeding based on factual allegations that respondent knew he could not prove was patently frivolous and unjust, and respondent's continued pursuit of the meritless factual allegations was strong circumstantial evidence that he was motivated by vindictiveness. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. **[4]**

Respondent's failure to have gained insight into his misconduct was troubling. The discipline imposed for his misconduct of filing and pursuing frivolous actions in bad faith and for a corrupt motive must reflect this lack of insight as well as the harm to the victims and assurance to the public and bar that such conduct will not be tolerated. The discipline recommended, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years on conditions, including 60 days' actual suspension, appropriately balances these values and the record as a whole. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. **[6]**

Respondent's frivolous appeal was a violation of section 6068 subdivision (c) of the Business and Professions Code and rule 3-200(A) of the Rules of Professional Conduct. However, since the rule 3-200(A) violation is essentially redundant, for purposes of assessing degree of discipline, the review department found respondent culpable of only the section 6068 subdivision (c) violation. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[3]**

Respondent violated his duty to maintain only just causes and abused the bankruptcy process by filing and maintaining a Chapter 11 bankruptcy proceeding for an insolvent client when he knew that the client's only assets were nine residential lots in which there was no equity and that the client had neither the ability nor the intention of making adequate protection payments to the lienholders on the nine lots in accordance with the law. Even if respondent was unaware of these facts, he would still be culpable. Under applicable federal rules of procedure, respondent's signature on the Chapter 11 petition as attorney of record for debtor was a certification that to the best of his knowledge and belief, formed after a reasonable inquiry, the petition was well founded in fact and

warranted by either existing law or a good faith argument for the modification of existing law. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[3]**

By repeatedly filing baseless and vexatious litigation, respondent violated an attorney's duty to counsel or maintain only such actions as appear legal or just. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[7]**

Where respondent did not simply advise client of consequences of not paying child support order, but actively counseled client on ways to accomplish goal of violating order, respondent was culpable of violating statute requiring attorneys only to counsel actions that appear legal or just, and rule prohibiting attorneys from advising the violation of any law or court order. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[5]**

In light of all relevant evidence and comparable case law, as well as heightened concern regarding enforcement of child support orders, respondent's very serious misconduct of advising and aiding a client in avoiding a child support order, which misconduct was substantially aggravated by respondent's overreaching in arranging real property transactions between the client and respondent's father, warranted increasing recommended discipline to one-year actual suspension coupled with three years of probation, even though review department found respondent culpable of less misconduct than did hearing judge. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[12]**

Due to difference in applicable standards of proof, a civil court finding is not binding on the State Bar Court for purposes of discipline. Where, upon evidence presented to civil court plus additional testimony, hearing judge concluded, contrary to civil court's decision, that respondent's loan to a client was not a sham transaction, then, resolving all reasonable doubts in respondent's favor, it was appropriate to dismiss charges that the loan transaction violated statutory duties to counsel only legal or just actions and to employ only truthful means of maintaining clients' causes; constituted act of moral turpitude; and violated rule against advising violations of law. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[1]**

213.31 Found

In the Matter of Kinney (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

213.35 Not Found

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

213.40 Section 6068(d) (do not mislead courts and judges)

Where respondent was found culpable of moral turpitude for filing bankruptcy petitions containing misrepresentations and material omissions, charge that respondent violated section 6068(d) based on same misconduct was duplicative, and was therefore dismissed. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[4]**

Where respondent filed a motion with the Court of Appeal misrepresenting that his clients wanted to pursue an appeal and where respondent failed to disclose to the Court of Appeal that he had been fired, respondent's actions violated Business and Professions Code section 6068, subdivision (d) as well as section 6106. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[6 a–c]**

Dismissal of duplicative violations is appropriate where misconduct establishing respondents' culpability for violating their duty never to seek to mislead a judge or other judicial offer by an artifice or false statement of law or fact is covered by the misconduct establishing culpability for committing acts of moral turpitude which supports identical or greater discipline. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[2]**

The good faith of an attorney in making a false statement is a defense to the charge of violating Business and Professions Code section 6068, subdivision (d). As a defense, respondent had the burden of proving that he acted in good faith and he failed to meet that burden. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.**[2]**

Business and Professions Code section 6068, subdivision (d) requires attorneys to refrain from misleading and deceptive acts without qualification. An attorney need not utter an affirmative falsehood in order to violate section 6068, subdivision (d). Concealment of a material fact misleads a judge just as effectively as a false statement. No distinction can therefore be drawn among concealment, half-truth, and false statement of fact. Respondent's unqualified and unequivocal statements to the judges that he served John under circumstances that should have caused him at least some uncertainty were, at a minimum, deceptive, in violation of Business and Professions Code sections 6068, subdivision (d) and 6106.*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.**[3]**

Respondent's argument is that a misrepresentation to a court is not material unless it successfully misleads the court is contrary to the express wording of Business and Professions Code section 6068 subdivision (d), which provides that it is the duty of an attorney to never seek to mislead a judge by a false statement of fact or law. The conduct denounced by this statute is not the act of an attorney by which he successfully misleads the court, but the presentation of a statement of fact, known by him to be false, which tends to do so. It is the endeavor to secure an advantage by means of falsity which is denounced. Whether respondent violated section 6068, subdivision (d) depends first upon whether his representation to the court was in fact untrue, and second, whether he knew that his statement was false and he intended thereby to deceive the court. With regard to whether respondent intended to deceive the court, the presentation to a court of a statement of fact known to be false presumes an intent to secure a determination based upon it and is a clear violation of section 6068, subdivision (d). Respondent's statements to the two courts were in fact untrue and he knew they were untrue. Thus, it is presumed that the statements were made with an intent to secure an advantage. No credible evidence rebutted this presumption. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.**[4 a-d]**

The review department's duty to independently review the record is settled. At the same time, the review department must give great weight to the hearing judge's determination that turns on credibility to be assigned to witness testimony. The department was reluctant, therefore, to ascribe to respondent a specific intent to deceive when the hearing judge who considered respondent's testimony and that of other witnesses found none. This does not exonerate respondent from moral turpitude charges as to his false statement in his motion to disqualify a superior court judge. The hearing judge's conclusion that respondent violated statute and rule of professional conduct requiring attorneys to use only means consistent with truth must be read to find culpability by respondent's gross negligence, as simple neglect would not be sufficient for a statutory violation. Gross negligence is a well-established basis for finding an act of moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.**[1]**

Even though hearing judge expressly found that respondent's violation of statute and rule of professional conduct was based on respondent's gross negligence, she inexplicably declined to apply that gross negligence to find that respondent's conduct involved moral turpitude in violation of statute prescribing attorneys from engaging in acts of moral turpitude. Gross negligence is a well-established basis for finding moral turpitude. Accordingly, review department independently found respondent culpable of act involving moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.**[2]**

Review department is very reluctant to consider State Bar's request for a holding that respondent's failure to comply with the terms of a civil settlement agreement was an aggravating circumstance because the State Bar did not request such a holding from the hearing judge, but requested it for the first time on review. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[3]**

Respondent's endorsement of a client's false financial statement and misrepresentation that one of a client's companies was a successful business were willful violations of his duty to employ only such means as are consistent with the truth when representing clients, and were dishonest acts involving moral turpitude. However, to the extent that the facts underlying both violations were the same, the review department gave no additional weight to the duplication in determining discipline. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[1]**

Hearing judge's credibility findings based on respondent's demeanor while testifying are entitled to great weight. Where hearing judge found that respondent did not mislead court about applicability of statutory fee limitation because respondent had honest but unreasonable belief that statute did not apply, but review department concluded that respondent's failure to disclose fee limitation was unreasonable under circumstances, review department found that respondent violated duty not to mislead courts and committed act of dishonesty, but that such misconduct occurred through gross negligence rather than intentional dishonesty. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[14]**

An attorney's concealment of material facts is just as misleading as explicit false statements and constitutes misconduct warranting discipline. Where respondent had superior expertise regarding statutory fee limits in medical negligence cases, respondent had duty both to court and client to disclose material fact that such statutory limit might apply in particular case, even if respondent thought he had reasonable grounds to distinguish case from ambit of statute. Respondent's grossly negligent failure to disclose such material fact violated his duties to respect courts, not to commit acts of dishonesty or moral turpitude, and not to mislead judges by artifice or false statements. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[15]**

Respondent had duty of candor to superior court approving his fee. Respondent was entitled to urge any creative theory in good faith that statutory fee limitation might not apply to his case, but he could not simply conceal material fact that fee limitation statute might apply and profit sizably thereby at expense of his client. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[22]**

Statute and ethics rule prohibiting attorneys from misleading judges do not provide that only attorneys of record are subject to their requirements. Attorneys are required to refrain from deceptive acts without qualification. Thus, fact that respondent was not attorney of record and appeared voluntarily at mandatory settlement conference was not relevant to whether respondent was culpable of violating such statute and rule by intentionally misleading settlement conference judge. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[1]**

Attorneys can be disciplined for making material misrepresentations to a court even when the facts are a matter of public record. Accordingly, where respondent's client's death was a matter of public record, but settlement judge in client's pending case was not aware of death, and death was material fact in settlement negotiations, respondent was culpable of misconduct for misleading settlement judge about client's death. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[2]**

Concealment of material facts is just as misleading as explicit false statements, and accordingly, is misconduct calling for discipline. Thus, respondent could be found culpable of intentionally misleading judge where he failed to reveal that his client had died, even though respondent was not directly asked if client was dead and even though respondent's answers to judge's questions may have been facially truthful, where respondent's statements to court and parties and his answers to judge's questions conveyed impression that client was alive and was exerting influence on respondent's ability to settle case. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[3]**

Dishonest acts by an attorney are grounds for suspension or disbarment even if no harm results. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[4]**

Statute prohibiting attorneys from engaging in acts of moral turpitude applies to misrepresentation and concealment of material facts. An attorney has a duty under statute and ethics rule never to seek to mislead a judge and acting otherwise constitutes moral turpitude and warrants discipline. Thus, respondent's intentional, material misrepresentation to a settlement conference judge was an act of moral turpitude. Nevertheless, where same misconduct underlay both finding of moral turpitude and findings of violation of statute and rule prohibiting misleading courts, misconduct was treated as single violation. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[5]**

Failing to appear as ordered at settlement conference, and intentionally misleading settlement judge regarding client's death, was serious misconduct which threatened public and undermined its confidence in legal profession. However, considering comparable case law, and in view of respondent's many years of practice prior to misconduct, and lack of proven aggravating factors, appropriate discipline was one-year stayed suspension and two years probation with no actual suspension, rather than two-year stayed suspension with two years probation and thirty days actual suspension. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[15]**

Even if State Bar prosecutor had duty to disclose exculpatory evidence, unpublished, non-precedential trial court decision did not constitute such evidence, nor was it controlling precedent which prosecutor had duty to disclose to court. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[14]**

An attorney's wilful failure to cite controlling authority squarely contradicting the attorney's position could be held to violate statute and rule prohibiting attorneys from misleading judges. However, attorneys as advocates are under no duty to reveal decisions which do not constitute controlling precedent. In State Bar Court, only decisions of review department, subject to relevant Supreme Court case law, are considered controlling precedent. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[15]**

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

Due to difference in applicable standards of proof, a civil court finding is not binding on the State Bar Court for purposes of discipline. Where, upon evidence presented to civil court plus additional testimony, hearing judge concluded, contrary to civil court's decision, that respondent's loan to a client was not a sham transaction, then, resolving all reasonable doubts in respondent's favor, it was appropriate to dismiss charges that the loan transaction violated statutory duties to counsel only legal or just actions and to employ only truthful means of maintaining clients' causes; constituted act of moral turpitude; and violated rule against advising violations of law. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[1]**

Where respondent's description of his car problems in explaining his failure to appear for a court hearing differed only in degree from the actual events, the difference did not constitute deception or an attempt to mislead the court. The steps respondent took once he experienced the car problems might not have been adequate to excuse his failure to appear, but this aspect of his conduct was not charged as a disciplinary violation and thus could not form the basis of a culpability finding. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[1]**

Where respondent represented to a judge that he had failed to attend an earlier hearing because he had been in another city appearing before another judge in a family law matter, when in fact he had had no court appearance but had been in the other courthouse on other errands, his statement was materially dishonest, because the proffered excuse was intended to carry more weight than the truth would have. Respondent's deception therefore constituted an act of dishonesty in violation of the moral turpitude statute, as well as a violation of the statute and rule of professional conduct prohibiting attorneys from misleading judicial officers. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[2]**

In order for an attorney's misrepresentation to be a violation of the statute prohibiting the commission of any act involving moral turpitude, dishonesty or corruption, the misrepresentation must be made with an intent to mislead. Negligence in making a representation does not constitute a violation of the statute. Where no clear and convincing evidence established any misrepresentation or deception, attorney's statements did not involve moral turpitude and also did not violate statute requiring attorneys only to use means consistent with truth and not to deceive judicial officers. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[13]**

The mere fact that an attorney has been held in contempt of court is not grounds for discipline. The State Bar must establish that the contempt resulted from bad faith noncompliance with a court order, or that the underlying facts present other independent grounds for discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[4]**

In order to violate the statute prohibiting seeking to mislead a judge, or its parallel Rule of Professional Conduct, an attorney must knowingly make a false, material statement of fact or law to a court, with the intent to mislead. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[5]**

Where respondent falsely stated to the judge, during a trial, that one of his witnesses who had not yet arrived at court was under subpoena, such false statement was material, because it affected the court's scheduling of its daily calendar to accommodate the late witness and because it wrongfully caused the court to treat the witness initially as being in disobedience of a subpoena when he did arrive. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[6]**

Depending upon the circumstances, a finding of contempt against an attorney may result in no discipline at all or substantial discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[18]**

Where respondent had asked a witness a question, knowing that the witness would testify falsely, in order to mislead the court, respondent was culpable of deceiving the court and of moral turpitude, but in the absence of evidence of an agreement between respondent and the witness, there was no proof that respondent suborned perjury. A determination of subornation of perjury requires clear and convincing proof of a corrupt agreement between the witness and the respondent for the witness to testify falsely. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[7]**

Attorneys are expected to be forceful advocates for clients' legitimate causes, but role played by attorneys in honest administration of justice is critical. Attorneys, by adherence to their high fiduciary duties and the truth, can sharply reduce or eliminate clashes and ease the way to dispute settlement. Where parties to marital dissolution matter agreed to allow husband's counsel to hold community funds in trust pending resolution of dispute regarding property settlement, relying on counsel's duty as an attorney to honor the trust nature of the money, attorney's misconduct in improperly disbursing funds and then misrepresenting to wife's counsel and courts that funds were still held in trust account was especially regrettable. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[19]**

First offense deceit has not resulted in disbarment in Supreme Court cases. No act of concealment or dishonesty is more reprehensible than attempts to mislead a court; nonetheless, disbarment for such misconduct may be too drastic and unnecessary to achieve the goals of attorney discipline. Where respondent presented evidence of general good character, discipline of five years stayed suspension, five years probation, and two years actual suspension, with standard 1.4(c)(ii) requirement, was adequate. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[20]**

By acts of dishonesty in deceiving a corporation in a business transaction, attorneys violated the statute which prohibits attorneys from committing acts of moral turpitude whether committed in the capacity of an attorney or not, but did not violate the statute prohibiting attorneys from making misrepresentations to a tribunal in seeking to further a client's interests. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[4]**

Where all of attorneys' acts of dishonesty were encompassed in charge of committing acts of moral turpitude, there would be no added value in straining to find in the same conduct a violation of another statute prohibiting misrepresentations to tribunals. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[5]**

213.41 Found

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

213.45 Not Found

In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391.

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

213.50 Section 6068(e) (preserve client confidences)

Attorney's fiduciary duty to develop and maintain adequate management and accounting procedures for proper operation of his law office is fundamental to fulfillment of multiple duties, including duties to competently perform legal services, adequately communicate with clients, protect client confidential information, and properly handle and account for client funds and other property.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[15]**

Where respondent knew, at a minimum, that a letter was being sent to a third party from his office on his letterhead and that it contained a copy of, at least, the greater portion of a client's confidential settlement agreement, respondent was culpable of failing to maintain inviolate his client's confidence in violation of Business and Professions Code section 6068, subdivision (e).*In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[3]**

Business and Professions Code section 6068 subdivision (e) is the most strongly worded duty binding on a California attorney. It requires the attorney to maintain inviolate the confidence and at every peril to himself or herself to preserve his client's secrets. The ethical duty of confidentiality is much broader in scope and covers communications that would not be privileged under the evidentiary attorney-client privilege. It prohibits an attorney from disclosing facts and even allegations that might cause a client or former client public embarrassment. The duty of confidentiality complements the evidentiary presumption that communications from client to attorney during their professional relationship are confidential. Respondent breached his client's confidence in violation of section 6068 subdivision (e) by disclosing to another, without good cause, that the client was a convicted felon, although the conviction was a public record, but not easily discovered. The client had communicated his status to respondent to aid respondent in effectively representing him. Even if respondent had not been charged with such a violation, the hearing judge could have concluded in aggravation of discipline that respondent's divulgence

was of a fact prejudicial to his client in violation of Business and Professions Code section 6068, subdivision (f). *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. **[3 a-c]**

The whereabouts of a fugitive client known to an attorney constituted privileged communications which the attorney cannot disclose. (Bus. & Prof. Code, § 6068 (e); ABA Model Rules, rule 1.6.) The attorney must advise the client to surrender and must not assist or facilitate the fugitive in avoiding capture or committing a crime. Thus, respondent's knowledge that his fugitive client was in California and his meetings with the client to discuss the progress of negotiations with the authorities regarding the outstanding criminal charges were client confidences which respondent was obligated to preserve. However, an attorney's ethical duty not to disclose client confidences does not extend to affirmative acts which further a client's unlawful conduct, and respondent's guilty plea constituted conclusive proof that he committed all the acts necessary to commit the charged offense of harboring his fugitive client with the intent of preventing the client's discovery and arrest by federal authorities. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[11]**

213.51 Found

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387.

213.55 Not Found

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

213.60 Section 6068(f) (abstain from offensive personality)

Business and Professions Code section 6068 subdivision (e) is the most strongly worded duty binding on a California attorney. It requires the attorney to maintain inviolate the confidence and at every peril to himself or herself to preserve his client's secrets. The ethical duty of confidentiality is much broader in scope and covers communications that would not be privileged under the evidentiary attorney-client privilege. It prohibits an attorney from disclosing facts and even allegations that might cause a client or former client public embarrassment. The duty of confidentiality complements the evidentiary presumption that communications from client to attorney during their professional relationship are confidential. Respondent breached his client's confidence in violation of section 6068 subdivision (e) by disclosing to another, without good cause, that the client was a convicted felon, although the conviction was a public record, but not easily discovered. The client had communicated his status to respondent to aid respondent in effectively representing him. Even if respondent had not been charged with such a violation, the hearing judge could have concluded in aggravation of discipline that respondent's divulgence was of a fact prejudicial to his client in violation of Business and Professions Code section 6068, subdivision (f). *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. **[3 a-c]**

Charge for violating statute proscribing offensive personality was dismissed because statute was previously declared unconstitutionally vague by federal appeals court. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[3]**

By repeatedly requesting courts to hold all opponents in contempt or subject to sanctions with no legitimate grounds for such requests, which were gratuitously insulting and offensive, respondent violated an attorney's duty to abstain from offensive personality. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[8]**

213.61 Found

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

213.65 Not Found

In the context of an emotional and adversarial lawsuit, propounding discovery that falsely intimated that respondent and the plaintiff, respondent's former client, had a sexual relationship and that the plaintiff was sexually promiscuous is not clear and convincing evidence of acts of moral turpitude in violation of Business and Professions Code section 6106. Further, it is unclear that Business and Professions Code section 6068, subdivision

(f), which prohibits the advancing of prejudicial facts to the honor or reputation of a party or witness, proscribes the use of such intimations.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[4 a - b]**

Because the plaintiff in a civil lawsuit, who was respondent's former client, introduced into evidence respondent's offensive discovery requests, it is presumed, in the absence of any jury instruction to the contrary, that the jury relied on them in finding by clear and convincing evidence that respondent acted with oppression or malice when he harassed or intentionally inflicted emotional harm on the plaintiff. Therefore, to find a Business and Professions Code section 6106 moral turpitude violation on this basis would be duplicative of the moral turpitude violations already found based on respondent's harassment and intentional infliction of emotional distress on the plaintiff. For the same reasons, it would also be duplicative to use the offensive discovery to find culpability of Business and Professions Code section 6068, subdivision (f). It is generally inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[5 a - b]**

The Business and Professions Code section 6068, subdivision (f) charge based on respondent's offensive discovery requests is duplicative of the Business and Professions Code section 6106 charge based on the same conduct. It is insufficient for culpability that the section 6068, subdivision (f) charge reflects the additional harm that respondent has caused to the administration of justice and to the right of the plaintiff, respondent's former client, to seek redress in the courts. Culpability of misconduct is determined by whether an attorney has violated the Rules of Professional Conduct, a disciplinable provision of the State Bar Act or other disciplinable provision of law. Harm or lack thereof is an aggravating circumstance.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[6]**

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788.

In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775.

213.70 Section 6068(g) (corrupt motive for action)

A cause of action in a civil proceeding based on factual allegations that respondent knew he could not prove was patently frivolous and unjust, and respondent's continued pursuit of the meritless factual allegations was strong circumstantial evidence that he was motivated by vindictiveness. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. **[4]**

Respondent's failure to have gained insight into his misconduct was troubling. The discipline imposed for his misconduct of filing and pursuing frivolous actions in bad faith and for a corrupt motive must reflect this lack of insight as well as the harm to the victims and assurance to the public and bar that such conduct will not be tolerated. The discipline recommended, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years on conditions, including 60 days' actual suspension, appropriately balances these values and the record as a whole.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. **[6]**

By acting in bad faith, out of spite, and with the purpose to harm others and cause delay, respondent violated an attorney's duty to refrain from encouraging the commencement or continuance of an action from a corrupt motive. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[9]**

213.71 Found

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

213.75 Not Found

213.80 Section 6068(h) (reject cause of defenseless or oppressed)

213.81 Found

213.85 Not Found

213.90 Section 6068(i) (cooperate in disciplinary proceedings)

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

Where attorney did not provide written response to State Bar investigative inquiry but allegedly met with State Bar two months after receiving inquiry, this is not timely cooperation. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[4]**

Misrepresentations in an attorney's verified answers to interrogatories propounded to him by the State Bar, is a serious aggravation warranting increased discipline and might well constitute a greater offense than underlying misconduct. It is no defense that attorney's answers were prepared for him by his counsel. While it might be improper to penalize a lay client for not correcting mistakes that his counsel made in a pleading that the client verified, such reasoning carries little weight when the client is an attorney.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[26 a-c]**

Under State Bar Act and disciplinary case law, respondent had affirmative duty to insure that his answers to interrogatories propounded to him by the State Bar were true and correct even if he had to refresh his recollection of the facts by going to the immigration court and reviewing the court file and listening to the tapes of all relevant court hearings in each client matter that was a subject of the interrogatories.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[27]**

Attorney's failure to respond to State Bar investigator's letter did not establish attorney's violation of statutory duty to cooperate with disciplinary investigations because State Bar did not mail letter to address that attorney maintained on State Bar's official membership records, but instead mailed letter to address it believed, but did not establish, to be attorney's home address. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[2]**

Section 6068, subdivision(i), of the Business and Professions Code requires an attorney to cooperate in any disciplinary investigation or proceeding. By offering to pay a client for the withdrawal of the client's State Bar complaint against respondent, respondent was attempting to interfere with the State Bar's investigation and thus committed an uncharged violation of section 6068, subdivision (i). *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.**[3]**

Respondent's two serious instances of reckless failure to perform legal services which resulted in the dismissal of his clients' civil lawsuits, and respondent's failure to cooperate with the State Bar investigations warrants a discipline recommendation of 18-months stayed suspension, two years of probation, and a 90-day actual suspension. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.**[4]**

Once respondent met with State Bar deputy trial counsel in response to initial State Bar investigative letters and indicated a willingness to cooperate through his counsel in any matter raised by the State Bar, respondent should be accorded the benefit of the doubt in assuming that continued cooperation with deputy trial counsel constituted contemporaneous cooperation with State Bar regarding additional investigative letters subsequently sent to respondent. Thus, respondent was not culpable of failing to cooperate in the State Bar's investigation. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[9]**

Respondent's participation in probation revocation proceeding was not a mitigating circumstance because his participation was mandated by Business and Professions Code section 6068, subdivision (i). *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[2]**

By choosing not to reply in writing to an investigatory letter from the State Bar when he knew a written reply was necessary, respondent intentionally violated an attorney's duty to cooperate with any State Bar investigation. Neither leaving telephone messages nor meeting with a State Bar attorney two years later exonerated respondent of the violation. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[12]**

Where respondent did not answer letters from State Bar investigators, but testified that he had discussed matters under investigation with a State Bar attorney at generally the same or a somewhat later time, and State Bar did not call its attorney as witness and did not seek review, review department concluded that hearing judge did

not err in finding lack of clear and convincing proof of respondent's failure to cooperate in investigation. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[5]**

Where respondent misused client trust account as personal account, failed to respond to client's reasonable status inquiries, did not keep client's settlement check in safe place, and did not respond to State Bar investigation, and where at time of disciplinary hearing respondent still suffered from chronic depression which was major cause of misconduct, and had been ineligible to practice law for two years, appropriate discipline was three years stayed suspension, four years probation, and actual suspension for one year and until respondent proved rehabilitation, fitness to practice competently, including mental fitness, and present learning and ability in the law. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[24]**

Lack of candor toward the State Bar during disciplinary investigation or proceedings, including presenting intentionally misleading testimony, fabricating evidence, or attempting to mislead the court through material omissions, is an aggravating circumstance. However, a respondent's honest, if mistaken belief in his or her innocence, and resulting in failure to acquiesce in the State Bar Court's findings, is not in and of itself aggravating. Lack of candor cannot be found based merely on a respondent's different memory of events from that of complaining former clients. Where respondent's testimony concerning his former office manager's conduct in hiding or destroying letters and messages was uncontroverted and not implausible, and was corroborated by an eyewitness, hearing judge's finding that such testimony lacked candor was not adopted by review department. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[9]**

The statute requiring cooperation in State Bar disciplinary proceedings contemplates that attorneys may be found culpable of violating that duty if they fail to cooperate either in the investigation or in the formal proceedings. An attorney may be found culpable of violating the statute by failing to respond to a State Bar investigator's letter, even if the attorney subsequently appears and fully participates in the formal proceeding. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[12]**

If an attorney wishes to invoke statutory or constitutional privileges which the attorney contends make a substantive response to a State Bar investigator's letter unnecessary, the attorney must nevertheless respond to the investigator's letter, if only to state that the attorney is claiming a privilege; otherwise, the attorney not only violates the statutory duty to cooperate, but also risks waiving the claimed privilege. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[14]**

The State Bar failed to establish that an attorney violated his duty to cooperate with the State Bar in a disciplinary investigation, where the evidence showed that letters were purportedly sent to the attorney by State Bar investigators, but no evidence was submitted proving that the letters were properly addressed to, or received by, the attorney. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[23]**

Respondent's failure to cooperate with the State Bar's investigation of his misconduct was a substantive violation of the statute requiring such cooperation, not just an aggravating factor. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[9]**

Argument that accused attorney can wait and cooperate with attorney employed by State Bar rather than one of its investigators is not supported by authority and is contrary to express language of statute setting forth duty to cooperate with State Bar investigations. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[15]**

Attorney was properly found not to be culpable of violating statutory duty to cooperate with State Bar investigation where alleged violation predated effective date of statute. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[16]**

Respondent's claimed alcoholism did not excuse him from his statutory duties to notify the State Bar promptly of any change of his address of record, and to participate in State Bar disciplinary proceedings against him. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[4]**

Attorney's failure to participate in State Bar's investigation of misconduct was a clear breach of attorney's legal and ethical duties. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[5]**

213.91 Found

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

213.95 Not Found

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

214.00 Section 6068(j) (comply with section 6002.1 address)

By maintaining a post office box as his State Bar address of record, respondent violated statute requiring attorneys to maintain, on the State Bar's official membership records, their current office addresses and telephone numbers. It is only when an attorney does not have offices that he is permitted to maintain some other address and telephone number as his official State Bar address.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[19 a-b]**

In addition to multiple State Bar administrative and investigative purposes, purpose of statute and State Bar rules and regulations requiring attorneys to maintain their current office addresses and telephone numbers on State Bar's official membership records is to establish a bar-wide database of every attorney's office address and telephone number from which clients may locate their attorneys should they lose contact with them.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[20]**

Unless no office is maintained, every attorney has statutory duty to maintain his or her current office address on State Bar's official membership records (official address). Attorney violated this duty by maintaining his home address on State Bar's official membership records instead of maintaining his office address. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[10]**

Section 6068(a) is not a proper basis for charging a violation of 6002.1, because section 6068(j) specifically makes it a duty of each State Bar member to comply with section 6002.1, and makes such compliance the subject of discipline. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[12]**

The failure to charge a violation of section 6068(j) in the notice to show cause was harmless error, where the notice clearly charged an alleged violation of section 6002.1. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[13]**

Respondent's claimed alcoholism did not excuse him from his statutory duties to notify the State Bar promptly of any change of his address of record, and to participate in State Bar disciplinary proceedings against him. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 83. **[4]**

214.01 Found

In the Matter of Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160

In the Matter of Downey (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

214.05 Not Found

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

214.10 Section 6068(k) (comply with disciplinary probation)

The State Bar can prosecute a probation violation by way of a motion to revoke probation, or by way of an original disciplinary proceeding based on a violation of the Business and Professions Code section 6068, subdivision (k). It was not error to charge a violation of Business and Professions Code section 6103 in this original disciplinary proceeding. The gravamen of this case was respondent's failure to comply with the conditions of his probation. Regardless of the statute charged, the proceeding was based on a violation of section 6068, subdivision (k). *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[3]**

Statutes providing (1) that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline; (2) that attorneys have duty to comply with disciplinary probation conditions, and (3) that wilful disobedience of court orders constitutes cause for disbarment or suspension are all statutes that can be violated. The determination that an attorney violated the statute making probation violations cause for revocation of probation means that the attorney failed to comply with a probation condition. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[2]**

Where respondent on disciplinary probation made no required restitution payments to former clients, but made some payments to State Bar in belief that probation monitor or other authority had so instructed, and where respondent had insufficient reason for such belief, respondent was grossly negligent in failing to make such payments to clients, and thereby violated probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[4]**

Where respondent's failure to make restitution payments required by disciplinary probation was due to lack of income, but respondent did not attempt to have restitution requirement modified, and did not demonstrate that he made sufficient good faith efforts to acquire resources to pay restitution, respondent was culpable of gross negligence which violated conditions of probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[5]**

Where attorney violated statute providing that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline, and where misconduct underlying such charge was same as misconduct underlying charges of violating statutes providing that attorneys have duty to comply with disciplinary probation conditions and that wilful disobedience of court orders constitutes cause for disbarment or suspension, latter two charges were given no additional weight in determining appropriate discipline. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[6]**

Where respondent believed that after notice to show cause in disciplinary probation revocation proceeding had been filed, his probation was terminated and he no longer needed to comply with probation reporting requirement, but respondent took no steps to ascertain whether this belief was correct, respondent was grossly negligent in failing to file required probation report, and thereby violated probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[7]**

Where respondent was charged with violating disciplinary probation conditions by failing to submit evidence of having obtained assistance from a licensed psychologist or psychiatrist, respondent could be found culpable only of failing to comply with requirement that he submit such evidence, and not of failing to comply with requirement that he obtain such assistance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[8]**

Substantial compliance with a disciplinary probation requirement is not a defense to violation of the requirement. Where respondent's probation conditions required that he obtain therapy from licensed practitioner, and where respondent made efforts to obtain therapy but did not seek to have probation conditions modified to include therapy provided by unlicensed practitioner, respondent's uncharged probation violation of failing to comply with therapy requirement was aggravating circumstance in probation revocation proceeding. However, respondent's efforts to comply constituted significant mitigating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[9]**

Where hearing judge viewed proceeding as one to revoke probation, not to impose added culpability or discipline, and recommended actual suspension would not exceed imposition of previously stayed suspension if respondent made restitution within such time, applicable standard of proof was preponderance of evidence standard applicable to probation revocation proceedings, even though notice to show cause also alleged violations of respondent's statutory oath and duties and of a court order. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[5]**

In original disciplinary proceedings for violation of statute requiring adherence to conditions of disciplinary probation, standard of proof is clear and convincing evidence, and discipline may be disbarment. In proceedings on motion to revoke probation, standard of proof is preponderance of evidence and recommended actual suspension may not exceed entire period of stayed suspension. (Trans. Rules Proc. of State Bar, rules 610-614 (eff. Jan. 1, 1993).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[4]**

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

Where respondent violated Supreme Court order imposing disciplinary probation, and hearing judge properly found that respondent had violated statute requiring compliance with probation conditions, respondent was also culpable of violating statute requiring compliance with court orders. However, review department did not need to modify hearing judge's decision to include additional statute and rule violations where review department's

recommendation did not depend on whether the misconduct also violated those additional duplicative violations. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[2]**

Where respondent violated conditions of disciplinary probation by failing to turn over former client's files and records, precluding accountant from assessing losses incurred due to respondent's misconduct so that determination could be made regarding restitution, such probation violations were serious and warranted lengthy actual suspension and requirement to prove rehabilitation, learning in the law, and fitness to practice before returning to law practice. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[4]**

214.11 Found

In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

In the Matter of Howard (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

214.15 Not Found

214.20 Section 6068(l) (comply with agreements in lieu of discipline)

In the Matter of Respondent R (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227.

214.21 Found

214.25 Not Found

214.30 Section 6068(m) (communicate with clients)

Where respondent stipulated he accepted representation of clients, and evidence showed respondent did not obtain clients' informed written consent to waive potential conflict, and case was later transferred to new attorney without clients' knowledge or consent, Review Department reversed hearing judge and found respondent culpable of violations of rules 3-310(C)(1) and 3-700(A)(2), and section 6068(m). *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 **[4 a,b]**

Where respondent was unable to access client contact information because his former office staff locked him out of his office, hearing judge properly found respondent not culpable of failing to communicate with clients in violation of Business and Professions code section 6068(m). *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296 **[5]**.

Where no credible evidence showed that mortgage lender notified respondent that it had denied client's loan modification, respondent was not culpable of failing to inform client of denial. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221. **[8]**

It is not necessarily duplicative to find culpability for failure to communicate with clients and culpability for improperly withdrawing from employment when respondent's failure to communicate arose from her failure to inform clients of crucial information regarding representation and respondent's improper withdrawal was based on her failure to take reasonable steps to protect her clients' interests. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[4 a, b]**

Filing extensions and an opening appellate brief does not constitute a response to several letters from respondent's clients in which they expressly asked to be informed of respondent's intentions regarding his continued pursuit of an appeal. Where the clients' requests were reasonable given the perception that respondent was acting against their wishes and where there is no evidence that respondent made any communication as an answer to his clients' requests, respondent violated Business and Professions Code section 6068, subdivision (m). *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[4 a, b]**

Attorney's fiduciary duty to develop and maintain adequate management and accounting procedures for proper operation of his law office is fundamental to fulfillment of multiple duties, including duties to competently perform legal services, adequately communicate with clients, protect client confidential information, and properly handle and account for client funds and other property.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[15]**

Because review department relied on respondent's repeated and reckless failure to communicate with client to establish his culpability for violating rule of professional conduct prohibiting attorneys from abandoning clients and withdrawing from employment without taking adequate steps to protect their clients' interests, review department did not adopt hearing judge's finding that respondent violated statute requiring attorneys to adequately communicate with their clients, but dismissed charge with prejudice as being duplicative.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[22]**

A client's efforts to communicate with respondent about a refund of fees and advanced costs were reasonable status inquiries for purposes of section 6068(m), of the Business and Professions Code. These efforts constituted status inquiries because they implicated the nature and conditions of respondent's representation. The efforts were reasonable because the clients quickly changed their mind about pursuing the matter for which respondent had been retained and deserved clarification about their financial arrangement with respondent. *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.**[4]**

The terms judges and judicial officers as used in Business and Professions Code section 6068(d) and rule 5-200(B) of the Rules of Professional Conduct are limited to those individuals who are officers of a state or federal system and who perform judicial functions. Thus, the review department reversed the hearing judge's determination that respondent attempted to mislead judicial officers, in violation of section 6068(d) and rule 5-200(B), when he told an arbitration panel that he had represented his clients previously. The local bar association's arbitration panel was not composed of judges or judicial officers as required under both section 6068(d) and rule 5-200 and the local bar association's arbitration panel was not court-appointed. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.**[6]**

Attorney's failure to communicate with a client may also constitute incompetent legal practice or abandonment of the client when facts demonstrate that attorney's failure to communicate resulted in the effective cessation of work on client's cause of action, foreclosed client from choices regarding her cause of action, or indicated a withdrawal from employment. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[5]**

An attorney's failure to adequately communicate with a client may evidence the attorney's lack of time to perform legal services competently in violation of Rules of Professional Conduct. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[7]**

The greatest amount of discipline is warranted for violations of probation which show a breach of a condition of probation significantly related to the misconduct for which probation was given, especially in circumstances raising a serious concern about the need for public protection. Where the misconduct which gave rise to the probation involved failure to perform and communicate, the law office management plan, ethics school, and law office management course conditions of probation directly addressed the misconduct and were therefore significantly related to the underlying misconduct. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[4]**

Under the State Bar Act and Rules of Professional Conduct clients have the right to expect that attorneys will reasonably supervise the progress of cases for which they accept responsibility. The fact that the file was misplaced, or that there was misconduct by an employee, cannot excuse the failure to maintain an information system that permits a lawyer to periodically check the status of his or her cases. The failure to have such a system resulted in culpability for failing to keep the client reasonably informed of significant events. *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608. **[2]**

An attorney's duty to communicate with a client includes the duty to communicate to persons who reasonably believe they are clients to the attorney's knowledge at least to the extent of advising them that they are not clients. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[4]**

In a prior case, the Supreme Court expressed concern for the privacy of the targeted attorney's clients, and further noted that the proceedings of the State Bar were conducted in strict confidence. While such formal proceedings are now public, the investigative process is conducted in the same strict confidence that the Supreme Court noted in the prior case. In addition, in the event the records are sought to be used in a subsequent public proceeding following a confidential investigation, the attorney's duty of informing the client or clients whose trust account information may become public of that fact would come into play. The client or clients would then have the opportunity to seek relief from the State Bar Court under the rules of procedure that create a method for sealing portions of the record. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[3]**

Where respondent was grossly negligent in failing to respond to requests for information from client and successor counsel, and where respondent failed to maintain client's settlement check in safe place, respondent repeatedly failed to perform competently. However, where charge of repeated failure to perform competently addressed same misconduct as charges of failure to communicate with client and failure to keep client property in safe place, failure to perform competently was given no additional weight in determining appropriate discipline. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[19]**

Where respondent misused client trust account as personal account, failed to respond to client's reasonable status inquiries, did not keep client's settlement check in safe place, and did not respond to State Bar investigation, and where at time of disciplinary hearing respondent still suffered from chronic depression which was major cause of misconduct, and had been ineligible to practice law for two years, appropriate discipline was three years stayed suspension, four years probation, and actual suspension for one year and until respondent proved rehabilitation, fitness to practice competently, including mental fitness, and present learning and ability in the law. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[24]**

Conduct which falls below the standard of the statute requiring attorneys to communicate with their clients, but which occurred prior to the effective date of the statute, does not violate its ban. However, where the attorney's failure to communicate began prior to that effective date, but extended beyond it, discipline has been imposed under the statute. Accordingly, where respondent's principal failures to communicate with client occurred prior to effective date of statute, when he withdrew from representing her, but respondent thereafter continued to encourage client to contact him as a conduit for her new counsel after his withdrawal, and did not respond to her efforts to contact him after effective date of statute, respondent was properly found culpable of violating his statutory duty to communicate with the client. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[2]**

Where respondent with no prior record of discipline failed to communicate reasonably with two clients and failed to relinquish their files promptly, causing harm to clients, six-month stayed suspension, with no actual suspension, was well within appropriate range of discipline as indicated by comparable cases. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[5]**

Where respondent spoke with clients approximately eight or nine times during short period of representation, there was insufficient evidence to support charge that respondent failed to communicate with clients. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[5]**

Where the overall number of phone calls made by a client to respondent may not have been reasonable, but they reflected the client's increasing frustration at her inability to speak with respondent, the hearing judge properly found respondent culpable of failing to respond to the client's reasonable inquiries. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[1]**

Where respondent did not respond to client's reasonable inquiries and missed appointments with client both before and after effective date of statute regarding duty to communicate with clients, respondent was culpable of violating attorney's oath and duties, as to conduct before such effective date, and of violating statutory duty to communicate, after such effective date. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[5]**

It is not inherently inconsistent to conclude that an attorney who withdrew from employment and failed to perform legal services competently is also culpable of failing to communicate with the client thereafter. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[7]**

In matters involving abandonment of a single client by an attorney with no prior record of discipline, discipline imposed by Supreme Court has ranged from no actual suspension to 90 days of actual suspension. Where respondent's misconduct was serious, harmed client, and included trust account violation as well as abandonment and failure to communicate, but respondent presented impressive mitigating evidence, including services to disadvantaged clients and to minority community, and respondent expressed sincere aspiration not to be involved in disciplinary proceedings again, review department recommended actual suspension of 30 days, with stayed suspension of six months and one year of probation. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[9]**

Misconduct committed by attorney who was grossly negligent, though not dishonest, in handling a significant sum of client trust funds in one matter, and who failed to communicate adequately with a client in another matter, warranted 90 days rather than 60 days of actual suspension as condition of 3-year probation accompanying 3-year stayed suspension. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[1]**

When a client learned independently that the client's case might be endangered by a statutory deadline, and contacted the attorney regarding that potential problem, the attorney breached the duty to communicate with the client by not having an office system in place to assure that such calls would be brought to the attorney's attention. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[5]**

While a lack of adequate communication with a client may warrant a finding of failure to perform legal services competently, it would be duplicative to draw such a conclusion when the attorney has been found culpable of violating the statutory duty to communicate with clients. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[6]**

Where respondent's disciplinable failure to communicate with his client may have prevented him from earlier discovering the non-disciplinable calendaring mistake that caused his client to lose his cause of action, the harm to the client was properly recognized as a factor in aggravation. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[8]**

For a failure to communicate with a client which occurred prior to the enactment of the statute requiring such communication, grounds for discipline remain under the common law doctrine underlying this duty. However, where the information the attorney most significantly failed to convey was notice of the attorney's withdrawal from representation, the attorney's conduct violated former the rule against prejudicial withdrawal, and finding culpability of a common law failure to communicate would be unnecessarily duplicative. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[10]**

Where an attorney's failure to communicate with a client occurred prior to the effective date of the statute specifically requiring communication with clients, a violation of the underlying duty predating this statute may be charged as a violation of the attorney's oath and duties generally. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[15]**

Where a client's matter involved a large amount of money and the client was concerned that his reputation would be affected by the dispute, the client's anxiousness to resolve the matter as quickly as was practical, and his periodic attempts to learn the status of the matter, were reasonable. His attorney's failure to complete necessary legal services and to return the client's calls thus violated the duty to respond to reasonable status inquiries and to provide competent legal services. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[5]**

Where client needed immediate action, and respondent recommended that client seek a temporary restraining order, respondent's failure to bring TRO application to hearing for over two months constituted reckless incompetence, and respondent's inaccessibility to the client, even though not as severe or protracted as in many disciplinary cases, violated the statutory duty to communicate with clients. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[8]**

Where respondent failed to inform a client that the five-year statute was about to run on the client's case, respondent violated the statutory duty to keep clients reasonably informed of significant developments in their cases; the fact that the failure to communicate resulted from the loss of the client's file did not render respondent any less culpable. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[11]**

The statute requiring attorneys to communicate with their clients does not require a suspended attorney's continued practice of law, and a suspended attorney thus may be found culpable of violating the statute. It is extremely important for a suspended attorney to continue to communicate with the client so that prejudice to the client is minimized, though such communication must not take the form of legal advice. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[14]**

A suspended attorney's failure to inform his client that he was suspended and that he was nonetheless filing an unauthorized complaint on her behalf, and his failure to communicate with the client in any other way, amounted to a violation of his statutory obligation to keep his client reasonably informed of significant developments with regard to her case. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[21]**

A notice to show cause which alleged that an attorney was hired by a father to represent his son and that the attorney thereafter failed to perform services for, communicate with, and return unearned fees to, the father was sufficient to put the attorney on notice that he was charged with the specified misconduct in his dual representation of the father and son, because the attorney would not have had a duty to communicate with the father if he were not representing the father. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[22]**

An attorney who failed to communicate adequately with a client prior to 1987 cannot be charged with a violation of section 6068(m), but can be charged with a violation of section 6068(a). *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[17]**

Statutory duty to communicate with clients is not an appropriate basis for discipline for failure to communicate which occurred well before effective date of statute. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[9]**

Where respondent's failure to respond to letters sent by another attorney whom clients had contacted occurred before enactment of specific statute requiring response to clients' reasonable status inquires, respondent could not be found culpable of violating that statute. Nevertheless, a longstanding common-law duty to communicate with clients was recognized by the Supreme Court prior to the adoption of the specific statute. Thus, for failures to communicate with clients occurring prior to the addition of the new statute, it is not duplicative nor otherwise inappropriate to charge an attorney with violating his general duties as an attorney. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[14]**

Culpability for violating statutory duty to communicate with clients may only be predicated on failure to communicate after effective date of statute. Where respondent failed to respond to letter sent by client after effective date, respondent's failure to communicate continued after effective date and culpability finding was appropriate. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[2]**

Attorney whose failure to communicate with client occurred prior to effective date of statute requiring such communication could not be found culpable of violating that statute. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[3]**

Attorney's failure to communicate with client prior to effective date of section 6068(m) did not violate that statute. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[11]**

214.31 Found

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Sullivan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

214.35 Not Found

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

Culpability of violating Business and Professions Code section 6068, subdivision (m) cannot be sustained by a factual finding based on allegations that respondent gave a client incorrect legal advice. This is addressed by rule 3-110(A) of the Rules of Professional Conduct, which was neither charged nor proved. Negligent legal representation, even that amounting to legal malpractice, does not establish a rule 3-110(A) violation. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[7 a, b, c]**

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Sullivan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

214.40 Section 6068(n) (comply with RPC re copies to client)

214.41 Found

214.45 Not Found

214.50 Section 6068(o) (comply with reporting requirements)

Respondent was required to report to the State Bar his criminal charges and conviction both under section 6068(o)(4) and (5), and under disciplinary probation conditions specifically requiring him to comply with the State Bar Act. His failure to report these charges and conviction was considered in aggravation as serious uncharged misconduct. By failing to report, respondent impeded the disciplinary process. The State Bar was not informed of respondent's criminal conduct when it made recommendations to the Supreme Court in two of his previous disciplinary matters, and the Supreme Court was also unaware of his conviction when it imposed discipline in those cases. *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189 **[3 a,b]**

Respondent had an independent duty to report judicial sanctions. Business and Professions Code section 6068, subdivision (o)(3) offers no exception to respondent's independent reporting obligation, regardless of his actual knowledge that the Supreme Court had complied with its own separate statutory duty to notify the State Bar. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 **[3]**

The duty to report sanctions timely pursuant to section 6068, subdivision (o)(3), Business and Professions Code, is not excused solely because of the pendency of an appeal of the sanction order. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70. **[2]**

Despite the silence of the statutory text, the time for reporting judicial sanctions pursuant to section 6068(o)(3) of the Business and Professions Code runs from the time the attorney knows the sanctions were ordered, regardless of the pendency of any appeal. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[1]**

The purpose of section 6068(o)(3) of the Business and Professions Code is to inform the State Bar promptly of events which could warrant disciplinary investigation. Depending on the facts, any such investigation might not focus primarily on the judicial sanction itself, but on the conduct preceding or surrounding a sanctions order. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[2]**

Code of Civil Procedure 916 does not stay either execution of a judicial sanctions order or respondent's duty to report it to the State Bar. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[3]**

The wilful violation of Business and Professions Code section 6068(0)(3)'s reporting requirement does not require a bad purpose or an evil intent. All that is required for a wilful violation of section 6068(o)(3) is a general purpose of willingness to commit the act or omission. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[4]**

As respondent was under a duty to report his criminal guilty plea to the State Bar under Business and Professions Code section 6068, subdivision (o)(5), his action in doing so was not a mitigating circumstance. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[5]**

The statutory duty to report to the State Bar any judicial sanction of more than $1,000 not imposed for failure to make discovery applies to a sanction incurred by an attorney during self-representation. Violation of this duty may serve as a basis for discipline even though the court imposing the sanction is also required to report the sanction. Knowledge of the reporting requirement is not necessary to find a violation thereof. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[11]**

Respondent's ignorance of statute requiring attorneys to report court-ordered sanctions to State Bar was not a defense to violation of such statute, but respondent's awareness that court itself had reported sanctions to State Bar substantially mitigated such violation. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[4]**

214.51 Found

In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195.

In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

214.55 Not Found

Where respondent testified that she timely informed the State Bar of the imposition of sanctions, and where the State Bar presented no evidence to contradict respondent's testimony nor any other independent evidence, the State Bar failed to satisfy the clear and convincing standard of proof for a violation of section 6068(o)(3). *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[9]**

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

215.00 Section 6077.5 (attorney collection agencies)

215.01 Found

215.05 Not Found

216.00 Section 6086.8(c) (reporting by uninsured members)

216.01 Found

216.05 Not Found

218.00 Section 6090.5 (requiring agreement not to complain)

Although respondent's attorney handled settlement negotiations with the opposing party, respondent acknowledged that he was on notice that one term of the proposed settlement was that the opposing party withdraw his complaint to the State Bar. Because respondent did nothing upon receiving notice of this fact to inform either his attorney or the opposing party that his attorney lacked authority to discuss such a settlement on his behalf, respondent's attorney had apparent authority to enter into such settlement discussions for respondent. Therefore, respondent intended to agree to this term of the settlement and was culpable of conditioning settlement on the withdrawal of the opposing party's complaint to the State Bar.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[7a-c]**

Where respondent offered to repay client funds which respondent had misappropriated, and client in turn proposed different repayment terms which included client's agreement not to file complaint with State Bar, evidence did not clearly and convincingly show violation by respondent of statute prohibiting attorneys from requiring agreement not to complain to State Bar as condition of settlement of civil action for professional misconduct. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[3]**

Respondent's attempts to have clients withdraw pending State Bar complaints as part of settlements of actions which were not for malpractice did not violate statute prohibiting attorneys from conditioning malpractice settlements on agreement by client not to file State Bar complaint. The State Bar may proceed with a disciplinary matter whether or not the complainant is willing. (Trans. Rules Proc. of State Bar, rule 507.) *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[12]**

Respondent's letters to client demanding release from all liability, including for malpractice, in exchange for settling outstanding business disputes between them, violated rule prohibiting attorneys from attempting to exonerate themselves from liability for malpractice except in settlement of a malpractice claim. However, respondent's attempt to persuade client to withdraw State Bar complaint did not violate statute prohibiting attorneys from requiring as a condition of malpractice settlement that plaintiff agree to not file a complaint with the State Bar. The plain language of the statute is limited to settlements involving the agreement not to file a disciplinary complaint. The effect of withdrawal of charges is not the same as not filing them. Once the State Bar becomes aware of possible misconduct by the filing of a complaint, it does not need a complaining witness in order to go forward with its investigation. (Trans. Rules Proc. of State Bar, rule 507.) *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[11]**

218.01 Found

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364.

218.05 Not Found

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

219.00 Section 6093(b) (violation of probation condition)

219.01 Found

219.05 Not Found

220.00 Section 6103, clause 1 (disobedience of court order)

Where reasonable interpretation of a court order is that a dental exam would not be allowed unless the court ordered it after the parties filed supporting and opposing papers, such order was mandatory and not permissive. Therefore attorney's willful failure to obey the court order was a violation of section 6103. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[1]**

In order to be found culpable of wilfully violating Business and Professions Code section 6103, the State Bar need not prove that respondent violated court orders in bad faith. For disciplinary purposes, bad faith must be proved if the State Bar alleges that respondent's noncompliance with court orders involves moral turpitude. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 **[2]**

Where preliminary and permanent injunctions prohibited respondent's client and the agents of respondent's client from filing any actions relating to certain realty, respondent's filing of a quiet title action in superior court and recording of a lis pendens on behalf of a company the client owned violated Business and Professions Code section 6103 because respondent had actual knowledge of the restraints imposed by the injunctions and because respondent was acting as an agent of the client. *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966. **[1 a–c]**

Where the record concerning respondents' knowledge of the import of the Superior Court's sanctions decision is confusing at best, there is not clear and convincing evidence that respondents knew there was a final, binding court order and respondents were therefore not culpable of violating their duty not to disobey or violate an order of the court since knowledge is an essential element to establishing such a violation. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[3]**

Finding that an order of a worker's compensation judge was an order of a court within the meaning of Business and Professions Code section 6103, the review department found respondent culpable of violating section 6103 by disregarding such an order. *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126. **[4 a-b]**

Since respondent clearly knew about the judicial sanctions order, the only issue pending before the court regarding a violation of Business and Professions Code section 6103 was whether respondent had a reasonable time to comply with the order. Whatever a reasonable amount of time would have been for respondent to have paid the sanctions, much more than a year had elapsed from the time of the order during which he failed to comply. Respondent's failure to comply with the sanctions order in more than one year from the time of the order constituted a wilful violation of section 6103. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[5]**

Respondent's inability to pay court-ordered sanctions is not a defense to the charged violation of section 6103 where there is no evidence that respondent ever sought relief from the sanctions order in the civil courts because of an inability to pay. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[6]**

Cases which hold that constitutional due process rights would be violated if a father delinquent in child support were held in a later criminal contempt proceeding to a statutory presumption of ability to pay the support order, in the face of the prosecutor's burden to prove criminal contempt beyond a reasonable doubt, are distinguishable as State Bar proceedings have long been defined by our Supreme Court as unique, and not as criminal proceedings. Moreover, even if respondent lacked the ability to pay, respondent would not be disciplined for failing to pay the sanction, but for failing to pay the sanction without first attempting to be relieved of the order in whole or in part in the superior court or Court of Appeal on the basis of ability to pay. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[7]**

A condition attached to respondent's private reproval requiring respondent to pay the $1000 sanctions ordered by the superior court was necessary. To conclude otherwise would terminate respondent's professional obligation under Business and Professions Code section 6103 to obey the order and pay the sanctions. Such a result would be inconsistent with the purposes of attorney discipline. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[9]**

The State Bar can prosecute a probation violation by way of a motion to revoke probation, or by way of an original disciplinary proceeding based on a violation of the Business and Professions Code section 6068, subdivision (k). It was not error to charge a violation of Business and Professions Code section 6103 in this original disciplinary proceeding. The gravamen of this case was respondent's failure to comply with the conditions of his probation. Regardless of the statute charged, the proceeding was based on a violation of section 6068, subdivision (k). *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[3]**

To establish a violation of an attorney's statutory duty to obey court orders issued in connection with the attorney's profession, State Bar must prove by clear and convincing evidence (1) that the attorney willfully disobeyed an order of a court and (2) that the court order required the attorney to do or forbear an act in connection with or in the course of the attorney's practice of law that he ought in good faith to have done or not done. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[1]**

The rule is well settled in California that a void order cannot be the basis for a valid contempt judgment. A person affected by an injunctive order may challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by (1) complying with the order while seeking a judicial determination as to its jurisdictional validity or (2) disobeying it and then raising the jurisdictional challenge if and when he is sought to be punished for his disobedience. If a person affected by an injunctive order chooses to challenge the validity of the order on the ground that it was issued without or in excess of the court's jurisdiction by disobeying it and then raising the jurisdictional challenge as a defense against any contempt charges brought against him, his violation of the order constitutes no punishable wrong if it is ultimately determined that the order was issued without or in excess of jurisdiction. However, the contempt order here was final and there was no valid reason to go behind a now-final order. The State Bar Court properly defers to the judgements of the courts of record that rendered contempt judgements against respondent and that considered respondent's subsequent appeals, requests for reconsideration, and certiorari. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[2]**

Even though respondent withdrew from employment because his client accepted a settlement agreement with a confidentiality order, he still had a fiduciary duty to his former client. The client, not respondent, had the right to decide to settle her lawsuit on the chosen terms. Thus, respondent had a good faith duty to act consistently with the client's settlement agreement to, at least, not reveal the settlement amount or the evidence obtained in the case except as allowed by the settlement judge. Respondent's failure to do so violated his statutory duty to obey court orders issued in connection with his profession. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[3]**

Even though an attorney's willful violation of his statutory duty to obey court orders issued in connection with his profession is stated grounds for disbarment or suspension, discipline within that range is not mandated. Thus, in light of the unusual circumstances surrounding respondent's violation of this duty, a private reproval was the appropriate level of discipline. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[4]**

Respondent violated his duty to obey court orders when he intentionally failed to comply with two bankruptcy court orders directing him and his client to produce various documents to an examiner appointed by the bankruptcy court. It was no defense that the documents were ultimately determined to be of no use to the examiner. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[2]**

Statutes providing (1) that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline; (2) that attorneys have duty to comply with disciplinary probation conditions, and (3) that wilful disobedience of court orders constitutes cause for disbarment or suspension are all statutes that can be violated. The determination that an attorney violated the statute making probation violations cause for revocation of probation means that the attorney failed to comply with a probation condition. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[2]**

Where respondent on disciplinary probation made no required restitution payments to former clients, but made some payments to State Bar in belief that probation monitor or other authority had so instructed, and where respondent had insufficient reason for such belief, respondent was grossly negligent in failing to make such payments to clients, and thereby violated probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[4]**

Where respondent's failure to make restitution payments required by disciplinary probation was due to lack of income, but respondent did not attempt to have restitution requirement modified, and did not demonstrate that he made sufficient good faith efforts to acquire resources to pay restitution, respondent was culpable of gross negligence which violated conditions of probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[5]**

Where attorney violated statute providing that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline, and where misconduct underlying such charge was same as misconduct underlying charges of violating statutes providing that attorneys have duty to comply with disciplinary probation conditions and that wilful disobedience of court orders constitutes cause for disbarment or suspension, latter two charges were given no additional weight in determining appropriate discipline. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[6]**

Where respondent believed that after notice to show cause in disciplinary probation revocation proceeding had been filed, his probation was terminated and he no longer needed to comply with probation reporting requirement, but respondent took no steps to ascertain whether this belief was correct, respondent was grossly negligent in failing to file required probation report, and thereby violated probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[7]**

Where respondent was charged with violating disciplinary probation conditions by failing to submit evidence of having obtained assistance from a licensed psychologist or psychiatrist, respondent could be found culpable only of failing to comply with requirement that he submit such evidence, and not of failing to comply with requirement that he obtain such assistance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[8]**

Substantial compliance with a disciplinary probation requirement is not a defense to violation of the requirement. Where respondent's probation conditions required that he obtain therapy from licensed practitioner, and where respondent made efforts to obtain therapy but did not seek to have probation conditions modified to include therapy provided by unlicensed practitioner, respondent's uncharged probation violation of failing to comply with therapy requirement was aggravating circumstance in probation revocation proceeding. However, respondent's efforts to comply constituted significant mitigating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[9]**

Where hearing judge viewed proceeding as one to revoke probation, not to impose added culpability or discipline, and recommended actual suspension would not exceed imposition of previously stayed suspension if respondent made restitution within such time, applicable standard of proof was preponderance of evidence standard applicable to probation revocation proceedings, even though notice to show cause also alleged violations of respondent's statutory oath and duties and of a court order. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[5]**

Even though respondent was ineligible to practice law on day he was ordered to appear in court on behalf of a client, this did not relieve him of his obligation to appear as ordered. He was obligated to do everything in his power to obey court's order short of practicing law, and at a minimum should have been physically present in court and given accurate information about his eligibility to practice. This would not have constituted the practice of law. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[8]**

Primary aims of attorney disciplinary probation are protection of public and rehabilitation of attorney. Greatest amount of discipline for violating probation conditions is merited for breaches of probation conditions significantly related to misconduct for which probation was given, especially when circumstances raise serious concern about public protection or show probationer's failure to undertake rehabilitative steps. Where misconduct for which respondent was placed on probation included practicing law in violation of court order, and respondent's current misconduct also involved violating numerous court orders and was aggravated by failure to participate in disciplinary proceeding, and where respondent's probation violations involved two of very first steps required by probation conditions, these factors indicated that respondent had a persistent problem with conforming his conduct to requirements of law, raised serious concerns for need to protect public, and showed that respondent had failed to even begin to take steps to rehabilitate himself. Accordingly, imposition of entire period of stayed suspension was appropriate discipline for respondent's violation of probation. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[12]**

Where, in representing four criminal clients, respondent violated six court orders, was held in contempt four times, failed to appear at scheduled court hearings nine times, and had warrants issued against him three times, and where respondent had breached two separate disciplinary orders and defaulted in current disciplinary proceeding, respondent's misconduct reflected disdain and contempt for the orderly process and rule of law and inability to conform to the most basic duties of an attorney. These facts, coupled with lack of mitigation, demonstrated that risk of future misconduct was great and indicated that respondent was not a good candidate for probation and/or suspension. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[14]**

Where respondent did not display disrespect for any court except insofar as he violated a court order, charge of violating statute requiring respect for courts was properly disregarded as duplicative of charge of violating statute requiring obedience to court orders, which more directly addressed respondent's specific misconduct. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[4]**

Regardless of an attorney's belief that a court order was issued in error, the attorney is obligated to obey the order unless the attorney takes steps to have it modified or vacated. The attorney's belief as to the validity of the order is irrelevant to a charge of violating the statute requiring attorneys to obey court orders. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[5]**

Where respondent did not intend to deliberately defy a court order and did not have any dishonest or wrongful intent, and where respondent's improper conduct was based on beliefs and understandings which, although not only mistaken but also objectively unreasonable, were honestly held, respondent did not commit acts involving moral turpitude, dishonesty or corruption. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[9]**

Where an attorney disobeys a court order based on an unreasonable interpretation of the order or an untested belief that the order is not valid, or takes money that is not the attorney's based on an unreasonable view of the facts, public discipline is necessary to make clear to the bar, the courts and the public that attorneys face serious consequences for such misconduct. However, where respondent did not pose a threat to the public, and review department concluded that actual suspension was not required to reinforce respondent's understanding of his ethical obligations, no actual suspension was necessary. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[13]**

Where a disciplinary proceeding did not involve a court order, respondent did not violate the statute which authorizes discipline to be imposed upon an attorney who violates a court order, but otherwise is not a basis for charged misconduct. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[7]**

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

Where a settlement judge's order following a settlement conference indicated that a final compromise had been reached, the order was binding and an attorney's failure to abide by it, without moving for relief therefrom, constituted a violation of the statutes requiring obedience to court orders and respect for courts and judicial officers. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[5]**

The purpose of a proof of service is to establish notice of an order or other document, and it is the kind of document relied upon in the conduct of serious affairs. Where a proof of service of a sanctions order on respondent was in evidence, and there was no indication in the record of any misconduct by respondent's staff concerning receipt of the order, respondent was presumed to have been served with the court order. His receipt of the order and his admission that he did not satisfy it established a violation of the statute requiring attorneys to obey court orders. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[6]**

Where an attorney failed to pay court-ordered sanctions, and was charged with violating both the statute requiring respect for courts and the statute requiring obedience to court orders, the misconduct was more specifically addressed under the statute requiring obedience to court orders and that charge was therefore to be preferred. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[7]**

Where respondent violated Supreme Court order imposing disciplinary probation, and hearing judge properly found that respondent had violated statute requiring compliance with probation conditions, respondent was also culpable of violating statute requiring compliance with court orders. However, review department did not need to

modify hearing judge's decision to include additional statute and rule violations where review department's recommendation did not depend on whether the misconduct also violated those additional duplicative violations. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[2]**

When payment of sanctions is ordered by a court, an attorney is expected to follow the order or proffer a formal explanation by motion or appeal as to why the order cannot be obeyed; the attorney cannot sit back and await contempt proceedings before either complying or explaining his or her noncompliance. Where respondent had personal knowledge of the entry of two orders awarding sanctions against him, but ignored opposing counsel's efforts to secure compliance and failed to take any action to seek relief from the orders, respondent's failure to comply was not excused by his impecunious status, and constituted a violation of the statutes requiring attorneys to maintain respect for the courts and to obey court orders. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[12]**

Because respondent made a good faith effort to pay court-awarded sanctions so that his client would not be adversely affected by his neglect of the case, and respondent did ultimately pay the sanctions, albeit after a complaint to the State Bar, respondent's initial attempt to pay the sanctions with a trust account check which was valid when written, but which failed to clear due to subsequent closure of the trust account by the bank, did not constitute a violation of statutes requiring attorneys to maintain respect for the courts and to obey court orders. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[14]**

An attorney's failure to comply with successive orders of the Supreme Court is of concern to the State Bar Court because it repeatedly burdens the resources of the State Bar Court and the disciplinary system. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[11]**

Section 6103 of the Business and Professions Code does not provide a basis for charging an attorney with any misconduct other than violating a court order. Where respondent who was charged with unauthorized practice of law while inactive had transferred to inactive status voluntarily and not as a result of a court order, section 6103 charge should have been dismissed. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[7]**

With the exception of a wilful violation of a court order, section 6103 of the Business and Professions Code does not define a duty or obligation of an attorney but provides only that the violation of the attorney's oath or duties defined elsewhere is ground for discipline. Thus, an attorney can not violate section 6103 unless he or she violated a court order. However, an attorney who is suspended for failure to pay State Bar membership fees is suspended by order of the Supreme Court. Thus, the attorney's continued practice of law after suspension is a violation of the court order suspending the attorney and therefore is a violation of section 6103. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[13]**

The mere fact that an attorney has been held in contempt of court is not grounds for discipline. The State Bar must establish that the contempt resulted from bad faith noncompliance with a court order, or that the underlying facts present other independent grounds for discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[4]**

Depending upon the circumstances, a finding of contempt against an attorney may result in no discipline at all or substantial discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[18]**

Prior to 1989, the Supreme Court customarily upheld charges that an attorney had violated the "oath and duties" provision of section 6103, but in 1989, the Supreme Court determined that an attorney charged with other statute and rule violations does not violate section 6103 because that section "defines no duties," except with regard to violation of court orders. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[1]**

Section 6103's authorization of discipline, including disbarment, is limited by its terms to occasions when an attorney violates the oath and duties defined in the Business and Professions Code or violates a court order. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[9]**

Where respondent was found culpable of violating statutes prohibiting unauthorized practice of law, charge of violating statute requiring obedience to court orders was redundant. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[21]**

Where sole court order violated by attorney was order suspending attorney from practice, and attorney was found culpable of unauthorized practice under other statutes, charge of violating section 6103 was superfluous. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[6]**

220.01 Found

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Esau (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131

In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Respondent X (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Howard (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

220.05 Not Found

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Respondent P (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Tady (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

220.10 Section 6103, clause 2 (oath and duties)

Where a disciplinary proceeding did not involve a court order, respondent did not violate the statute which authorizes discipline to be imposed upon an attorney who violates a court order, but otherwise is not a basis for charged misconduct. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[7]**

Unlike the statute regarding violations of an attorney's oath and duties, which has been construed only to state a sanction and not to proscribe conduct, the statute regarding conduct by attorneys which involves moral turpitude, corruption or dishonesty has been construed so as to permit violations thereof to be charged and proved. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[4]**

Section 6103 of the Business and Professions Code does not provide a basis for charging an attorney with any misconduct other than violating a court order. Where respondent who was charged with unauthorized practice of law while inactive had transferred to inactive status voluntarily and not as a result of a court order, section 6103 charge should have been dismissed. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[7]**

Section 6106, in contrast to sections 6068(a) and 6103, does state a chargeable offense for which discipline may be imposed. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[10]**

With the exception of a wilful violation of a court order, section 6103 of the Business and Professions Code does not define a duty or obligation of an attorney but provides only that the violation of the attorney's oath or duties defined elsewhere is ground for discipline. Thus, an attorney can not violate section 6103 unless he or she violated a court order. However, an attorney who is suspended for failure to pay State Bar membership fees is suspended by order of the Supreme Court. Thus, the attorney's continued practice of law after suspension is a violation of the court order suspending the attorney and therefore is a violation of section 6103. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[13]**

Prior to 1989, the Supreme Court customarily upheld charges that an attorney had violated the "oath and duties" provision of section 6103, but in 1989, the Supreme Court determined that an attorney charged with other statute and rule violations does not violate section 6103 because that section "defines no duties," except with regard to violation of court orders. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[1]**

Duplicative allegations of misconduct serve little purpose; if misconduct violates a specific disciplinary provision of the State Bar Act or a Rule of Professional Conduct, there is no need to charge the same misconduct as a violation of sections 6068(a) and 6103. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[3]**

Sections 6068(a) and 6103 were not intended to refer to the Rules of Professional Conduct or to make disbarment available for violations of such rules. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[5]**

Section 6103's authorization of discipline, including disbarment, is limited by its terms to occasions when an attorney violates the oath and duties defined in the Business and Professions Code or violates a court order. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[9]**

Where respondent was found culpable of violating statutory duty to uphold the law by failing to adhere to common law duty to communicate with client, additional charge that respondent violated attorney's "oath and duties" under separate statute was duplicative, and resolution of case would not be affected by finding such violation. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[11]**

As terms of art, an attorney's "oath and duties" are defined by sections 6067 and 6068. Section 6103 confirms the Supreme Court's inherent authority to impose discipline for violation of oath or duties defined by other statutes. Accordingly, charge of violating section 6103 or finding that attorney has committed misconduct thereunder is redundant and adds nothing to charges otherwise pending. Charge of violating section 6103 "oath and duties" does not put respondent on notice of any particular misconduct without reference to other statutes defining the particular duty allegedly violated. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[7]**

In matter charging attorney with filing false declaration and assisting in preparation of fraudulent documents, hearing referee's conclusions that respondent violated statutory duty to uphold the law (Bus. & Prof. Code, § 6068(a)) and statute regarding attorneys' violations of their oath and duties (*id.*, § 6103) were inappropriate. Section 6068(a) charge was duplicative since same misconduct was charged as violation of specific Rule of Professional Conduct. Section 6103 does not define a duty or obligation, but rather provides grounds for discipline for violation of an oath or duty defined elsewhere. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[3]**

Section 6103 is not a charging provision, but rather provides that violation of a duty defined elsewhere is grounds for discipline. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[10]**

Accepting fees for services rendered while suspended from practice does not violate sections 6068(a) or 6103. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[7]**

Where the notice to show cause did not allege a violation of the Penal Code, the alleged violations of sections 6068(a) and 6103 could not be construed as putting the attorney on notice of a possible Penal Code violation. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[2]**

The Supreme Court has unequivocally rejected section 6103 as a basis for culpability. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19. **[4]**

Business and Professions Code section 6103 does not define a duty or obligation of an attorney, but provides only that violation of an attorney's oath or duties defined elsewhere is a ground for discipline. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[5]**

220.11 Found

220.15 Not Found

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Tady (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

In the Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Respondent D (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

In the Matter of Temkin (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Glasser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

220.20 Section 6103.5 (communicate settlement offer to client)

Even though respondent did not promptly communicate, to her client, the terms and conditions of settlement offer in letter respondent received from opposing counsel, respondent was not culpable of violating statute requiring attorneys to promptly communicate such information to their clients because opposing counsel sent a copy of letter to respondent's client, which client received. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[4 a-b]**

220.21 Found

220.25 Not Found

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

220.26 Section 6103.6 (violation of Probation Code)

220.27 Found

220.28 Not Found

Note: For section 6103.7, see topic number 220.50 below.

220.30 Section 6104 (appearing without authority)

Filing a complaint with a superior court constitutes an appearance within the meaning of Business and Professions Code section 6104. Similarly, respondent's filing of a notice of appeal initiated an appellate proceeding in the same way a complaint would initiate litigation. Furthermore, respondent's numerous extension requests to file an opening brief were associated with the perfection of the filing of an appeal, and each request constituted an appearance before the court. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[1]**

Where respondent's clients decisively terminated his authority to pursue an appeal by expressly telling him in correspondence that they no longer wished the appeal pursued and where respondent thereafter filed requests for extensions and an appellate opening brief, the fact that respondent initially received authorization to initiate the appellate action did not insulate him from culpability for violating Business and Professions Code section 6104. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[2 a–c]**

Respondent's duty under Rules of Procedure of the State Bar, rule 3–700(A)(2) to not withdraw from employment until reasonable steps are taken to avoid foreseeable client prejudice did not exonerate respondent from culpability under Business and Professions Code section 6104 for his continued appearances on behalf of his clients after the clients had discharged him. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[3]**

Well-established definitions of "appearing" apply to the construction of section 6104 of the Business and Professions Code. For the purposes of jurisdiction, a defendant appears by answering or demurring to a complaint, by filing a notice of a motion to strike or transfer or by giving a plaintiff written notice of appearance. Also, an appearance occurs if the defendant or defendant's attorney participates in a trial or in a hearing on a motion or an order to show cause. Respondent's firm performed the following legal services for the client after respondent reviewed the letter terminating his services: review motion to compel, preparation of a letter to the client, telephone conversations with the client and with opposing counsel, research, preparation of a response to the motion to compel, preparation of a letter to the client about a status conference, and the preparation and filing of a substitution of attorney. There was not clear and convincing evidence that the preceding services amounted to "appearing" within the meaning of section 6104. Section 6104 does not prohibit legal services related to a possible appearance. It prohibits an actual appearance which is wilful or corrupt and without authority. *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907. **[2]**

A respondent who, without authority, wrote to an insurance carrier claiming that he represented a client is not culpable of violating Business and Professions Code section 6104. Such conduct does not constitute an "appearance" within the meaning of section 6104 which provides for discipline for "[c]orruptly or willfully and without authority appearing as attorney for a party to an action or proceeding." *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[2]**

Where an attorney had been suspended from practice and had been contacted by new counsel retained by his former client, the attorney's subsequent negotiation with an insurance company on the client's behalf without the new counsel's consent constituted unauthorized practice of law and violated the statute prohibiting attorneys from appearing without authority. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[3]**

Disbarment was the appropriate sanction for an attorney's misappropriation of a very large sum of client funds over many years, which was surrounded by utter disregard of the attorney's fiduciary and trust account duties, and aggravated by incompetent representation of the client and prosecution of a lawsuit without the client's consent, demonstrating a lack of basic understanding of the fundamental responsibilities of an attorney. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[10]**

Requiring a suspended attorney to comply with the statutory prohibition against appearing as attorney for a party without authority would not necessitate the attorney's continued practice of law. The attorney can comply with the unauthorized appearance statute by not practicing while suspended. Accordingly, an suspended attorney who wilfully filed a lawsuit on behalf of a client without her authority could be found culpable of violating the statute. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[20]**

An attorney who receives a medical payment draft made payable to the client, simulates the client's signature on the draft, and deposits it in the attorney's trust account does not thereby corruptly or wilfully and without

authority appear as attorney for a party to an action or proceeding. Merely signing the back of a check does not constitute an appearance. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[8]**

220.31 Found

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

220.35 Not Found

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

220.40 Section 6105 (lending name for use by non-attorney)

Where respondent was found culpable of aiding the unauthorized practice of law, in violation of rule 1-300(A) of the Rules of Professional Conduct, and charges that respondent lent his name for use by non-attorneys, in violation of Business and Professions Code section 6105, were based entirely on same facts, section 6105 charges were duplicative. *In the Matter of Huang*(Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296 **[4]**

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

220.41 Found

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

220.45 Not Found

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

220.50 Section 6103.7 (reporting suspected immigration status)

220.51 Found

220.55 Not Found

221.00 Section 6106 (moral turpitude, corruption, dishonesty)

For purposes of rule 9.20 of California Rules of Court, requiring attorneys to give advance notice of impending disciplinary suspension, notice is required for all cases pending as of filing date of suspension order, not effective date. Where respondent's declaration of compliance with rule 9.20 stated that respondent had given required notice in all cases pending as of suspension order's filing date, but State Bar alleged that respondent failed to do so in one client matter, respondent's having given informal notice of impending suspension and having substituted out of case prior to suspension order's effective date was not a defense. Notice of disciplinary charges thus properly alleged both violation of rule 9.20 and act of moral turpitude in filing false declaration. *In the Matter of Eldridge* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 413 **[2 a, b]**

Respondent was culpable of moral turpitude for noncompliance with court orders and serious and habitual abuse of the judicial system where he acted with "unclean hands" in suing his neighbors without attempting informal resolution, sought to use the judicial system as a weapon to inflict onerous litigation costs on neighbors for his own benefit, abused the judicial system in bringing at least 16 meritless appeals, and acted in bad faith for years by disregarding a vexatious litigant pre-filing order and pursuing his property interests in the guise of being plaintiff's counsel rather than the plaintiff. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[2]**

Where an attorney knowingly converts client funds for his or her own purpose, the attorney clearly violates section 6106. Respondent's defense that he was entitled to CTA funds as compensation for post-judgment legal services lacked merit where the contingency fee agreement did not provide for compensation for these services, and the client did not otherwise agree to pay it. Likewise, respondent's claim that the withdrawals from the CTA were temporary loans lacked merit because he never obtained his client's consent to withdraw the money as loans or for any other reason. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273 **[1 a-c]**

Attorney who charged illegal fees in mortgage loan modification matters did not commit acts of moral turpitude. At most, attorney negligently breached agreements but did not make intentional misrepresentations or misappropriate client funds. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[5]**

Attorney committed an act involving moral turpitude when he wrote several checks from a personal account to a client when he knew or should have known the bank would not honor them. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[1]**

Attorney committed acts involving moral turpitude when he orally misrepresented case status to clients and sent them letters that omitted critical information the clients were entitled to know. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[3a,b]**

Attorney committed act involving moral turpitude when he persuaded a client to pay him $68,500 by falsely stating he had settled the client's defense case for that amount. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[5]**

Attorney committed act involving moral turpitude when he signed, or caused to be signed, his client's name to a forbearance agreement without the client's knowledge or consent. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[6]**

Attorney committed acts involving moral turpitude by issuing five checks when he knew or should have known his account was negative. Since each check was made in an amount equal to his account overdraft protection limit and the account balance was negative when each check was written and presented for payment, the attorney could not reasonably expect his bank would honor any of the checks. Overdraft protection is not a substitute for the proper handling of client money and will not relieve an attorney from unethical conduct that caused the overdraft. Excessive use of overdraft protection is improper in any account for the purpose of covering checks paid to or on behalf of clients. The purpose of overdraft protection is to avoid harm to the client for an occasional shortfall in funds due to bank errors or delay in processing funds. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[7 a-e]**

Prosecutors have a duty under California and federal law to disclose exculpatory materials after trial, including in habeas corpus proceedings. Attorney committed an act of moral turpitude and dishonesty when he

intentionally concealed the statement and whereabouts of a favorable witness in a habeas corpus proceeding. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[2 a, b]**

Attorney's violation of a judge's explicit instruction is an act of disrespect to the court. Further, where an attorney intentionally does not keep his promise to a judge, he is culpable of an act of moral turpitude and dishonesty. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[5]**

Where attorney suppressed evidence by intentionally failing to voluntarily disclose a defendant's jail interview, such conduct was dishonest and involved moral turpitude. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[7]**

Attorney committed an act of moral turpitude when he intentionally argued the consequences of a sexually violent predator finding in his closing argument to a jury in violation of California law and an in limine order. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[9]**

Where respondent falsely represented to civil trial judge that his verdict was within the court's instructions and the trial evidence, respondent's deceit to the judge during questioning of him regarding his verdict was most certainly an act of moral turpitude and reprehensible conduct for an attorney. *In the Matter of Fahy* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141 **[3]**

Respondent ignored his role as a fiduciary to one client when, while negotiating the transfer of her real property to his other client, he failed to advise her that she would no longer have any right, title, or interest in the property, that she remained on the deed of trust placing her at risk of having to pay the mortgage upon default in the mortgage payments or recordation of the grant deed, or that she would continue to receive the tax bills. At best, respondent was grossly negligent in failing to disclose the terms of the sale and the pros and cons of the transactions to his client, and at worst, respondent intentionally concealed the information to the advantage of his other client and his son. Respondent exploited his superior knowledge and position of trust to the detriment of his vulnerable client, which constituted an act or moral turpitude. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117 **[2 a–b]**

In addition to the fiduciary duty to fully inform his client about the sale of her condominium, respondent breached correlative fiduciary duties to adequately document the terms of the sale in a manner reasonably calculated for the client to understand, to advise his client that she should consult another attorney, or to disclose the serious conflicts in representing both parties to the transfer transaction. Respondent's conduct constituted overreaching, and as a result of his multiple conflicts, he gravely compromised his duty of loyalty to his client. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117 **[3 a–c]**

Although it is not inherently wrong for an attorney to communicate with an opposing party not represented by counsel, where an attorney instigates a conversation with an adverse party under false pretenses, secretly tape–records the conversation and thereafter lies about the surreptitious recording during litigation, the attorney is culpable of moral turpitude. *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 **[1]**

Where respondent had actual knowledge that the court required her to continue to appear on behalf of her indigent clients at their upcoming hearings and where respondent expressly declined to proceed as ordered, respondent's disobedience was willful and constituted a violation of section 6103. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[6]**

Where respondent's clients had English language limitations and where respondent used technical legalese in his engagement agreements in an effort to exempt himself from providing any service of consequence to his clients, respondent's exploitation of his superior knowledge and position of trust to the detriment of his vulnerable clients was evidence of overreaching that constituted moral turpitude forming the basis for additional uncharged misconduct in aggravation. *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. **[7]**

Moral turpitude includes creating a false impression by concealment as well as affirmative misrepresentations. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[6]**

Where respondent filed a motion with the Court of Appeal misrepresenting that his clients wanted to pursue an appeal and where respondent failed to disclose to the Court of Appeal that he had been fired, respondent's

actions violated Business and Professions Code section 6068, subdivision (d) as well as section 6106. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[6 a–c]**

Where respondent demanded a modification of an oral contingent fee agreement in a manner that was abusive of his client due to the timing of and circumstances surrounding the demand, the demand of a modification constituted a coercive act involving moral turpitude. Moreover, moral turpitude was involved even if respondent did not intend the demand to be abusive, since respondent was at least grossly negligent in timing the demand and respondent's fiduciary duties to a client were involved. *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829. **[2a–d]**

Where respondent elicited an incriminating statement from an individual who was incarcerated and awaiting the appeal of his confession to the police and where respondent was an experienced criminal attorney who knew that the incriminating statement could be used as evidence at re–trial, respondent's overreaching was the height of irresponsibility and constituted at least gross neglect establishing a basis for a finding of moral turpitude. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[4]**

Where respondent was aware that a witness's attorneys objected to his cooperation with respondent, where respondent circumvented their objections and ultimately convinced the witness to reject his attorneys' advice, and where there is no evidence that the witness gave a knowing and intelligent waiver of his right to counsel, respondent committed misconduct involving moral turpitude by allowing the witness to act as his own counsel. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[5]**

Respondent was culpable of moral turpitude when he made misleading statements in order to induce a witness to sign a confession. Respondent was, at best, grossly negligent in not fully explaining to a witness the consequences of his cooperation. A finding of gross negligence in creating a false impression is sufficient for violation of section 6106. Acts of moral turpitude include concealment as well as affirmative misrepresentations and no distinction can be drawn among concealment, half–truth, and false statement of fact. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[6]**

Respondents committed acts of moral turpitude by knowingly making repeated misrepresentations to the Superior Court when they submitted numerous pleadings for filing that were permeated with half–truths, omissions, and outright misstatements of fact and law. Respondents' misconduct was compounded by the fact that they signed many of their pleadings under penalty of perjury which should have put reasonable persons on notice to ensure their pleadings were accurate, complete and true. Because respondents' misleading statements to the court were not the result of mere carelessness but were intended to secure an advantage in litigation, respondents' misconduct reflected a disregard of their duty to adhere to the requirements of the law and professional responsibilities as officers of the court and constituted evidence of moral turpitude. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[1 a–c]**

The review department concluded that respondent's failure to update her moral character application to disclose misdemeanor charges did not involve moral turpitude where (1) the hearing judge (and review department) gave credibility to respondent's testimony of innocent mistake and no intent to mislead the Committee of Bar Examiners; (2) respondent disclosed other litigated matters, including those involving her former husband; (3) the non–disclosed charges took place 10 or 11 months after the submission of the moral character application; and (4) the review department agreed with the hearing judge that respondent could not have reasonably believed that the disclosure of the misdemeanor charges of a domestic dispute, combined with all other information in the application, was crucial and would adversely affect her admission to practice law. *In the Matter of Pasyanos* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746. **[3a–c]**

An attorney has a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. This duty is nondelegable. The law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support a charge of violating section 6106 of the Business and Professions Code. Respondent gave control of her trust account to her bookkeeper and then failed to supervise the management of the account or to examine the bank statements or other records. The result was the theft of $1.7 million. Any procedure so lax as to produce that result was grossly negligent. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627. **[2 a, b]**

Once respondent deposited insurance settlement check that was made payable to his corporate client into his client trust account, he had a fiduciary duty to protect the settlement funds on behalf of all the members of the corporation's board of directors regardless of whether he considered them authorized to act on corporation's behalf. Respondent willfully misappropriated $50,000 of those funds when he disbursed $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors as he knew of intractable dispute between president and other three directors over control of the corporation and corporation's board had suspended president and denied him access to corporation's funds. Respondent's misappropriation involved moral turpitude.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[3 a-c]**

When respondent, without the knowledge or consent of all of the directors, withdrew $29,875.89 of corporate settlement funds as his attorney's fees for representing the corporation in bankruptcy proceeding, he knowingly and intentionally misappropriated the $29,875.89 for his own purpose without an honest belief in his right to those funds because (1) he knew a majority of directors vigorously disputed his right to represent corporation and to incur legal fees; (2) he knew president could authorize payment of only $100 of respondent's fees; (3) he acknowledged, under penalty of perjury in a bankruptcy court declaration, he did not have right to withdraw fees from trust account without court's approval; yet, there is no evidence respondent ever obtained such court approval before paying himself; (4) he deceived and misled corporation's chairman and his legal counsel about existence and location of insurance settlement funds; (5) he refused to provide records of settlement check and funds to State Bar. Respondent's knowing and intentional misappropriation of $29,875.89 involved moral turpitude in violation of statute prohibiting acts of moral turpitude and dishonesty.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[4 a-d]**

Where respondent misappropriated $50,000 of $79,875.89 insurance settlement funds he held in his trust account for his corporate client by disbursing $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors; where respondent violated his fiduciary duty to remaining three directors by disbursing the $50,000 to president without their knowledge or consent; where respondent knowingly and intentionally misappropriated remaining $29,875.89 of settlement funds for his own use and benefit by withdrawing them from his trust account as attorney's fees without the knowledge and consent of remaining three directors; where respondent violated rule of professional conduct requiring disputed funds to be held in trust by withdrawing $29,875.89 in fees from his trust account when his right to collect fees was disputed; where respondent repeatedly refused to account for proceeds of insurance settlement check in accordance with requests of chairman of corporations board of directors; where there was extensive aggravation, including concealment, overreaching, and failure to make restitution, with mitigation for strong good character testimony, extensive community service, no prior record of discipline, and lack of additional misconduct in more than five years; and where misconduct involved only a single client matter; and even though standard for attorney sanctions for professional misconduct for willful misappropriation called for and Supreme Court has repeatedly held that usual discipline for willfully misappropriation of client funds is disbarment, appropriate discipline recommendation was not disbarment, but four years' stayed suspension, four years' probation on conditions, which included two years' actual suspension continuing until respondent pays restitution of $29,875.89 with interest.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[9 a-d]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

Misrepresentations in an attorney's verified answers to interrogatories propounded to him by the State Bar, is a serious aggravation warranting increased discipline and might well constitute a greater offense than underlying misconduct. It is no defense that attorney's answers were prepared for him by his counsel. While it might be improper to penalize a lay client for not correcting mistakes that his counsel made in a pleading that the client verified,

such reasoning carries little weight when the client is an attorney.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[26 a-c]**

Respondent committed acts involving moral turpitude where, in borrowing money from clients, he repeatedly misrepresented to the clients his business situation, his financial situation, and his ability to repay the loans. Notwithstanding respondent's argument on review that his inability to repay the loans to his clients did not constitute any ethical violation, the review department found respondent culpable of violating Business and Professions Code section 6106 based on respondent's misrepresentations.*In the Matter of Peavey* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483. **[2 a-f]**

While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, the law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[3]**

Respondent violated statute proscribing acts of moral turpitude through her gross negligence in fulfilling her trust account duties. Even though respondent had an agreement with her husband and law partner that he would manage their client trust account, there was no evidence of established or agreed on procedures for the operation of trust account. And respondent overextended herself in the handling landmark litigation cases and in advocating for legislation dealing in that specialized area of law, allowed herself to be disconnected from management of law office over extended period of time during a period when her husband (whom respondent knew was abusive and controlling) was grossly mismanaging their trust account, and made no inquiry as to operation of the trust account even after she heard of specific complaint regarding the underpayment of trust funds to clients.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[4]**

An attorney has a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. These duties are nondelegable. This does not mean that an attorney is culpable of a moral turpitude violation by not personally managing his or her trust account, provided that attorney reasonably relies on a partner, associate, or other responsible employee to care for that account. However, even that reasonable reliance on another to care for the trust account does not relieve the attorney from the professional responsibility to properly maintain funds in that account. That is, in the handling of client funds, an attorney has a direct professional responsibility to his or her client, and the attorney does not avoid that direct professional responsibility by, even reasonable, reliance on a partner, associate or responsible employee.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[5]**

Where there was ample evidence demonstrating respondent's violation of his fiduciary duty to his client, arising from the unfairness of the manner in which his residential real property was sold to his client, and that the transaction was, at least in part, for his own benefit, respondent was culpable of committing an act involving moral turpitude in violation of Business and Professions Code section 6106.*In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[2]**

Respondent was culpable of an act involving moral turpitude in permitting his office to provide a copy of his client's confidential settlement agreement to a third party. The disclosure of the terms of that agreement placed the client at risk of action by the other party to the settlement agreement, and the sole purpose of providing the third party with information concerning the client's settlement was to aid respondent. In placing his interests above those of his client, respondent violated Business and Professions Code section 6106.*In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[4]**

Respondent's false statement in response to the State Bar's investigative letter, combined with respondent's ambiguous statement on a similar subject in response to the same letter, showed an intent to mislead the investigator. Such a deliberate attempt to mislead a State Bar investigation constitutes an act involving moral turpitude in violation of Business and Professions Code section 6106.*In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[5a,b]**

Although respondent's conduct in the sale of residential real property to his client involved moral turpitude, it was not shown by clear and convincing evidence to have been either intentionally dishonest or venal; there was potential for benefits to the client; and it was impossible to allocate responsibility for the client's loss between

respondent, who acted at least partially for his own benefit, and the client, who failed to act responsibly. Under these circumstances, restitution to the client was not recommended.*In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[8a,b]**

Respondent was culpable of committing an act involving moral turpitude where respondent, acting as a general partner of a California limited partnership, misappropriated a limited partner's share of distribution funds, which act was also a breach of respondent's fiduciary duties to the limited partner.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[2]**

Disbarment was not warranted for misappropriation of over $20,000 where the matter appeared to have been an aberrational, isolated instance of misconduct, respondent had no prior record of discipline in over 40 years of practice, and respondent presented evidence of good character and community service.*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[8]**

Because attorney's act of borrowing money without intending to repay it involves dishonesty and moral turpitude as a matter of law, State Bar need only prove that attorney borrowed money without intending to repay it to establish that attorney violated statutory duty not to engage in acts of dishonesty or involving moral turpitude. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[4]**

Regardless of whether amount of money is small, act of borrowing money without intending to repay it is dishonest and involves moral turpitude. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[5]**

Intent to repay debt requires some factual underpinning that would lead person to a degree of certainty that he or she would have ability to repay. Mere hope and unrealistic or speculative sources of income are insufficient. This is particularly true where respondent obtained large cash advances on the same day he was repaying gambling debts in the form of casino markers. And it is particularly true where respondent did not proffer any documentary evidence to support his claims that he was an experienced and successful or winning blackjack player. Moreover, in light of the fact that respondent never kept any records of his gambling winnings and losses, any hope of repaying any portion of his credit card debts with gambling winnings was unreasonable. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[6]**

Hearing judge's findings that attorney incurred credit card debts totaling $19,327 without intending to repay them and thereby committed acts of dishonesty and moral turpitude were supported by clear and convincing circumstantial evidence where, despite his meager and unpredictable income, and monthly living expenses in excess of $2,200, respondent continued to obtain cash advances totaling $32,054 on his four credit cards in the face of staggering gambling losses and lack of adequate liquid assets to repay his debts. Respondent could not have possibly have failed to perceive the hopelessness of repaying his mounting cash advances in the face of his gambling losses and lack of assets and current income. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[7]**

In its answers to the special findings in a prior civil proceeding against respondent, the jury found that respondent was liable to the plaintiff on the plaintiff's claims for, among other things, breach of fiduciary duty and fraud. In a separate special finding on the issues of malice, oppression, and fraud, the jury found by clear and convincing evidence that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of liability for either breach of fiduciary duty or fraud." The use of the disjunctive conjunction "or" in the phrase "malice, oppression or fraud," precluded the review department from determining whether the jury found that respondent was guilty of malice, oppression, fraud, or some combination thereof. And the use of the disjunctive correlative conjunction "either . . . or" in the phrase "finding of liability for either breach of fiduciary duty or fraud" precluded the Review Department from determining whether the jury found that respondent was guilty of "malice, oppression or fraud" when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both. Nonetheless, regardless of whether the jury based its answer against respondent on the malice, oppression, and fraud special finding on a finding that respondent was guilty of malice, oppression, fraud, or some combination thereof when he breached his fiduciary duty to the plaintiff, when he defrauded the plaintiff, or both, the jury's answer against him on the malice, oppression, and fraud special finding established, under collateral estoppel principles, that he committed acts involving moral turpitude in violation of statute proscribing acts of moral turpitude, but did not establish the nature and extent of those acts. An attorney who breaches a fiduciary duty (whether to a client or non-client) with malice, oppression, fraud, or some combination thereof, as those terms were

defined for the jury, commits an act of moral turpitude as a matter of law. Similarly, an attorney who commits an act of fraud (whether in the capacity as of an attorney or not) with malice, oppression, fraud, or some combination thereof, as those terms were defined for the jury, commits an act of moral turpitude as a matter of law.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[6 a-f]**

Respondent committed an act of moral turpitude by signing his client's name to a declaration under penalty of perjury without her approval or without her even seeing the declaration in advance. Even if he had the client's authority to sign her name to the declaration, respondent would still be culpable of moral turpitude. Respondent's acts, particularly if it was determined that the client had not agreed to the text of the declaration he had prepared in her name, could have resulted in his prosecution for forgery, a crime involving moral turpitude.*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. **[1 a, b]**

Respondent's production of verifications purporting to bear his client's signature but which were signed by a manipulated means involved dishonesty, an aggravating circumstance. Respondent engaged in moral turpitude whether he was grossly negligent in offering the verifications as signed by his client or prepared them intentionally to mislead. Although there is no direct evidence that respondent personally simulated his client's signature, he offered the documents to exculpate himself and he must bear responsibility for their altered nature.*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. **[5]**

Business and Professions Code section 6068, subdivision (d) requires attorneys to refrain from misleading and deceptive acts without qualification. An attorney need not utter an affirmative falsehood in order to violate section 6068, subdivision (d). Concealment of a material fact misleads a judge just as effectively as a false statement. No distinction can therefore be drawn among concealment, half-truth, and false statement of fact. Respondent's unqualified and unequivocal statements to the judges that he served John under circumstances that should have caused him at least some uncertainty were, at a minimum, deceptive, in violation of Business and Professions Code sections 6068, subdivision (d) and 6106.*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166.**[3]**

The Business and Professions Code section 6068, subdivision (f) charge based on respondent's offensive discovery requests is duplicative of the Business and Professions Code section 6106 charge based on the same conduct. It is insufficient for culpability that the section 6068, subdivision (f) charge reflects the additional harm that respondent has caused to the administration of justice and to the right of the plaintiff, respondent's former client, to seek redress in the courts. Culpability of misconduct is determined by whether an attorney has violated the Rules of Professional Conduct, a disciplinable provision of the State Bar Act or other disciplinable provision of law. Harm or lack thereof is an aggravating circumstance.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[6]**

Respondent failed to seek approval for his fees in a workers' compensation matter as required by the Labor Code and withheld it for a two-year period. Respondent was thus culpable of charging an illegal fee in violation of rule 4-200(A) of the Rules of Professional Conduct. Given the length of the rule 4-200(A) violation, the review department also found that such conduct was at least gross negligence and therefore involved moral turpitude. *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126. **[3]**

Respondent's contention that he should not be found culpable of failing to use truthful means in a civil complaint he filed because his statements contained in an initial pleading were rejected. The State Bar Act makes any act of dishonesty or misleading of a court to be disciplinable.*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[4]**

This case presents serious acts of dishonesty which served to defraud two sellers of valuable real estate. Respondent's many ethical violations featured harm to victims and the honest administration of justice. Offenses concerning the administration of justice have been considered as very serious by the Supreme Court. Disbarment is not reserved just for attorneys with prior disciplinary records. A most significant factor is respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing. This factor makes disbarment appropriate despite the fact that respondent presented some mitigating evidence. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70.**[5]**

Respondent engaged in an act involving moral turpitude when she had client sign blank pleading forms and then later completed the forms and filed them as having been executed under penalty of perjury without first

confirming the accuracy of the information with client. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[1 a-b]**

Disciplinary rules governing legal profession cannot punish activity protected by First Amendment, but neither false statements made knowingly nor false statements made with reckless disregard for truth are protected by First Amendment. Thus, because respondent's statements in pleadings, which she filed in superior court action and this disciplinary action, that her opposing counsel in superior court action was "well-known racist," "champion of the Emeryville pedophile ring," "operated by organized crime," "intent upon avoiding his own criminal indictment," and "motivated by racial hatred," and described young children as "niggers, hood and scums" were proved false at trial; because those statements were not mere rhetorical hyperbole, incapable of being proved true or false; and because respondent either knew statements were false or made them with reckless disregard of truth as there was no objective evidence that statements were true, hearing judge properly found respondent culpable of violating professional rules requiring attorneys to employ only such means as are consistent with truth and not to seek to mislead courts and judicial officers as well as statute proscribing acts involving moral turpitude. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[2 a-i]**

The review department's duty to independently review the record is settled. At the same time, the review department must give great weight to the hearing judge's determination that turns on credibility to be assigned to witness testimony. The department was reluctant, therefore, to ascribe to respondent a specific intent to deceive when the hearing judge who considered respondent's testimony and that of other witnesses found none. This does not exonerate respondent from moral turpitude charges as to his false statement in his motion to disqualify a superior court judge. The hearing judge's conclusion that respondent violated statute and rule of professional conduct requiring attorneys to use only means consistent with truth must be read to find culpability by respondent's gross negligence, as simple neglect would not be sufficient for a statutory violation. Gross negligence is a well-established basis for finding an act of moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[1]**

Even though hearing judge expressly found that respondent's violation of statute and rule of professional conduct was based on respondent's gross negligence, she inexplicably declined to apply that gross negligence to find that respondent's conduct involved moral turpitude in violation of statute prescribing attorneys from engaging in acts of moral turpitude. Gross negligence is a well-established basis for finding moral turpitude. Accordingly, review department independently found respondent culpable of act involving moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[2]**

Respondent wilfully violated section 6106 of the Business and Professions Code by conditioning repayment of fees on the withdrawal of a client's State Bar complaint against him. The withdrawal of the complaint would not have prevented the State Bar from pursuing a disciplinary proceeding against respondent and there was not clear and convincing evidence that respondent knew the clients were entitled to a refund. However, in response to respondent's letter explaining the agreement with the client, a State Bar investigator warned him that attempting to induce the withdrawal of a State Bar complaint involved moral turpitude. Despite the warning, respondent refunded the fees and advanced costs, but the letter accompanying the refund did not inform the client of the investigator's warning or mention any change in the agreement between respondent and the client. After receiving the refunds, the clients withdrew their petition with a local bar association to arbitrate their fee dispute with respondent. Under these circumstances, respondent's attempt to thwart the disciplinary process involved moral turpitude. *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907. **[5]**

Respondent repeatedly used his client trust accounts for personal expenses and repeatedly wrote NSF checks. He made no effort to determine his responsibilities relating to his trust account, nor did he exercise any effort to determine the balance in the trust accounts, maintain a ledger, or even determine that, in fact, deposits had been made to the trust account. Such a total abdication of responsibility can be attributed to no less than gross negligence and constitutes moral turpitude in violation of Business and Professions Code section 6106. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[2]**

A client may be billed the reasonable cost a firm itself incurs, but no more, for in-house costs such as photocopying, couriers, or meals eaten while working on a client's case. It appears that charging a flat periodic fee or lump sum to cover disbursements is permissible in any particular case if it does not result in an unreasonable

amount of compensation and if the client has given informed consent to the arrangement. Respondent's collection of estimated lump sum costs was not an act involving moral turpitude as there was no evidence that costs were excessive or that respondent hid his lump sum costs reimbursement procedures from his client. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[3]**

Respondent's practice of orally authorizing his staff to sign his name to declarations made under the penalty of perjury without disclosing, on the declaration, the fact that they were signing the declaration with respondent's permission or at his direction was misleading and inappropriate and thus was aggravation. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[8]**

Considering that respondent treated a significant amount of his client's money as a ready pool to further his and his wife's forays into championship horse breeding and realty acquisition, there was little difference for moral turpitude purposes between this case and the traditional trust funds wilful misappropriation cases. 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. This case meets that definition without doubt. *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824. **[3]**

Respondent's failure to control his law practice amounted to moral turpitude where he let a nonlawyer take over much of his practice, sign client trust account checks, and handle all financial records without proper supervision; where he took no decisive steps to stop the nonlawyer from telling clients and others that the nonlawyer was his partner; where his detachment enabled the nonlawyer to engage in extensive dishonesty and theft; and where, after the nonlawyer confessed to embezzlement, he did not report the nonlawyer to the authorities, fire the nonlawyer, or (at the very least) stop the nonlawyer's handling of his bank accounts so to protect his client's funds from further theft. *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709. **[1]**

A pattern of misconduct may be found even though the acts and omissions encompass a wide range of improper behavior. Respondent's numerous acts of neglect extended over a long period of time, 10 years, indicating a continuous course of professional misconduct. It continued even after respondent attempted to address his case management problems by hiring a management consultant and after the State Bar contacted him about client complaints. Even though none of this neglect entailed dishonesty or false statement, the review department concluded that respondent habitually disregarded his client's interests and failed to communicate with them and, therefore, committed acts of moral turpitude. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[10]**

Even though none of respondent's individual acts of misconduct involved dishonesty, concealment, or mishandling of client funds and even though respondent had no prior record of discipline over a lengthy practice, respondent's disbarment was warranted as consistent with past case law and the standards for attorney discipline for respondent's panoply of protracted failure to communicate with clients, incompetent practice, and failure to supervise subordinate staff affecting many different clients over a 10-year period. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[11]**

Respondent engaged in acts involving moral turpitude where he both knew that he was abdicating his responsibilities as an attorney and acted purposefully in allowing a non-lawyer to engage in activities constituting the practice of law. *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615. **[4]**

Where respondent misled client into believing that he was working on her case when he was on administrative suspension for failing to pay his State Bar dues, he improperly held himself out as entitled to practice law in violation of Business and Professions Code section proscribing acts of moral turpitude, dishonesty, and corruption. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[2]**

Even if an attorney returns money that he or she misappropriates, the attorney is still be culpable of the original misappropriation. Thus, restitution is not a defense to a misappropriation charge. Rather, it is a mitigating circumstance that could possibly support a reduction in the discipline. Respondent had the burden of proving mitigating circumstances, including restitution. Where there was no evidence that respondent paid the money back, he did not meet his burden of proving that restitution had been paid. Under these circumstances, restitution was an appropriate component of the discipline. *In the Matter of Elliott* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541. **[1]**

Misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, and generally warrants disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. Where respondent did not meet that burden, disbarment was recommended. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[1]**

Gross negligence or recklessness by an attorney in discharging fiduciary duties involves moral turpitude. Respondent displayed recklessness constituting moral turpitude where his failure to supervise staff for whom he was responsible resulted in the settlement of a client's matter without the client's knowledge or consent, the forging of the client's signature on the release and the settlement check, and the failure to distribute the client's share of the settlement funds to the client. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[5]**

Respondent's endorsement of a client's false financial statement and misrepresentation that one of a client's companies was a successful business were willful violations of his duty to employ only such means as are consistent with the truth when representing clients, and were dishonest acts involving moral turpitude. However, to the extent that the facts underlying both violations were the same, the review department gave no additional weight to the duplication in determining discipline. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[1]**

Respondent committed acts involving moral turpitude when he filed and knowingly maintained a client's meritless bankruptcy proceeding in bad faith. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[5]**

An attorney's practice of issuing checks which he knows will not be honored violates the fundamental rule of ethics--that of common honesty--without which the profession is worse than valueless in the place it holds in the administration of justice. Such conduct involves moral turpitude. Nevertheless, a justifiable and reasonable belief that a check will be honored is a defense to this charge. *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420. **[3]**

An attorney's failure to repay borrowed money, even if the attorney had funds to pay at least part of the money, without more, does not amount to moral turpitude. However, the failure to pay at least part of the money owed under these circumstances is a factor in aggravation as a demonstrated indifference toward rectification and atonement for respondent's misconduct. *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420. **[4]**

In broad terms, any act contrary to honesty and good morals involves moral turpitude. Although an evil intent is not necessary for moral turpitude, some level of guilty knowledge or at least gross negligence is required. Where respondent's failure to comply with a court order was either intentional or grossly negligent, this failure involved moral turpitude. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[7]**

An attorney's habitual disregard of clients' interests involves moral turpitude even if such disregard results only from carelessness or gross negligence. Where respondent recklessly or repeatedly failed to provide competent legal services in seven matters and failed to return files properly to clients in four matters, these failures together constituted habitual disregard of clients' interests and amounted to moral turpitude. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[8]**

Where the notice to show cause did not charge respondent with committing acts of moral turpitude on account of a violation of fiduciary duty, but did charge respondent with making a misrepresentation to a court, and the hearing judge and the parties understood that the charged moral turpitude violation was based on the misrepresentation, the review department declined the State Bar's request, made for the first time on review, that it find moral turpitude based on respondent's breach of fiduciary duty. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[2]**

Where notice to show cause charged respondent with making a misrepresentation to a court by filing an erroneous pleading, and where respondent consistently asserted that he did not intend to deceive the court and that the erroneous pleading resulted from his inadvertence, but where filing of misleading pleading did not result from single isolated instance of negligence, but from grossly negligent handling of entire matter to which pleading related, respondent could be found culpable of an act of moral turpitude due to his gross neglect in filing the pleading. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[3]**

Where respondent's entire course of conduct in handling his duties as the trustee of a testamentary trust amounted to a reckless failure to perform services competently, but the review department considered much of the same misconduct in reaching its conclusion that respondent committed moral turpitude through gross negligence in handling his duties as trustee, the failure to perform competently was given minimal weight as an aggravating circumstance in determining the appropriate discipline to recommend. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[6]**

Improper business transactions with clients have resulted in discipline ranging from reproval to suspension. Where, despite respondent's asserted intent to advance interests of beneficiaries of trust of which respondent was trustee, respondent realized significant benefits from improper loans from trust to himself, and where respondent also was grossly negligent in handling his duties as trustee, in view of the seriousness of respondent's misconduct, and comparable case law, the review department recommended three years stayed suspension, three years probation, and 60 days actual suspension. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[7]**

Hearing judge's credibility findings based on respondent's demeanor while testifying are entitled to great weight. Where hearing judge found that respondent did not mislead court about applicability of statutory fee limitation because respondent had honest but unreasonable belief that statute did not apply, but review department concluded that respondent's failure to disclose fee limitation was unreasonable under circumstances, review department found that respondent violated duty not to mislead courts and committed act of dishonesty, but that such misconduct occurred through gross negligence rather than intentional dishonesty. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[14]**

An attorney's concealment of material facts is just as misleading as explicit false statements and constitutes misconduct warranting discipline. Where respondent had superior expertise regarding statutory fee limits in medical negligence cases, respondent had duty both to court and client to disclose material fact that such statutory limit might apply in particular case, even if respondent thought he had reasonable grounds to distinguish case from ambit of statute. Respondent's grossly negligent failure to disclose such material fact violated his duties to respect courts, not to commit acts of dishonesty or moral turpitude, and not to mislead judges by artifice or false statements. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[15]**

Disbelief of a respondent's testimony does not create evidence to the contrary. Where respondent allegedly misrepresented to insurer that respondent's personal bank account was a client trust account, but only evidence to rebut respondent's testimony to contrary was notation in insurer's records, presence of such notation was not sufficient to establish that it resulted from misrepresentation by respondent, even where hearing judge found respondent not credible. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[2]**

Where client gave written authorization to respondent to apply portion of client's net settlement proceeds to outstanding legal fees client owed respondent on prior case, respondent was not required to prove existence of prior case to establish entitlement to funds applied to fees. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[3]**

Fact that attorney obtained loan from client improperly, in violation of rule governing business transactions with clients, did not automatically convert attorney's acquisition of loan funds into misappropriation, and did not invalidate underlying loan transaction. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[11]**

Attorney's failure to repay loan from client did not constitute theft, but did aggravate harm already suffered by client. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[12]**

Where respondent, as attorney and close family member of client, exploited superior knowledge and position of trust to detriment of vulnerable client in obtaining loan from client with grossly unfair provisions, attorney's overreaching constituted act of moral turpitude. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[13]**

Dishonest acts by an attorney are grounds for suspension or disbarment even if no harm results. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[4]**

Statute prohibiting attorneys from engaging in acts of moral turpitude applies to misrepresentation and concealment of material facts. An attorney has a duty under statute and ethics rule never to seek to mislead a judge and acting otherwise constitutes moral turpitude and warrants discipline. Thus, respondent's intentional, material

misrepresentation to a settlement conference judge was an act of moral turpitude. Nevertheless, where same misconduct underlay both finding of moral turpitude and findings of violation of statute and rule prohibiting misleading courts, misconduct was treated as single violation. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[5]**

An attorney's disobedience of a court order involves moral turpitude for disciplinary purposes only if the attorney acted in either objective or subjective bad faith. Review department declined to find respondent culpable of moral turpitude for failure to appear as ordered at settlement conference, where such culpability was argued for first time on review, notice to show cause did not allege that failure to appear was in bad faith, and hearing judge made no findings regarding respondent's objective or subjective bad faith in failing to obey order to appear. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[6]**

Failing to appear as ordered at settlement conference, and intentionally misleading settlement judge regarding client's death, was serious misconduct which threatened public and undermined its confidence in legal profession. However, considering comparable case law, and in view of respondent's many years of practice prior to misconduct, and lack of proven aggravating factors, appropriate discipline was one-year stayed suspension and two years probation with no actual suspension, rather than two-year stayed suspension with two years probation and thirty days actual suspension. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[15]**

Acts of moral turpitude are those done contrary to honesty and good morals and are a cause for discipline whether or not they are committed in the practice of law. Even if individual acts do not involve moral turpitude, a pattern of misconduct may amount to moral turpitude. Where respondent repeatedly misstated facts and failed to reveal prior adverse rulings to trial and appellate courts, failed to follow court rules, and flouted the authority of the courts, such serious, habitual abuse of the judicial system constituted moral turpitude. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[5]**

Where respondent seriously abused the judicial system for a dozen years despite heavy sanctions, showed no remorse, and refused to mend his ways, no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession. Because of respondent's total lack of repentance, a lengthy suspension coupled with probation terms was inappropriate; there was a great danger that respondent would fail to comply with any probation terms imposed. Respondent's repeated acts of moral turpitude demonstrated that he was no longer worthy of membership in the bar. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[14]**

Where hearing judge found that respondent discussed borrowing client's entrusted funds with client, but intentionally did so in vague terms, and that client's consent to respondent's use of funds was not knowing or intelligent, and review department concluded that at most, client had consented to some use of funds to be agreed upon in future, respondent had neither reasonable nor honest belief in right to use client's funds, and respondent's misappropriation of such funds involved moral turpitude. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[1]**

Attorney disciplinary proceedings are not decided on principles of contract law, but where, due to vagueness of terms of purported agreement allowing attorney to use client's funds, contract law principles would not permit court to find any binding contract, such purported agreement could not provide defense to charges of professional misconduct. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[2]**

Where respondent had good faith but unreasonable belief that he had permission from clients' medical provider to use medical lien funds indefinitely, record did not establish that respondent misappropriated such funds, but due to respondent's abdication of his duty to supervise personal injury cases and reckless disregard of trust account obligations, respondent's mishandling of trust funds amounted to violation of statute providing that acts of moral turpitude are grounds for discipline. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[1]**

Where respondent's failure to supervise his personal injury practice and fulfill trust fund responsibilities was so remiss as to be reckless, and his mismanagement of his trust account included repeated failure to provide competent legal services by promptly paying medical liens, respondent violated rule regarding reckless or repeated failure to perform competently. However, where misconduct forming basis for such violation also underlay charge

of moral turpitude supporting identical or greater discipline, review department gave violation of competence rule no additional weight in determining discipline. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[2]**

Where respondent's mishandling of trust funds was not intentional, but respondent abdicated responsibility to supervise personal injury cases and recklessly disregarded trust account obligations, thereby committing acts of moral turpitude; where respondent also repeatedly failed to provide legal services competently and did not notify a client of receipt of a settlement; and where record did not show that problems resulting from respondent's disregard of his trust account obligations had ended or that respondent had established sound office management plan, appropriate discipline included three years probation with trust account audit and law office management requirements, three years stayed suspension, and actual suspension for eighteen months and until restitution was completed. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[15]**

Review department's review of record is independent, and it may draw its own conclusions from record whether or not a party has requested it to do so. Where hearing judge's conclusion that respondent had committed act of moral turpitude was difficult to reconcile with judge's conclusion as to appropriate discipline, it was appropriate for review department to give particular scrutiny to culpability conclusion as well as degree of discipline, even though respondent had not requested review of moral turpitude conclusion. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[8]**

Where respondent did not intend to deliberately defy a court order and did not have any dishonest or wrongful intent, and where respondent's improper conduct was based on beliefs and understandings which, although not only mistaken but also objectively unreasonable, were honestly held, respondent did not commit acts involving moral turpitude, dishonesty or corruption. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[9]**

Where respondent, knowing that his client had stopped paying child support and intended to move with the express purpose of avoiding complying with a child support order, provided the client with affirmative help in moving, these facts demonstrated that respondent acted in conscious disregard of his obligation to uphold the law, and his misconduct therefore involved moral turpitude despite his lack of specific intent to help the client avoid the support order. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[6]**

Due to difference in applicable standards of proof, a civil court finding is not binding on the State Bar Court for purposes of discipline. Where, upon evidence presented to civil court plus additional testimony, hearing judge concluded, contrary to civil court's decision, that respondent's loan to a client was not a sham transaction, then, resolving all reasonable doubts in respondent's favor, it was appropriate to dismiss charges that the loan transaction violated statutory duties to counsel only legal or just actions and to employ only truthful means of maintaining clients' causes; constituted act of moral turpitude; and violated rule against advising violations of law. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[1]**

Where respondent filed a foreclosure suit in good faith against persons whom he was representing in another lawsuit, his violation of his fiduciary duties under the rule governing adverse interests to clients did not constitute a per se violation of the statute regarding acts of moral turpitude or dishonesty by attorneys. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[6]**

Where respondents made a shared decision to operate a distant branch office using non-lawyer independent contractors paid in cash to sign up clients, respondents committed acts of moral turpitude by violating the client solicitation rules and conspiring to violate such rules; their involvement in repeated client solicitation constituted "corruption" within the meaning of the moral turpitude statute. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[13]**

Unlike the statute regarding violations of an attorney's oath and duties, which has been construed only to state a sanction and not to proscribe conduct, the statute regarding conduct by attorneys which involves moral turpitude, corruption or dishonesty has been construed so as to permit violations thereof to be charged and proved. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[4]**

Where, after receiving medical payments advanced by his personal injury client's first-party insurer, respondent misappropriated the funds; failed to apprise his client that the first-party insurer was subrogated to the client's recovery against the other driver; failed to ensure that the first-party insurer was reimbursed from the

ultimate settlement; failed to deduct the subrogation amount from the settlement in calculating his fee, and failed to refund the resulting excess fee for three years after the client demanded the refund, respondent violated the statute prohibiting moral turpitude and dishonesty and the rule regarding prompt payment of client funds on demand. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[10]**

Where an attorney failed to advise a client, the insurer-defendant or the superior court in which the client's lawsuit was filed of his disciplinary suspension, but filed an affidavit with the Supreme Court declaring under penalty of perjury that he had complied with the rule requiring him to notify all clients, courts, and opposing parties of his suspension, his false affidavit constituted an act of moral turpitude and dishonesty, and his failure to comply with the rule violated the statute requiring respect for courts and judges. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[2]**

Where respondent represented to a judge that he had failed to attend an earlier hearing because he had been in another city appearing before another judge in a family law matter, when in fact he had had no court appearance but had been in the other courthouse on other errands, his statement was materially dishonest, because the proffered excuse was intended to carry more weight than the truth would have. Respondent's deception therefore constituted an act of dishonesty in violation of the moral turpitude statute, as well as a violation of the statute and rule of professional conduct prohibiting attorneys from misleading judicial officers. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[2]**

Where respondent honestly believed that he was entitled to retain portions of his clients' cost advances, even though this belief was unreasonable and unsubstantiated, respondent's retention of the funds did not necessarily warrant a conclusion that his conduct was dishonest, especially where respondent's gross negligence in handling the same funds had already been held to violate the moral turpitude statute. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[5]**

Where hearing judge concluded that respondent misappropriated a portion of client's cost advance under trust account rule, and violated moral turpitude statute by gross negligence in supervising client trust funds, it was unnecessary for review department to amend hearing judge's conclusions to establish that those sections were violated, and review department declined to adopt additional conclusion that respondent acted dishonestly in misappropriating client's funds. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[6]**

Where respondent had been ordered to give notice of prior disciplinary suspension and to file affidavit of compliance with such order, and respondent failed to give timely notice and failed to notify opposing counsel in three matters, and respondent's affidavit of compliance was filed late and incorrectly stated that all courts and opposing counsel had been notified of his suspension, respondent's gross neglect and lack of diligence in complying with the order to give notice violated the statute requiring respect for courts, but did not constitute an intentional misrepresentation of facts to the Supreme Court in violation of statute prohibiting acts of moral turpitude and dishonesty. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[9]**

Where respondent, oblivious to the Rules of Professional Conduct, intentionally created a personal injury practice in conjunction with a non-lawyer without adequate controls, and inadequately supervised the non-lawyer's conduct of the practice over a two-year period, acting with gross neglect and in a manner bordering on extreme recklessness, respondent's conduct violated the statute prohibiting acts of moral turpitude. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[4]**

In order for an attorney's misrepresentation to be a violation of the statute prohibiting the commission of any act involving moral turpitude, dishonesty or corruption, the misrepresentation must be made with an intent to mislead. Negligence in making a representation does not constitute a violation of the statute. Where no clear and convincing evidence established any misrepresentation or deception, attorney's statements did not involve moral turpitude and also did not violate statute requiring attorneys only to use means consistent with truth and not to deceive judicial officers. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[13]**

A disciplinary proceeding is seldom the proper forum for attorney fee disputes. In a matter arising from a dispute between attorneys, where respondent did not mishandle any sum that could be considered trust funds and respondent's instruction to staff to endorse the other attorney's name to settlement drafts was not dishonest,

corrupt, or reflective of bad moral character, the review department affirmed the dismissal of the proceeding. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[1]**

Although the term "moral turpitude" has been defined very broadly, the Supreme Court has always required a certain level of intent, guilty knowledge, wilfulness, or, at the very least, gross negligence before labelling an attorney's conduct moral turpitude. Where respondent reasonably and in good faith believed that he had the authority to endorse his clients' former attorney's name to settlement drafts, and there was no evidence that respondent misused funds intended for clients or medical providers and no evidence of fraud, hearing judge correctly concluded that there was no clear and convincing evidence of moral turpitude. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[3]**

Where respondent had retained personal property given to respondent by client, claiming it was for legal fees owed, but respondent had no writing to support such claim and hearing judge rejected it based on client's testimony, respondent's retention of property was not reasonable or honest, and was in the nature of conversion, in violation of statute prohibiting acts of moral turpitude or dishonesty. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[8]**

The statute regarding acts of moral turpitude or dishonesty prohibits any dishonest act by an attorney, whether or not committed while acting as an attorney. Where respondent falsely stated to client's prospective lessor that respondent was holding client's lease deposit in trust, respondent committed an act in violation of such statute. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[6]**

A conclusion that an attorney engaged in acts of moral turpitude does not necessarily follow from a finding that the attorney misappropriated client funds. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[9]**

An attorney's appropriation of client funds based on an unreasonable but honest belief of entitlement to the funds constitutes only a violation of the rule of professional conduct regarding client trust funds, and not an act of moral turpitude or dishonesty. However, where respondent could not have held an honest belief that he was entitled to some of the money he withdrew from a client trust account, his misappropriation of those funds not only violated the rule governing client trust funds, but also involved moral turpitude. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[10]**

An attorney's gross carelessness and negligence constitute violations of the attorney's oath to faithfully discharge duties to clients to the best of the attorney's knowledge and ability, and involve moral turpitude in that they breach the fiduciary relationship attorneys owe to clients. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[12]**

An attorney's gross negligence in handling his clients' funds, which resulted in the issuance of several trust account checks that were not honored due to insufficient funds, involved moral turpitude even though there was no evidence of intentional wrongdoing or dishonest motive. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[13]**

Even though notice to show cause did not expressly charge violation of rule requiring client funds to be held in trust, respondent could be found culpable of violating such rule by misappropriating client funds, where such charge was clearly encompassed within allegations in support of moral turpitude charge. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[15]**

Where, as justification for taking client trust funds, respondent asserted that his written fee agreements had been modified to provide for a large contingent fee in one matter and a large flat fee in another matter, but did not produce any documents to support this contention, and offered varying characterizations of the alleged change in the fee arrangements, and, in contrast, the client testified credibly that he had never consented to a change in the fee agreements and had never been billed for additional fees, respondent failed to establish entitlement to the claimed fees. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[2]**

Restitution of client funds taken by an attorney is no defense to disciplinary charges of misappropriation. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[3]**

Where respondent was suspended from practice as a result of disciplinary charges, and by omitting this fact from his application for a position as a judicial arbitrator, created the false impression that he was currently able to practice law, respondent's gross negligence in failing to ascertain that active membership in the State Bar was a requirement of the position, and his improper holding himself out as entitled to practice law, constituted an act involving moral turpitude. A suspended attorney cannot expressly or impliedly create or leave undisturbed the false impression that the attorney has the ability to practice law. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[3]**

Where respondent, who had been previously suspended from practice, described his legal career to a prospective employer in such a way as to indicate that respondent's practice of law had been uninterrupted, it was sufficient to establish culpability of misrepresentation to show that respondent knowingly presented a statement which itself tended to mislead. It was not material that the employer did not rely on the application or was not in fact deceived. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[6]**

Instructions on a job application asking for a statement of those experiences which met the requirements of the position sought did not entitle respondent to misrepresent his employment history by selective omissions or misrepresentations calculated to imply that there had been no hiatus in his ability to practice law. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[7]**

Misrepresentations are no less egregious when made to a public agency than when made to an individual client, and warrant discipline of no less magnitude. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[9]**

Where an attorney's prior discipline involved culpability of moral turpitude for attempted receipt of stolen property, and the attorney's subsequent misconduct involved moral turpitude in misleading applications for employment, there was no pattern or common thread linking the former misconduct with the later case. However, the attorney's multiple breaches of ethical duties demonstrated that the attorney lacked a true understanding of professional responsibilities. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[11]**

Departure from the disciplinary standards was not justified based on the novelty of the issues raised in the matter, when the misconduct involved was respondent's misrepresentation of his status as an attorney, an area in which the governing rules have been clearly established for many years. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[12]**

Attorneys placed on disciplinary suspension must be careful not to hold themselves out as being able to practice when they are not and must not mislead employers regarding their prior status. An attorney's statements in a resume or job interview should be as trustworthy as that professional's representation to a court or client. Where respondent did not seem to understand the seriousness of his ethical duties in this regard, and had a prior record of discipline, a period of actual suspension was necessary for the protection of the public. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[13]**

Misconduct committed by attorney who was grossly negligent, though not dishonest, in handling a significant sum of client trust funds in one matter, and who failed to communicate adequately with a client in another matter, warranted 90 days rather than 60 days of actual suspension as condition of 3-year probation accompanying 3-year stayed suspension. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[1]**

Where the evidence concerning an attorney's authority to apply client trust funds to attorney's fees consisted largely of conflicting testimony, the hearing judge's finding that the attorney did not have the authority to use the funds, coupled with the documentary evidence supporting culpability, constituted clear and convincing evidence supporting the judge's conclusion that the attorney improperly used and misappropriated client trust funds. Because the attorney's trust account balance repeatedly dropped below the necessary amount over a period of many months, and the attorney did not have an adequate explanation for the inadequate trust account balance, the attorney's misconduct, though not involving intentional dishonesty, constituted gross negligence amounting to moral turpitude. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[2]**

Where respondent inadequately supervised her trust accounts over a period of several months and carelessly wrote a check which reduced the balance in a trust account slightly below the necessary amount, respondent's conduct did not amount to gross negligence, and thus did not constitute moral turpitude, but respondent did violate the rule requiring client funds to be held in trust. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[5]**

An allegation of an act of moral turpitude or dishonesty encompasses the lesser allegation of a violation of the trust account rules, where the pleading clearly raises the issue of the misuse of trust funds. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[6]**

Even though an attorney's individual acts did not involve moral turpitude, the attorney's pattern of misconduct amounted to moral turpitude; habitual disregard of client interests, even where grossly negligent or careless rather than wilful or dishonest, constitutes moral turpitude and justifies disbarment. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[1]**

Where the stipulation of the parties did not preclude a conclusion that respondent's misappropriations were acts of moral turpitude, and given the number and similarity of the matters in which respondent admitted to misappropriating trust funds, the burden shifted to respondent to rebut the conclusion that moral turpitude was involved. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[4]**

Where respondent failed to catch an isolated mistake in the billing of a single matter, but had an accounting system in place which was otherwise apparently working extremely well, and there was evidence that respondent had a long history of accurate and careful handling of client funds, respondent's isolated mistake in the billing of the single matter did not amount to gross negligence constituting moral turpitude. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[6]**

Although attorneys cannot be held responsible for every detail of office operations, fiduciary violations resulting from serious and inexcusable lapses in office procedure may be deemed wilful for disciplinary purposes even in the absence of deliberate wrongdoing. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[7]**

The analysis of gross negligence in cases decided before the adoption of the Standards for Attorney Sanctions for Professional Misconduct is not affected by the adoption of the standards, but the discipline imposed now takes into account guidelines provided by the standards, although they are not rigidly applied. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[8]**

Section 6106, in contrast to sections 6068(a) and 6103, does state a chargeable offense for which discipline may be imposed. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[10]**

Under the case law, the repeated dipping of a respondent's trust account below the required balance constitutes a sufficient basis for a finding of moral turpitude. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[1]**

An attorney's failure to return unspent costs advanced by the client did not violate the rule requiring prompt payment of client funds upon request, where there was no evidence that the client had requested the return of the funds. Nor did the attorney's inaction alone, in failing to return the funds for several years, support a finding that the attorney had misappropriated the funds or committed acts of moral turpitude. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[18]**

Providing a trust account check to pay for a personal expense, and then failing to satisfy the underlying obligation when the check was dishonored, constituted an act of moral turpitude. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[19]**

Because the retention of unearned advanced fees is a violation of an express duty under the Rules of Professional Conduct, it would be duplicative to find the same conduct to constitute an act of moral turpitude, and such a finding is not supported by the case law. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[20]**

Where an attorney representing a bankrupt client had possession of the proceeds of a court-ordered sale of estate assets, did not place the funds in a trust account, did not pay them as directed by the bankruptcy court, and did not otherwise account for the funds, the evidence supported a finding that the attorney misappropriated the funds, violated the rule requiring prompt payment of client funds on request, and committed an act of moral turpitude. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[21]**

While failure to keep a promise of future action alone is not ordinarily proof of dishonesty, where respondent promised to deliver client funds into court custody and soon thereafter misappropriated the funds, the review department upheld the hearing department's finding that respondent's actions were intended to mislead the client and therefore constituted deceitful conduct. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[22]**

In an attorney discipline proceeding, all reasonable doubts must be weighed in favor of the attorney. Where the evidence presented by documents raised an inference of irregularity concerning the genuineness of a bankruptcy court order, but there was no evidence from the bankruptcy court concerning its practices nor any evaluation of the genuineness of the purported order itself, there was not clear and convincing evidence that the respondent had fabricated the order. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[23]**

A finding that the amount respondent withdrew from a client trust account was not an earned fee, even though the client did not dispute respondent's testimony that it was an earned fee, was consistent with the evidence that respondent had not performed any legal services during the period of time for which he withdrew the funds; that what work was done by the attorney occurred after the trust funds had been withdrawn; that no value had been placed on the attorney's services during that time, and that the attorney had otherwise been inattentive to the client's case. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[3]**

An attorney's withdrawal of client trust funds based on a reasonable or unreasonable but honest belief of entitlement to fees may constitute only a violation of the rule of professional conduct regarding client trust funds, and not an act of moral turpitude or dishonesty. However, where an attorney could not have held an honest belief that he was entitled to most of the money he withdrew from a client trust account, his misappropriation of the funds not only violated the rule governing client trust funds, but also involved moral turpitude and dishonesty. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[4]**

Misappropriation of client funds is a particularly serious ethical violation, which breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the legal profession. Misappropriation generally warrants disbarment of the attorney involved unless clearly extenuating circumstances are present. In assessing the appropriate discipline to recommend for a respondent who had misappropriated a large amount of client funds and also abandoned the client, the review department focused on the misappropriation, the most serious aspect of the misconduct. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[6]**

Respondents have a right to reasonable notice of the charges against them and they may not be disciplined for a violation not alleged either in the original or a properly amended notice to show cause. Where the notice to show cause charged respondent with dishonest acts with regard to non-payment of tax monies withheld from an employee's wages, respondent could not, based on that notice, be held culpable of improperly concealing personal money from the tax authorities by putting it in a client trust account. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[2]**

Although it was improper to find respondent culpable of misconduct on the basis of his freely given evidence that he concealed funds from the Franchise Tax Board, because such conduct fell outside the proper scope of the charges, such evidence could be used to form the basis of an aggravating circumstance. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[13]**

Evidence that respondent practiced law while on suspension by making one court appearance prior to paying dues and being reinstated, did not establish culpability of moral turpitude, dishonesty or corruption, where hearing judge found credible respondent's statement during said court appearance that respondent believed his dues had been paid. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[5]**

The statute providing that any act of moral turpitude by an attorney is cause for discipline applies regardless of whether the act was committed in the practice of law. Hence, a suspended attorney's duty under this statute does not contradict the attorney's duty to cease practicing while suspended. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[15]**

An act of concealment can be dishonest and involve moral turpitude that is subject to professional discipline. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[16]**

The use of a presigned verification, attesting to the truth of facts set forth in a civil complaint, without first consulting with the client to assure that the assertions of fact are true, constitutes an act of moral turpitude. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[18]**

A suspended attorney held himself out to a client as entitled to practice law when he discussed her legal problems with the client, accepted a fee and filed a lawsuit on her behalf. This conduct also involved moral turpitude in that the attorney deceived the client by not advising her that he was not entitled to practice law. An attorney's practice of deceit involves moral turpitude. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[19]**

Where a municipal court order finding an appeal frivolous and awarding sanctions did not explain the basis for such finding or the statutory basis for awarding sanctions, and no additional evidence was introduced to establish that the appeal was substantively without merit, the record did not clearly and convincingly establish for disciplinary purposes that the appeal was frivolous or pursued in bad faith. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[7]**

Where neither party sought review of the dismissal of misrepresentation charges, and the testimony at the hearing was in conflict on the matter, then in light of the weight accorded to credibility findings of the trier of fact and in view of the record as a whole, the review department adopted the hearing department's findings regarding the misrepresentation charge. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[9]**

The commission of any act of dishonesty constitutes a violation of section 6106. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[7]**

Where respondent had asked a witness a question, knowing that the witness would testify falsely, in order to mislead the court, respondent was culpable of deceiving the court and of moral turpitude, but in the absence of evidence of an agreement between respondent and the witness, there was no proof that respondent suborned perjury. A determination of subornation of perjury requires clear and convincing proof of a corrupt agreement between the witness and the respondent for the witness to testify falsely. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[7]**

General charges in a notice to show cause of disbursing trust funds without permission or knowledge of the beneficiary did not give adequate notice of a charge of misappropriation of such funds, without further specification as to the facts giving rise to the accompanying charge of committing acts of moral turpitude. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[8]**

Improper withdrawal of entrusted funds in violation of duty to maintain funds in trust, and of fiduciary duty to opposing party, does not necessarily rise to the level of an act of moral turpitude. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[9]**

In a matter in which respondent prematurely disbursed entrusted funds to repay client for expenses later determined to have been properly reimbursable, and also withdrew funds for attorney's fees but later replaced those funds, the gravamen of the case, for the purpose of assessing the appropriate discipline, was the prolonged deceit perpetuated by respondent on opposing counsel and the courts regarding the unauthorized disbursements. Respondent's extended practice of deceit on courts and counsel made respondent's case far more serious as to discipline than the trust violations. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[10]**

Violations of trust account rules which do not involve a misappropriation found to constitute an act of moral turpitude are not treated, for the purpose of determining appropriate discipline, as misappropriations within the contemplation of standard 2.2(a), Standards for Attorney Sanctions for Professional Misconduct, for which disbarment is the presumed sanction. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[16]**

A justifiable and reasonably certain belief that a check will be paid by the bank despite insufficient funds is a valid defense to a charge of issuing checks drawn against insufficient funds. Where respondent had an oral agreement with a bank officer to pay all his checks automatically, which would not have been terminated without notice to respondent, and where all checks he wrote were honored and no creditor was put at risk, respondent's repeated issuance of insufficient funds checks did not constitute misconduct. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[1]**

Where attorney failed to reveal to clients the real reason for the delay in their receipt of settlement funds, and was grossly negligent in failing to supervise his staff in the handling of client funds and settling of personal injury cases, this misconduct, coupled with misappropriation from the attorney's client trust account due to his failure to maintain a sufficient balance, was an appropriate basis for a finding of moral turpitude. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[2]**

Attorney's reliance on clients' oral authorizations to simulate their endorsements on settlement checks did not constitute a basis to find moral turpitude. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[4]**

An attorney's simulation of a client's endorsement on a check, pursuant to an express power of attorney, without expressly indicating the representational capacity of the signature, does not constitute an attempt to deceive the bank and is not an act of moral turpitude. An attorney may not endorse a client's name to a check without express authority to do so, but the representative capacity of the signature need not be indicated on the check. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[15]**

Moral turpitude is not demonstrated simply by an attorney's failure to notify a client that a medical payment draft has arrived and that the attorney has endorsed it for the client. Although this conduct clearly violates the rule requiring attorneys to notify clients promptly upon receipt of client funds, it does not amount to dishonesty or other misconduct in any way characterizable as moral turpitude. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[17]**

Where a notice to show cause alleged that the respondent attorney had misappropriated funds to his own use and purposes, and charged the attorney with acts of moral turpitude in violation of section 6106, but did not charge the attorney with a breach of the ethical rule concerning the proper handling of client trust funds, and the notice to show cause did not clearly put the attorney on notice of a charge that he had violated the trust funds rule, the attorney therefore could not be found culpable of violating that rule in light of the mandate that the attorney be given adequate notice of all charges and a reasonable opportunity to respond thereto. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[18]**

An attorney's trust account violation, which consisted of unilaterally determining his fee and withdrawing trust funds to satisfy the fee, did not amount to an act of moral turpitude, because there was no evidence the attorney acted dishonestly in his payment to himself of a reduced fee taken in the good faith belief of a claim of right. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[24]**

Possession of client funds in the form of a cashier's check is no defense to a charge of commingling. However, an attorney who held client funds outside his trust account in the form of cashier's checks, notified his client promptly of the receipt of the funds, forwarded them to the client promptly upon demand, and had adequate funds at all times to pay what he owed the client, did not commit misappropriation, violate obligation to deliver client funds promptly upon demand, or commit any act of moral turpitude or dishonesty. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[9]**

Conclusion that respondent was not culpable on charge of violating section 6106 would be inconsistent with Supreme Court precedent where hearing judge made factual findings that respondent lied to clients about status of their claim and wrongfully held himself out during suspension as entitled to practice law. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[6]**

Charging a violation of section 6106 is the basis for imposing discipline for acts of moral turpitude. An attorney cannot be disciplined under section 6106 except based on an explicit determination that the attorney committed an act within its scope. The source of precise definition of such acts is not any specific statutes and rules, but case law and common understanding. The scope of section 6106 includes any act of moral turpitude, dishonesty, or corruption, whether or not violative of any civil or criminal statute. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[8]**

Charge of violating section 6106 put respondent on notice, to which respondent was entitled, that misconduct charged involved moral turpitude, dishonesty or corruption as described by statute and case law. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[9]**

Where hearing judge's finding of aggravation for conduct surrounded by bad faith, dishonesty and concealment reflected same conduct that review department relied on as basis for finding respondent culpable of acts of moral turpitude, finding in aggravation was deleted as duplicative. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[12]**

Where respondent misrepresented his educational background in his resume, these actions were dishonest, and some period of actual suspension was warranted. Where respondent's misconduct extended over a three-year period, and was aggravated by his misrepresentations in discovery responses in the disciplinary proceeding, and where respondent had personal problems but they did not fully explain his misconduct, a 60-day actual suspension, with one year of probation, was appropriate to recognize the seriousness of the misconduct, the mitigating circumstances, and the sanction imposed in previous cases. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[5]**

Although respondent's acts of dishonesty did not occur during the actual practice of law, but rather while respondent was seeking employment as a lawyer, respondent's willingness to use false and misleading means in the employment process was a matter of serious concern. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[6]**

An attorney's deliberate use of dishonesty to further attempts to gain employment, particularly as a lawyer, is very serious. An attorney is not just another job-holder or job-seeker. Attorneys in this state are charged with high duties of honesty and professional responsibility. Any act of dishonesty by an attorney is an act of moral turpitude, and ground for serious professional misconduct, whether or not arising in the course of attorney-client relations; an attorney's dishonesty in seeking to further his or her career is simply inexcusable. An attorney's statements in a resume, job interview or research paper should be as trustworthy as that professional's representation to a court or client. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[13]**

Where hearing referee concluded that respondent did not act dishonestly, but failed to exercise due diligence in learning the true facts before filing a declaration in a civil court, this conclusion was inconsistent with the conclusion that respondent's declaration violated the rule against seeking to mislead a judge by a false statement of fact. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[9]**

In order to find a violation of the rule against misleading courts and judicial officers, the State Bar must show clearly and convincingly that the attorney knowingly presented a false statement intending to mislead the court, and such deceit would, in almost every case, be an act of dishonesty in violation of the statute authorizing discipline for acts of moral turpitude, corruption and dishonesty. When an attorney makes a false or misleading statement to a court, that act involves moral turpitude. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[11]**

The knowing issuance of a check drawn on insufficient funds is a proper basis for finding an act of moral turpitude. Where such check was immediately negotiable on its face, respondent was culpable regardless of whether or not respondent orally instructed recipient to delay cashing it. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[11]**

In finding respondent culpable of misappropriating trust funds and of knowingly issuing a check drawn on insufficient funds, the referee's statement that respondent's acts constituted crimes involving moral turpitude was improper since the criminal statutes were not charged in the notice to show cause. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[16]**

Appearing in court while suspended or enrolled inactive does not inherently involve moral turpitude; nor does it necessarily involve deception of the court, if the attorney is unaware of his or her inactive status. Evidence that an attorney made a single court appearance while ignorant of his or her inactive status is insufficient to establish clearly and convincingly that the attorney acted with moral turpitude or intent to deceive the court. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[22]**

Respondent's conduct in placing trust funds in his personal account, using such funds, and delaying payment thereof to his clients' medical lienholder for a year and a half after demand for payment constituted commingling and misappropriation and involved moral turpitude. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[5]**

Where hearing department found unpersuasive client's testimony that he did not consent to respondent's application of client trust funds to respondent's outstanding legal fees, State Bar did not demonstrate trust account irregularities or misappropriation by clear and convincing evidence. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[9]**

Unauthorized practice of law may or may not constitute moral turpitude. It did not constitute moral turpitude for attorney to continue to render, and accept fees for, legal services which, at client's insistence and with client's knowledge and consent, were rendered during attorney's suspension from practice. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[10]**

Supreme Court has defined moral turpitude as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, or an act contrary to honesty and good morals. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[1]**

Where respondent's involvement in capping was pervasive, and his law practice was built entirely on illegal payments to third parties for cases, respondent's conduct clearly involved corruption, and thus violated statute precluding acts of moral turpitude, dishonesty or corruption, even though no deceit was involved. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[2]**

Absent additional evidence, attorney could not be found culpable of committing act of moral turpitude by misappropriating client trust funds, where evidence showed that attorney had transferred funds to successor counsel, and State Bar had stipulated that successor counsel had actually misappropriated funds. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[4]**

By acts of dishonesty in deceiving a corporation in a business transaction, attorneys violated the statute which prohibits attorneys from committing acts of moral turpitude whether committed in the capacity of an attorney or not, but did not violate the statute prohibiting attorneys from making misrepresentations to a tribunal in seeking to further a client's interests. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[4]**

Where all of attorneys' acts of dishonesty were encompassed in charge of committing acts of moral turpitude, there would be no added value in straining to find in the same conduct a violation of another statute prohibiting misrepresentations to tribunals. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[5]**

Honesty is one of the most fundamental rules of ethics for attorneys. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[22]**

Respondent's repeated misrepresentations to his client's husband were reprehensible conduct for an attorney and constituted dishonesty and moral turpitude. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[3]**

Although respondent's misappropriation of client funds was not intentional, and resulted from poor management and misuse of trust account, respondent's gross carelessness, at best, in management of client's entrusted funds constituted moral turpitude, as such conduct breached his fiduciary duty to his client. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[8]**

Whether an attorney's misconduct involved moral turpitude is a question of law ultimately decided by the Supreme Court. The test is the same whether or not the act was a criminal offense. Where respondent failed to pay payroll taxes due to financial difficulty, such conduct did not constitute moral turpitude, because Supreme Court did not find moral turpitude in case involving similar but more egregious misconduct. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[9]**

Respondent's admitted improper use of trust account as an operating account into which he deposited personal funds in order to avoid tax levy which he anticipated, involved concealment and dishonesty, and thus constituted moral turpitude. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[11]**

Records of respondent's trust account, showing that balance dropped to a negative sum without payment having been made to clients' treating physician, warranted the conclusion that respondent misappropriated trust funds. *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[3]**

Attorney's misrepresentation to clients that attorney had paid all of clients' medical bills, when attorney had not done so, constituted act of moral turpitude. *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[4]**

Attorney's repeated acts of deceit to clients in falsely representing that attorney had filed suit on clients' claims constituted acts of moral turpitude. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[1]**

Attorney's repeated, protracted deceit of clients, which had effect of forestalling them from discovering true status of their matters, was perhaps even more serious than harm caused by attorney's inattention to client duties. An attorney's practice of deceit is inimical to the high ethical standards of honesty and integrity required of members of the legal profession and to the promotion of confidence in the trustworthiness of members of the profession. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[4]**

Where notice to show cause did not charge that respondent misrepresented to his clients the status of their claims, and respondent defaulted and did not appear at hearing, the review department declined to find, based on client's testimony at hearing, that respondent had committed act of dishonesty by making such misrepresentation. The review department is most reluctant to consider, even for the purpose of aggravation, misconduct which could have been, but was not charged in notice to show cause, especially where respondent is in default and has no opportunity to learn of or rebut matters arising during hearing. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[3]**

Respondent's false representation to his clients that he was a partner in a law firm and respondent's conversion of advanced attorney's fees and costs without performing any services were acts of dishonesty. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[8]**

The continued practice of issuing numerous checks which the attorney knows will not be honored violates the fundamental rule of ethics—that of common honesty—without which the profession is worse than valueless in the place it holds in the administration of justice. An attorney's issuance of multiple bad checks has consistently been found to be an act of moral turpitude, even when the checks were written on personal accounts for non-legal expenses. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[4]**

In disciplinary cases, the Supreme Court has considered an attorney's acts of gross neglect in representing clients' interests to involve moral turpitude. Reinstatement petitioner's lack of care as to his own duties regarding disclosure of litigation on reinstatement petition, while not requiring strong label of moral turpitude, fell short of highest standard of fitness which petitioner must demonstrate for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[10]**

An attorney's misappropriations of funds from his client trust account and other client funds constituted acts of dishonesty or moral turpitude. Misappropriation of funds is a serious offense involving moral turpitude. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[6]**

Writing checks when one knows or should know that there are not sufficient funds to cover them manifests a disregard for ethics and fundamental honesty, at least if such conduct occurs repeatedly. Writing bad checks may, by itself under some circumstances, constitute moral turpitude. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[11]**

221.10 Found

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

221.11 Deliberate dishonesty/fraud

Where respondent intentionally filed bankruptcy petitions on behalf of sham corporations for the purpose of delaying foreclosures, and such petitions contained false information and material omissions, respondent's scheme to defraud creditors by abusing the bankruptcy system and misleading the court constituted moral turpitude. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[3]**

Where respondent was found culpable of moral turpitude for filing bankruptcy petitions containing misrepresentations and material omissions, charge that respondent violated section 6068(d) based on same misconduct was duplicative, and was therefore dismissed. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[4]**

Attorney's concealment of his suspension or creation of false impression of present ability to practice when consulted by a former client seeking representation is an act of moral turpitude in violation of Business and Professions Code section 6106. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308. **[4]**

Where respondent failed to inform client that her case had been dismissed due to respondent's fault; concealed facts from client regarding his ongoing neglect of her case; and falsely reassured her after she contacted him, Review Department reversed hearing judge and found respondent culpable of moral turpitude based on misrepresentations to client. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 **[5]**

IIn the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273.

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

Where respondent submitted invoices and binders of memoranda to the State Bar which were fraudulent and created after the fact in an attempt to justify respondent's fees, such conduct constitutes moral turpitude. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[6]**

In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

Review department recommended five years' stayed suspension and three years' actual suspension where, in a single client matter, (1) respondent committed multiple violations of Rules of Professional Conduct, rule 3-300; (2) respondent engaged in acts involving moral turpitude by concealing important information about a business transaction from his client and by overreaching his client; (3) respondent failed to report a civil fraud judgment to the State Bar; and (4) there were several factors in aggravation and two factors in mitigation, including respondent's long years of practice without prior discipline.*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.**[3 a-g]**

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Kittrell (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195.

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.157.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Elliott (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

221.12 Gross negligence

The requirement that attorneys submit an accurate MCLE compliance affirmation is essential to maintaining public confidence in the legal profession. Attorneys must accurately report compliance because the MCLE program is based on an honor system. Respondent was grossly negligent, and thereby culpable of an act of moral turpitude, when she affirmed her MCLE compliance without making any effort to confirm that she completed the required education and had the records to prove it. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330 **[1 a, b]**

Where respondent allowed his staff to access his client trust account (CTA) records without supervision, failed to regularly monitor CTA, and took no action to protect his clients or his CTA for lengthy period after learning that his office manager was under investigation for fraud, and balance in respondent's CTA dipped below amount held in trust for client, respondent was culpable of moral turpitude based on gross negligence. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 **[1 a,b]**

The Rules of Professional Conduct require an attorney to manage his trust account and maintain a trust account recordkeeping system. The failure to manage the client trust account amounts to grossly negligent conduct constituting moral turpitude. *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239 **[1]**

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

Respondent was grossly negligent and culpable of moral turpitude when he jumped to the unreasonable conclusion without sufficient supporting evidence that his clients left the county. Additionally, respondent could have used a tailored affidavit explaining why his clients did not sign the verification rather than using a standard, pre-printed form provided by the Judicial Council. *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151 **[2 a, b]**

Where respondent's slipshod procedures allowed a substantial sum of entrusted funds to be misappropriated without respondent's knowledge, such misappropriation resulted from respondent's gross negligence and constitutes moral turpitude. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[3]**

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

Where respondent elicited an incriminating statement from an individual who was incarcerated and awaiting the appeal of his confession to the police and where respondent was an experienced criminal attorney who knew

that the incriminating statement could be used as evidence at re–trial, respondent's overreaching was the height of irresponsibility and constituted at least gross neglect establishing a basis for a finding of moral turpitude. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[4]**

Respondent was culpable of moral turpitude when he made misleading statements in order to induce a witness to sign a confession. Respondent was, at best, grossly negligent in not fully explaining to a witness the consequences of his cooperation. A finding of gross negligence in creating a false impression is sufficient for violation of section 6106. Acts of moral turpitude include concealment as well as affirmative misrepresentations and no distinction can be drawn among concealment, half–truth, and false statement of fact. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[6]**

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403.

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[1]**

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

221.19 Other factual basis

Respondent was culpable of moral turpitude for noncompliance with court orders and serious and habitual abuse of the judicial system where he acted with "unclean hands" in suing his neighbors without attempting informal resolution, sought to use the judicial system as a weapon to inflict onerous litigation costs on neighbors for his own benefit, abused the judicial system in bringing at least 16 meritless appeals, and acted in bad faith for years by disregarding a vexatious litigant pre-filing order and pursuing his property interests in the guise of being plaintiff's counsel rather than the plaintiff. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[3]**

Where respondent's standard retainer agreement gave him unqualified authority to settle clients' cases, and respondent negotiated settlements and released clients' claims without their knowledge or consent, respondent breached his fiduciary duty by overreaching. Accordingly, Review Department reversed hearing judge's finding that respondent was not culpable of moral turpitude. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 **[3]**

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

Sending numerous, threatening voicemail messages is intentionally harassing and constitutes moral turpitude. Such conduct is not protected by the First Amendment of the U.S. Constitution. *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 **[2 a, b]**

Where letter drafted on behalf of respondent threatened to disclose client confidences, impute criminal conduct, and cause financial harm, respondent's failure to retract the letter constituted serious overreaching that compromised respondent's fiduciary duties to his client and involved moral turpitude. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[4 a-c]**

Where respondent believed a client was mentally unstable and billed the client in excess of the amount authorized in the retainer agreement, billed in excess of a subsequently negotiated oral fee agreement and also billed for unnecessary research, respondent's exploitation of the vulnerable client was overreaching and constituted an act of moral turpitude. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[9]**

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

Where respondent was aware that a witness's attorneys objected to his cooperation with respondent, where respondent circumvented their objections and ultimately convinced the witness to reject his attorneys' advice, and where there is no evidence that the witness gave a knowing and intelligent waiver of his right to counsel, respondent committed misconduct involving moral turpitude by allowing the witness to act as his own counsel. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[5]**

Review department recommended five years' stayed suspension and three years' actual suspension where, in a single client matter, (1) respondent committed multiple violations of Rules of Professional Conduct, rule 3-300; (2) respondent engaged in acts involving moral turpitude by concealing important information about a business transaction from his client and by overreaching his client; (3) respondent failed to report a civil fraud judgment to the State Bar; and (4) there were several factors in aggravation and two factors in mitigation, including respondent's long years of practice without prior discipline. *In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615. **[3 a-g]**

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

221.50 Not Found

Respondent was not culpable of moral turpitude based on a "serious, habitual abuse of the judicial system," even though he filed frivolous appeals, recycled previously rejected arguments, and resubmitted essentially the same complaint as "amended," because he did not have a personal interest in the actions and acted at the direction of his clients. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[5]**

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

Where record establishes that the jurors steadfastly remained divided into two groups based on their evaluation of the evidence and it was only the respondent who espoused a verdict for reasons of personal convenience, respondent was not culpable of the charge of moral turpitude for having sought to corrupt other jurors by unduly influencing them. *In the Matter of Fahy* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141 **[4]**

In the Matter of Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746.

In the Matter of Scott (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the context of an emotional and adversarial lawsuit, propounding discovery that falsely intimated that respondent and the plaintiff, respondent's former client, had a sexual relationship and that the plaintiff was sexually promiscuous is not clear and convincing evidence of acts of moral turpitude in violation of Business and Professions Code section 6106. Further, it is unclear that Business and Professions Code section 6068, subdivision (f), which prohibits the advancing of prejudicial facts to the honor or reputation of a party or witness, proscribes the use of such intimations. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[4 a - b]**

Because the plaintiff in a civil lawsuit, who was respondent's former client, introduced into evidence respondent's offensive discovery requests, it is presumed, in the absence of any jury instruction to the contrary, that the jury relied on them in finding by clear and convincing evidence that respondent acted with oppression or malice when he harassed or intentionally inflicted emotional harm on the plaintiff. Therefore, to find a Business and Professions Code section 6106 moral turpitude violation on this basis would be duplicative of the moral turpitude violations already found based on respondent's harassment and intentional infliction of emotional distress on the plaintiff. For the same reasons, it would also be duplicative to use the offensive discovery to find culpability of Business and Professions Code section 6068, subdivision (f). It is generally inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[5 a - b]**

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

In the Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Hazelkorn (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602.

In the Matter of Respondent D (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

222.10 Section 6106.1 (advocating overthrow of government)

222.11 Found

222.15 Not Found

Note: For section 6106.2, see topic number 223.00 below.

222.20 Section 6106.3 (violation of Civil Code § 2944.6 or 2944.7 re mortgage loan modification)

Where record revealed that attorney complied with statute governing loan modification services by providing client with required statement that third party negotiator was not necessary, Review Department disagreed with finding that attorney violated Business and Professions Code 6106.3, and dismissed charge. *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. **[2]**

Attorney violated section Business and Professions Code, section 6106.3 in eight client matters by charging each client for preliminary financial analysis before all mortgage loan modification services were complete. Civil Code section 2944.7, subdivision (a) plainly prohibits any person, including a legal professional, from collecting any fee related to a loan modification until each and every service contracted for has been completed. Attorney was not allowed to charge unbundled fees for individual financial analysis services until he had completed all other loan modification services listed in his retainer agreement. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[1]**

Attorney may not rely on opinion of another attorney as a defense to violating the rules or sections governing attorney ethics. Attorney did not act in good faith when he chose interpretation of Civil Code section 2944.7, subdivision (a) that ignored a new statute's plain language and legislative history as well as his own knowledge of a State Bar ethics alert interpreting it. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[2]**

Attorney was culpable of violating Business and Professions Code section 6106.3 by failing to provide a separate statement that it was not necessary for the client to retain a third party mortgage loan modification negotiator as required by Civil Code section 2944.6, subdivision (a) when he charged his client for loan modification services without first providing the client the retainer agreement which contained the separate statement. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[3]**

Attorney was not culpable of violating Business and Professions Code section 6106.3 by failing to provide a separate statement that it was not necessary for the client to retain a third party mortgage loan modification negotiator as required by Civil Code section 2944.6, subdivision (a) when he the client received the retainer agreement containing that section's mandatory language the same day she authorized payment. Civil Code section 2944.6, subdivision (a) requires the information be provided as a separate statement, but does not mandate that it be in a separate document. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[4]**

222.21 Found

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

222.25 Not Found

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

222.50 Section 6106.5 (insurance fraud)

222.51 Found

222.55 Not Found

222.70 Section 6106.7 (overcharge for sports contract negotiation)

222.71 Found

222.75 Not Found

222.80 Section 6106.8 (violation of sex-with-clients rule)

222.81 Found

222.85 Not Found

222.90 Section 6106.9 (sex with clients)

222.91 Found

222.95 Not Found

223.00 Section 6106.2 (violation of Civil Code § 55.3, 55.31, or 55.32)

223.01 Found

223.05 Not Found

230.00 Section 6125 (practice of law while not active member)

Where an attorney's actions, taken as a whole, create a false impression of ability to practice law while on suspension, this constitutes unauthorized practice of law in violation of Business and Professions Code sections 6125 and 6126, upon which is predicated a violation of section 6068, subdivision (a). Here, respondent paid for television advertisements, recorded voice messages for the law office, failed to provide a disclaimer in the advertisements and voice messages that he was not entitled to practice law, failed to identify any other attorney as working for the law office, maintained a website for the law office that described his abilities and qualifications as an attorney, took no steps to correct the false impression of an insurance company and chiropractor as to his status as an attorney, and failed to ensure that no stationary identifying him as an attorney was used by the law office where he worked. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[1 a-c]**

The practice of law embraces a wide range of activities, including giving legal advice and preparing documents to secure legal rights. Where, during disciplinary suspension, respondent told a client he would take her case; communicated with Medicare and an insurance company on the client's behalf; negotiated a settlement, and endorsed a settlement check, these actions constituted the practice of law, and established respondent's culpability of unauthorized practice. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[2]**

The opinion of another attorney is not a defense to a violation of the rules or statutes governing attorney ethics. Where respondent claimed to have followed the advice of ethics counsel regarding permissible conduct during his suspension, but in fact continued to use his designation as an attorney in advertisements and on his website and stationery, totality of evidence left no doubt that respondent engaged in the unauthorized practice of law while suspended. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[3]**

Where respondent wrote letters to negotiate claims on behalf of clients while suspended from the practice of law, respondent was still culpable of engaging in the unauthorized practice of law despite having filed a motion to stay his suspension. *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966. **[2]**

Where respondent misled client into believing that he was working on her case when he was on administrative suspension for failing to pay his State Bar dues, he improperly held himself out as entitled to practice law in violation of Business and Professions Code section proscribing acts of moral turpitude, dishonesty, and corruption. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[2]**

Sections 6125 and 6126 of the Business and Professions Code, which prohibit practicing law or holding oneself out as entitled to practice law by anyone other than an active attorney, are not of themselves disciplinary offenses. The appropriate method of charging disciplinary violations of those sections is by way of adding a charge of a violation of section 6068, subdivision (a), which imposes upon an attorney the duty to support state laws, to sections 6125 and 6126. Even though section 6068, subdivision (a), was not charged, the review department upheld the hearing judge's findings that respondent violated sections 6125 and 6126 where the amended charges made it clear both by text and citation to sections 6125 and 6126 that respondent was being charged with accepting employment from and holding himself out as entitled to practice law while respondent was suspended, and where respondent failed to object and show any evidence of specific prejudice arising from the failure to add section 6068, subdivision (a), to the underlying charges. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[7]**

Even though respondent was ineligible to practice law on day he was ordered to appear in court on behalf of a client, this did not relieve him of his obligation to appear as ordered. He was obligated to do everything in his power to obey court's order short of practicing law, and at a minimum should have been physically present in court and given accurate information about his eligibility to practice. This would not have constituted the practice of law. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[8]**

An attorney's unauthorized practice of law while on suspension is an appropriate matter to be considered in aggravation. Where, during the trial in a disciplinary matter, the respondent made a court appearance in a client's case while suspended for nonpayment of dues, the deputy trial counsel was not obligated to wait to file another disciplinary action to address the issue. Where respondent's counsel agreed that the deputy trial counsel could introduce evidence regarding respondent's court appearance during a later phase of the hearing, respondent received proper notice of the charge in aggravation. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[15]**

Where an attorney appeared in court on the date his suspension began solely to report to the court that his client was now without representation, and acted under the trial court's instructions to speak with the client about possibly resolving the lawsuit that day, and the trial was continued for the client to retain new counsel, there was not clear and convincing evidence that the attorney knowingly practiced law while suspended. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[16]**

Where an attorney had been suspended from practice and had been contacted by new counsel retained by his former client, the attorney's subsequent negotiation with an insurance company on the client's behalf without the new counsel's consent constituted unauthorized practice of law and violated the statute prohibiting attorneys from appearing without authority. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[3]**

Where respondent knowingly permitted a civil complaint bearing his name as counsel to be filed after the effective date of his suspension from practice, respondent thereby violated statute prohibiting practicing while suspended. Even if respondent prepared complaint prior to suspension, did not intend to practice while suspended, and was only trying to assist client by having complaint filed, this did not constitute an excuse for respondent's conduct. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[7]**

While suspended from practice, an attorney may research any point of law or draft any legal document so long as it is done for the independent review of an active member of the State Bar in good standing who will take responsibility for the work to the client. Where respondent drafted a detailed points and authorities directly for a client while respondent was suspended, this conduct constituted unauthorized practice of law, regardless of respondent's laudable motive in attempting to aid the client at a critical time in the client's case. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[10]**

Once an attorney is placed on suspension, he or she is prohibited from engaging in any law practice or even holding himself or herself out to opposing counsel as entitled to practice. Respondent's sending a counteroffer in settlement to opposing counsel in one matter the day after his suspension became effective, and his post-suspension use of his secretary in another matter to communicate with opposing counsel concerning a settlement offer pending at the time of his suspension, constituted unauthorized practice of law. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[11]**

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

It was not improper for petitioner for reinstatement to have continued to work as a paralegal for his son in his former office after resigning with charges pending, where petitioner did not engage in any acts constituting the practice of law while so employed. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[12]**

Where a resigned attorney continued to work as a paralegal for his son's law firm despite the son's adoption of a firm name which might have been construed to imply that the resigned attorney was a member of the firm, but the evidence indicated that the firm name was beyond the resigned attorney's control, and there was no credible evidence that the public or clients were in fact misled or that the resigned attorney had practiced law after resigning, the review department deferred to the hearing judge's favorable credibility determinations and concluded that the resigned attorney had not held himself out as entitled to practice law. The resigned attorney's continued employment in a situation where the public and clients could easily be misled clearly called into question his suitability for reinstatement, but under all the circumstances did not establish his lack of rehabilitation or present moral qualifications. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[18]**

Under section 6125 of the Business and Professions Code, members of the State Bar who are on inactive status may not practice law in California. Section 6068(a) makes violation of section 6125 a disciplinable offense. A member on inactive status who is alleged to have committed acts constituting the practice of law is properly charged with violating sections 6125 and 6068(a). *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[6]**

A broad scope of activities may be held to constitute the practice of law, but the unauthorized practice of law outside of court appearances is difficult to define. Where respondent, while on inactive status, allegedly referred to a family member as respondent's client in a letter to another lawyer and expressed an intention to seek statutory fees in a probate matter involving the family member, respondent was properly charged with unauthorized practice of law. *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[8]**

The practice of law includes not only performing services in court but also legal advice and counsel and the preparation of legal instruments and contracts. Where an attorney was convicted of mail fraud based on the attorney's fraudulent creation of a separate corporation in order to obtain payment for legal work for clients which otherwise would have been performed by the attorney's law firm, the crime was committed in the practice of law within the meaning of the summary disbarment statute (Bus. & Prof. Code § 6102 (c)). *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[5]**

Notice to show cause properly charged respondent with practicing law while suspended, in violation of sections 6125 and 6126(b), despite language in notice describing respondent as having made court appearance while "on inactive . . . status," when respondent was actually suspended for nonpayment of dues. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[1]**

The mere holding out by a suspended attorney that he or she is practicing or is entitled to practice law constitutes the unauthorized practice of law. Where suspended attorney accepted money to perform legal services, attorney violated probation against law practice by anyone other than active State Bar members. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[4]**

Suspended attorneys are expressly precluded by statute from practicing law. On the other hand, one of the Rules of Professional Conduct requires an attorney to perform the services for which he or she is hired, because the failure to do so can be an intentional or reckless failure to perform competently in violation of the rule. Thus, requiring a suspended attorney to comply with both the unauthorized practice statute and the rule regarding competent performance would result in incompatible duties. For this reason, the rule regarding failure to act competently has no applicability to attorneys practicing while suspended. The suspended attorney's only duty is to stop practicing until reestablished as an attorney in good standing. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[6]**

There is no reason to require suspended attorneys to comply with the rules requiring competent representation and prohibiting prejudicial withdrawal even while they are precluded from practicing because suspended. A full range of discipline is available to protect the public, courts and profession for unauthorized practice alone. Recklessness or incompetence in the unauthorized practice of law, or a precipitous withdrawal, would cause harm to the client and would constitute an aggravating factor which justifies greater discipline than would have been appropriate if no harm had occurred. In order to minimize harm to clients, suspended attorneys should take all steps to avoid foreseeable prejudice, short of practicing law. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[8]**

The Rule of Professional Conduct which provides that an attorney shall not withdraw until he or she takes steps to avoid foreseeable prejudice to the rights of the client requires, by its express terms, that the attorney continue representing the client until the attorney has taken steps to avoid foreseeable prejudice. This obligation directly contradicts the duty of a suspended attorney to cease practicing law immediately. It is unreasonable to hold an attorney to a duty of having to continue to represent his or her client for a reasonable period of time to avoid prejudice prior to withdrawal, if the attorney has an absolute duty to stop practicing due to a suspension. Thus, the rule against prejudicial withdrawal has no applicability to attorneys while they are suspended. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[10]**

An attorney must, upon withdrawal, promptly return any unearned fees. An attorney is not required to practice law in order to comply with this rule, and it therefore continues to apply even if an attorney is suspended. Moreover, a suspended attorney is legally precluded from practicing law and therefore, the attorney's agreement to provide legal services in exchange for a fee is illegal. Permitting a suspended attorney to retain any of the money paid him by a client for services rendered while suspended would condone the attorney's unauthorized practice of law and would be contrary to public policy. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[11]**

Charging an attorney with a violation of the duty to support the Constitution and laws, by reason of the attorney's violation of the statutes prohibiting practicing law while suspended, provides the basis for imposition of professional discipline for unauthorized practice. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[12]**

With the exception of a wilful violation of a court order, section 6103 of the Business and Professions Code does not define a duty or obligation of an attorney but provides only that the violation of the attorney's oath or duties defined elsewhere is ground for discipline. Thus, an attorney can not violate section 6103 unless he or she violated a court order. However, an attorney who is suspended for failure to pay State Bar membership fees is suspended by order of the Supreme Court. Thus, the attorney's continued practice of law after suspension is a violation of the court order suspending the attorney and therefore is a violation of section 6103. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[13]**

The statute requiring attorneys to communicate with their clients does not require a suspended attorney's continued practice of law, and a suspended attorney thus may be found culpable of violating the statute. It is extremely important for a suspended attorney to continue to communicate with the client so that prejudice to the client is minimized, though such communication must not take the form of legal advice. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[14]**

The statute providing that any act of moral turpitude by an attorney is cause for discipline applies regardless of whether the act was committed in the practice of law. Hence, a suspended attorney's duty under this statute does not contradict the attorney's duty to cease practicing while suspended. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[15]**

A suspended attorney held himself out to a client as entitled to practice law when he discussed her legal problems with the client, accepted a fee and filed a lawsuit on her behalf. This conduct also involved moral turpitude in that the attorney deceived the client by not advising her that he was not entitled to practice law. An attorney's practice of deceit involves moral turpitude. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[19]**

Requiring a suspended attorney to comply with the statutory prohibition against appearing as attorney for a party without authority would not necessitate the attorney's continued practice of law. The attorney can comply with the unauthorized appearance statute by not practicing while suspended. Accordingly, an suspended attorney who wilfully filed a lawsuit on behalf of a client without her authority could be found culpable of violating the statute. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[20]**

A suspended attorney's failure to inform his client that he was suspended and that he was nonetheless filing an unauthorized complaint on her behalf, and his failure to communicate with the client in any other way, amounted to a violation of his statutory obligation to keep his client reasonably informed of significant developments with regard to her case. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[21]**

Practicing law while suspended has resulted in a range of discipline from suspension to disbarment, depending on the circumstances of the misconduct, including the nature of any companion charges and the existence and gravity of prior disciplinary proceedings. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[27]**

Discipline may appropriately be imposed based on an attorney's unauthorized practice of law when the attorney is charged with violating sections 6068(a) and sections 6125 or 6126. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[16]**

Where reinstatement petitioner described himself as an attorney at law in public advertisement, but same document referred clearly to petitioner's disbarment, review department declined to find that petitioner had held himself out to the public as authorized to practice law. However, petitioner's use of term "attorney at law" when not an active member of State Bar was inappropriate, and its use in papers filed with State Bar Court in reinstatement proceeding did not aid petitioner in demonstrating sustained exemplary conduct. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[11]**

To be accurate, petitioner should have stated that the minimum waiting period to apply for reinstatement is five years (Trans. Rules Proc. of State Bar, rule 662), rather than stating that he had been disbarred for five years. Nonetheless, petitioner's statement as a whole clearly indicated that petitioner was not then licensed to practice law, so misstatement was not serious. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[12]**

Finding that respondent was culpable of prejudicial withdrawal from representation and of failure to perform competently was based only on respondent's failure to render services while not under suspension; during suspension, respondent was precluded from practicing law, and misconduct in that connection is governed by statute precluding unauthorized practice of law. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[3]**

Respondent's violation of statutes prohibiting unauthorized practice of law was established by unanswered charges and uncontroverted evidence showing that respondent appeared in court after the effective date of his involuntary inactive enrollment. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[20]**

Sections 6125 and 6126 together, when coupled with a section 6068(a) charge, create a basis for discipline for unlawful practice of law by a member of the State Bar. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[4]**

230.01 Found

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Hazelkorn (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

230.05 Not Found

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

231.00 Section 6126 (unauthorized practice - misdemeanor)

Where an attorney's actions, taken as a whole, create a false impression of ability to practice law while on suspension, this constitutes unauthorized practice of law in violation of Business and Professions Code sections 6125 and 6126, upon which is predicated a violation of section 6068, subdivision (a). Here, respondent paid for television advertisements, recorded voice messages for the law office, failed to provide a disclaimer in the advertisements and voice messages that he was not entitled to practice law, failed to identify any other attorney as working for the law office, maintained a website for the law office that described his abilities and qualifications as an attorney, took no steps to correct the false impression of an insurance company and chiropractor as to his status as an attorney, and failed to ensure that no stationary identifying him as an attorney was used by the law office where he worked. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[1 a-c]**

The practice of law embraces a wide range of activities, including giving legal advice and preparing documents to secure legal rights. Where, during disciplinary suspension, respondent told a client he would take her case; communicated with Medicare and an insurance company on the client's behalf; negotiated a settlement, and endorsed a settlement check, these actions constituted the practice of law, and established respondent's culpability of unauthorized practice. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[2]**

The opinion of another attorney is not a defense to a violation of the rules or statutes governing attorney ethics. Where respondent claimed to have followed the advice of ethics counsel regarding permissible conduct during his suspension, but in fact continued to use his designation as an attorney in advertisements and on his website and stationery, totality of evidence left no doubt that respondent engaged in the unauthorized practice of law while suspended. *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[3]**

Where respondent wrote letters to negotiate claims on behalf of clients while suspended from the practice of law, respondent was still culpable of engaging in the unauthorized practice of law despite having filed a motion to stay his suspension. *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966. **[2]**

Sections 6125 and 6126 of the Business and Professions Code, which prohibit practicing law or holding oneself out as entitled to practice law by anyone other than an active attorney, are not of themselves disciplinary offenses. The appropriate method of charging disciplinary violations of those sections is by way of adding a charge of a violation of section 6068, subdivision (a), which imposes upon an attorney the duty to support state laws, to sections 6125 and 6126. Even though section 6068, subdivision (a), was not charged, the review department upheld the hearing judge's findings that respondent violated sections 6125 and 6126 where the amended charges made

it clear both by text and citation to sections 6125 and 6126 that respondent was being charged with accepting employment from and holding himself out as entitled to practice law while respondent was suspended, and where respondent failed to object and show any evidence of specific prejudice arising from the failure to add section 6068, subdivision (a), to the underlying charges. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[7]**

Where respondent stated at oral argument that she did not object to judicial notice of her conviction for the unlicensed practice of law and admitted that she had improperly practiced law, the review department augmented the record on review to note the record of her conviction and considered the unlicensed practice as an aggravating circumstance. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (d)(1).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[4]**

It was not improper for petitioner for reinstatement to have continued to work as a paralegal for his son in his former office after resigning with charges pending, where petitioner did not engage in any acts constituting the practice of law while so employed. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[12]**

Statement by resigning attorney to clients that he would assist another attorney in handling their matters was proper, where attorney did not suggest that he would be acting as clients' attorney in so doing. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[14]**

Where a resigned attorney continued to work as a paralegal for another attorney, and two former clients of the resigned attorney, although aware he was no longer practicing law, submitted checks payable to him for legal services from the other attorney, and where he promptly endorsed the checks over to the other attorney, neither the checks nor the resigned attorney's handling of them supported the claim that he had held himself out as entitled to practice law. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[15]**

Where a resigned attorney continued to work as a paralegal for a sole practitioner, and attorney-client contracts and letters from the sole practitioner contained plural references to attorneys, these plural references did not establish that the resigned attorney had held himself out as entitled to practice law, where the resigned attorney was not aware of these plural references, and the sole practitioner hired other attorneys to assist on a contract basis. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[16]**

Where a resigned attorney continued to work as a paralegal for his son's law firm despite the son's adoption of a firm name which might have been construed to imply that the resigned attorney was a member of the firm, but the evidence indicated that the firm name was beyond the resigned attorney's control, and there was no credible evidence that the public or clients were in fact misled or that the resigned attorney had practiced law after resigning, the review department deferred to the hearing judge's favorable credibility determinations and concluded that the resigned attorney had not held himself out as entitled to practice law. The resigned attorney's continued employment in a situation where the public and clients could easily be misled clearly called into question his suitability for reinstatement, but under all the circumstances did not establish his lack of rehabilitation or present moral qualifications. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[18]**

Where respondent was suspended from practice as a result of disciplinary charges, and by omitting this fact from his application for a position as a judicial arbitrator, created the false impression that he was currently able to practice law, respondent's gross negligence in failing to ascertain that active membership in the State Bar was a requirement of the position, and his improper holding himself out as entitled to practice law, constituted an act involving moral turpitude. A suspended attorney cannot expressly or impliedly create or leave undisturbed the false impression that the attorney has the ability to practice law. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[3]**

Where respondent, who had been previously suspended from practice, described his legal career to a prospective employer in such a way as to indicate that respondent's practice of law had been uninterrupted, it was sufficient to establish culpability of misrepresentation to show that respondent knowingly presented a statement which itself tended to mislead. It was not material that the employer did not rely on the application or was not in fact deceived. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[6]**

Instructions on a job application asking for a statement of those experiences which met the requirements of the position sought did not entitle respondent to misrepresent his employment history by selective omissions or misrepresentations calculated to imply that there had been no hiatus in his ability to practice law. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[7]**

A hearing judge's statement that the State Bar Court has a duty to ensure that suspended attorneys are scrupulously honest regarding their suspensions did not indicate that the judge had improperly shifted the burden of proof on culpability at the disciplinary hearing from the State Bar to the respondent. The view that suspended attorneys have a duty not to mislead the public about their suspensions has also been expressed by the Supreme Court. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[8]**

Departure from the disciplinary standards was not justified based on the novelty of the issues raised in the matter, when the misconduct involved was respondent's misrepresentation of his status as an attorney, an area in which the governing rules have been clearly established for many years. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[12]**

Attorneys placed on disciplinary suspension must be careful not to hold themselves out as being able to practice when they are not and must not mislead employers regarding their prior status. An attorney's statements in a resume or job interview should be as trustworthy as that professional's representation to a court or client. Where respondent did not seem to understand the seriousness of his ethical duties in this regard, and had a prior record of discipline, a period of actual suspension was necessary for the protection of the public. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[13]**

Notice to show cause properly charged respondent with practicing law while suspended, in violation of sections 6125 and 6126(b), despite language in notice describing respondent as having made court appearance while "on inactive . . . status," when respondent was actually suspended for nonpayment of dues. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[1]**

Charging an attorney with a violation of the duty to support the Constitution and laws, by reason of the attorney's violation of the statutes prohibiting practicing law while suspended, provides the basis for imposition of professional discipline for unauthorized practice. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[12]**

Discipline may appropriately be imposed based on an attorney's unauthorized practice of law when the attorney is charged with violating sections 6068(a) and sections 6125 or 6126. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[16]**

Respondent's violation of statutes prohibiting unauthorized practice of law was established by unanswered charges and uncontroverted evidence showing that respondent appeared in court after the effective date of his involuntary inactive enrollment. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[20]**

Sections 6125 and 6126 together, when coupled with a section 6068(a) charge, create a basis for discipline for unlawful practice of law by a member of the State Bar. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[4]**

231.01 Found

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Hazelkorn (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

231.05 Not Found

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

231.50 Section 6127 (unauthorized practice - contempt)

Business and Professions Code section 6127(b) does not apply to a member of the State Bar practicing law while suspended. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[4]**

Section 6127 does not authorize discipline for unauthorized practice of law that constitutes contempt of federal court. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[5]**

231.51 Found

231.55 Not Found

In the Matter of Hazelkorn (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

232.00 Section 6128 (improper practices - misdemeanors)

Statute which requires that if a party is represented by counsel, papers must be served on counsel rather than on the party, does not apply to the service of a summons or a writ. Therefore, respondent did not have to serve alternative writ and petition for writ on opposing party's counsel, but could serve opposing party personally. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[1]**

Where an appeal and a petition for extraordinary writ had each been pursued by respondent, a notice to show cause charging respondent with "pursu[ing] appeals in bad faith" did not convey sufficient information to advise respondent that the manner of service of the writ of mandate was at issue in the disciplinary case. Respondent therefore was not held culpable for alleged misconduct in connection with the writ proceeding since the notice to show cause did not provide reasonable notice of such charges. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[6]**

Where neither party sought review of the dismissal of misrepresentation charges, and the testimony at the hearing was in conflict on the matter, then in light of the weight accorded to credibility findings of the trier of fact and in view of the record as a whole, the review department adopted the hearing department's findings regarding the misrepresentation charge. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[9]**

232.01 Found

232.05 Not Found

In the Matter of Respondent D (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517.

233.00 Section 6129 (buying claims - misdemeanor)

233.01 Found

233.05 Not Found

234.00 Section 6130 (suing on assigned claim while suspended)

234.01 Found

234.05 Not Found

235.00 Section 6131 (criminal defense by prosecutor or partner)

235.01 Found

235.05 Not Found

236.00 Section 6132 (removal of disbarred attorney from firm name)

A law firm is required by statute to remove from its business name the name of an attorney who is disbarred or resigns with discipline charges pending. The May 1989 Rules of Professional Conduct explicitly provide that a law firm's name can itself constitute a prohibited misleading communication, and the definition of "communication" in the predecessor rules was also broad enough to encompass law firm names. However, where a resigned attorney continued to work for his attorney son as a paralegal despite the son's adoption of a firm name which might have been construed to imply that the resigned attorney was a member of the firm, any possible misconduct by the son regarding his firm's name was not before the State Bar Court on the father's petition for reinstatement. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[17]**

236.01 Found

236.05 Not Found

237.00 Section 6133 (employing disbarred attorney to practice law)

237.01 Found

237.05 Not Found

240.00 Section 6146 (medical malpractice contingent fee limits)

Violation of State Bar Act section that is not, by its terms, disciplinable offense may be grounds for finding violation of statute requiring attorneys to uphold law. Where respondent was charged with violating statutory fee limitations and written fee agreement and disclosure requirements which are not, by their terms, disciplinable offenses, charge of violating statute requiring attorneys to uphold law was required as conduit to allege other violations, and such charge should not have been dismissed as unnecessary. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[4]**

Statute limiting contingent fees in medical negligence cases prohibits attorneys from either contracting for or collecting a contingent fee in excess of statutory limits. Where respondent had no written fee agreement, but agreed orally to accept fee to be awarded by court if result was successful, evidence was not clear and convincing that respondent had a contingent fee contract. However, once respondent received court-awarded fee after settlement of case, respondent collected a contingent fee within meaning of fee limit statute. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[5]**

When attorney contracts for contingent fee in medical negligence case, maximum collectible fee is set by statutory limits in effect at time contract was entered into. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[7]**

Statutory limit on attorneys' contingent fees for representation of plaintiffs in medical negligence actions applies whether person represented is responsible adult, infant or person of unsound mind and regardless of whether recovery is by settlement, arbitration or judgment. Where respondent failed to reveal potential applicability of such statute to incompetent client's representative and superior court ruling on respondent's fee application, such conduct frustrated court's function in passing upon fee request and client's interest in receiving all of recovery to which she was entitled, and violated attorney's duty to uphold law and rule against charging or collecting illegal fees. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[8]**

Clients may not waive statutory limit on contingent fees in medical negligence cases, and superior court award of such fees in excess of statutory limits is erroneous. Where attorney did not reveal material issue of potential applicability of such statutory fee limit to superior court in connection with approval of settlement and award of fees, such award did not constitute res judicata, because attorney and client were not adversaries in proceeding. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[9]**

Where respondent's client's settlement had always been treated by civil court and by counsel in civil proceeding as having certain value, respondent's argument in disciplinary proceeding that settlement had different value for purpose of applying statutory contingent fee limits was without merit. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[10]**

Hearing judge's credibility findings based on respondent's demeanor while testifying are entitled to great weight. Where hearing judge found that respondent did not mislead court about applicability of statutory fee limitation because respondent had honest but unreasonable belief that statute did not apply, but review department concluded that respondent's failure to disclose fee limitation was unreasonable under circumstances, review department found that respondent violated duty not to mislead courts and committed act of dishonesty, but that such misconduct occurred through gross negligence rather than intentional dishonesty. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[14]**

An attorney's concealment of material facts is just as misleading as explicit false statements and constitutes misconduct warranting discipline. Where respondent had superior expertise regarding statutory fee limits in medical negligence cases, respondent had duty both to court and client to disclose material fact that such statutory limit might apply in particular case, even if respondent thought he had reasonable grounds to distinguish case from ambit of statute. Respondent's grossly negligent failure to disclose such material fact violated his duties to respect courts, not to commit acts of dishonesty or moral turpitude, and not to mislead judges by artifice or false statements. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[15]**

Respondent's failure to disclose potential applicability to client's case of statute limiting amount of attorney's fees caused significant harm to client and administration of justice. Failure to comply with statute requiring written fee agreement and disclosures also harmed client. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[18]**

In light of respondent's recognized expertise regarding statutory contingent fee limits in medical negligence cases, his persistent claim that he was not obligated to discuss potential applicability of every law in every book in his library with medical negligence client and superior court judge was frivolous and betrayed disdain for his client and trial court. Similarly, respondent's claim that he was victim of uncertain law regarding fee limitation statute demonstrated lack of candor with State Bar Court. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[19]**

Respondent's duty to medical negligence client was not confined solely to obtaining successful recovery on client's claim. Respondent also had duty of utmost good faith and fidelity to client, which required him to advise client candidly of application of statutory limit on fee he could charge client. Where respondent overreached client by concealing such statute through recklessness or gross neglect, and collected excessive fee thereby, such conduct was patent breach of respondent's duty of good faith and fair dealing to client, and was very serious aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[21]**

Respondent had duty of candor to superior court approving his fee. Respondent was entitled to urge any creative theory in good faith that statutory fee limitation might not apply to his case, but he could not simply conceal material fact that fee limitation statute might apply and profit sizably thereby at expense of his client. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[22]**

Where, after prior discipline in connection with violation of statutory contingent fee limit in medical negligence cases, respondent continued to assert that such fee limit did not apply to particular case, it was appropriate to require as condition of disciplinary probation that respondent provide written retainer agreements to all medical negligence plaintiff clients not paying on hourly basis; that such agreements disclose statutory fee schedule; and that disclosures regarding fee limit be contained in such fee agreements and in declarations to be presented to judges approving respondent's petitions for attorney representation or attorney fees. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[24]**

240.01 Found

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

240.05 Not Found

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

241.00 Section 6147 (requirements for contingent fee agreements)

Although respondent never entered into a written contingent fee agreement with his client as required by Business and Professions Code section 6147, the failure to enter into a written contingent fee agreement is not a disciplinable offense. Thus, the review department did not adopt the hearing judge's aggravation determination with respect to this issue. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[7]**

Violation of State Bar Act section that is not, by its terms, disciplinable offense may be grounds for finding violation of statute requiring attorneys to uphold law. Where respondent was charged with violating statutory fee limitations and written fee agreement and disclosure requirements which are not, by their terms, disciplinable offenses, charge of violating statute requiring attorneys to uphold law was required as conduit to allege other violations, and such charge should not have been dismissed as unnecessary. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[4]**

Statute requiring attorneys to uphold law is not always proper vehicle for charging violation of State Bar Act when statute is already covered as a disciplinable offense in another part of the Act. Because statutes requiring written attorney fee agreements containing certain information specify non-disciplinary remedies for attorneys' failure to comply with them, and because failure to comply with such statutes may be charged as violations of Rules of Professional Conduct regarding illegal fees, competence, and communication with clients, violation of such statutes is not disciplinable under statute requiring attorneys to uphold law. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[11]**

Conclusion that violations of statutes requiring written fee agreements and specified disclosures are not disciplinable offenses does not preclude consideration of attorney's failure to comply with such statutes as aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[12]**

Respondent's failure to disclose potential applicability to client's case of statute limiting amount of attorney's fees caused significant harm to client and administration of justice. Failure to comply with statute requiring written fee agreement and disclosures also harmed client. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[18]**

Where, after prior discipline in connection with violation of statutory contingent fee limit in medical negligence cases, respondent continued to assert that such fee limit did not apply to particular case, it was appropriate to require as condition of disciplinary probation that respondent provide written retainer agreements to all medical negligence plaintiff clients not paying on hourly basis; that such agreements disclose statutory fee schedule; and that disclosures regarding fee limit be contained in such fee agreements and in declarations to be presented to judges approving respondent's petitions for attorney representation or attorney fees. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[24]**

Respondent's oral contingent fee agreement with a personal injury client was voidable by the client under section 6147, but respondent was entitled to a reasonable fee. Where the reasonable value of respondent's services exceeded the amount of the contingency fee, the hearing judge properly found that respondent was entitled to the contingency fee amount. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[5]**

241.01 Found

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

241.05 Not Found

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

242.00 Section 6148 (written fee agreements)

Violation of State Bar Act section that is not, by its terms, disciplinable offense may be grounds for finding violation of statute requiring attorneys to uphold law. Where respondent was charged with violating statutory fee limitations and written fee agreement and disclosure requirements which are not, by their terms, disciplinable

offenses, charge of violating statute requiring attorneys to uphold law was required as conduit to allege other violations, and such charge should not have been dismissed as unnecessary. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[4]**

Statute requiring attorneys to uphold law is not always proper vehicle for charging violation of State Bar Act when statute is already covered as a disciplinable offense in another part of the Act. Because statutes requiring written attorney fee agreements containing certain information specify non-disciplinary remedies for attorneys' failure to comply with them, and because failure to comply with such statutes may be charged as violations of Rules of Professional Conduct regarding illegal fees, competence, and communication with clients, violation of such statutes is not disciplinable under statute requiring attorneys to uphold law. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[11]**

Conclusion that violations of statutes requiring written fee agreements and specified disclosures are not disciplinable offenses does not preclude consideration of attorney's failure to comply with such statutes as aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[12]**

Attorneys are not permitted to set their fees unilaterally. If a client contests fees charged or paid, the disputed fees must be placed in a trust account until the conflict is resolved. The duty to account for client funds includes a duty to maintain adequate records of fees drawn against an advanced fee and of fee payments made thereafter, and to provide clients with an appropriate accounting. In evaluating the promptness and adequacy of such an accounting, it was appropriate to look to the standards set forth in the statute governing attorneys' bills for fees and costs, even where a violation of that statute was not charged. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[3]**

Where respondent's failure to adhere to statutory requirement of written attorney-client fee agreements was at heart of both matters in which he had been charged with misconduct, and respondent's attention needed to be directed to written fee agreements and also to his obligations upon withdrawal from employment, public reproval was properly conditioned on completion of State Bar Ethics School. Its format of classroom instruction, followed by a test, would better remedy these problems than the more passive experience of the California Professional Responsibility Examination. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[14]**

Keeping proper records prepares attorneys to prove honesty and fair dealing when their actions are called into question, and is part of their duty in the attorney-client relationship. Written fee agreements not only protect clients and help to ensure that a fair and understandable fee agreement is reached for specified services, but can also aid the attorney as well in proving the terms of engagement. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[15]**

242.01 Found

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

242.05 Not Found

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

243.00 Sections 6150-6154 (solicitation; runners and cappers)

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

The reason behind the long-standing prohibition in the rules of professional conduct or state law, against capping and improper partnership and fee division activities between lawyers and non-lawyers, is the potential these activities have to adversely affect the independent professional judgment of the lawyer. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[3]**

Finding of culpability of violating attorney's duty to uphold the law was proper, where attorney was found to have violated criminal provision of Business and Professions Code as charged in notice to show cause. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[8]**

Supreme Court attorney disciplinary opinions in which prohibited solicitation or capping activities were a significant or sole part of the lawyer's misconduct have imposed discipline ranging from six months actual suspension for isolated acts to disbarment in a few aggravated cases. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[9]**

243.01 Found

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

243.05 Not Found

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

245.00 Section 6158.7 (violation of advertising statutes)

245.01 Found

245.05 Not Found

250 Rules of Professional Conduct (RPC) Violations

Note: References to "1975 RPC" are to the rules in effect from 1975 to May 26, 1989.

251.10 Obey discipline conditions (RPC 1-110; 1975 RPC 9-101)

Hearing judge properly deemed allegations in notice of disciplinary charges to be admitted by virtue of respondent's default. Where admitted allegations showed respondent had received public reproval with conditions attached in prior discipline matter, and had failed to comply with certain conditions, hearing judge properly found clear and convincing evidence that respondent violated conditions of prior disciplinary order, in violation of rule 1-110. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[5]**

Even though respondent was culpable of failing to comply with the conditions attached to his private reproval, the review department did not strictly apply the Standard for Attorney Sanctions for Professional Misconduct for such violations which calls for suspension. Instead, the review department imposed a public reproval because of respondent's extensive participation in the proceeding and because respondent acknowledged his obligation to comply with State Bar Court orders. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[5]**

Attorney violated duty to comply with conditions attached to reproval previously imposed on him by State Bar Court by failing to file two probation reports and not providing proof of completion of six hours of continuing legal education. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[1]**

Where respondent violated Supreme Court order imposing disciplinary probation, and hearing judge properly found that respondent had violated statute requiring compliance with probation conditions, respondent was also culpable of violating statute requiring compliance with court orders. However, review department did not need to modify hearing judge's decision to include additional statute and rule violations where review department's recommendation did not depend on whether the misconduct also violated those additional duplicative violations. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[2]**

When a requirement to take and pass the professional responsibility examination is attached as a condition to a reproval, wilful failure to comply may be cause for a separate disciplinary proceeding. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[7]**

251.11 Found

In the Matter of Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348

In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

251.15 Not Found

In the Matter of Howard (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

251.20 Assist, solicit or induce violation (RPC 1-120)

251.21 Found

251.25 Not Found

251.30 Admissions fraud (RPC 1-200(A))

Respondent stipulated that she did not disclose to the Committee of Bar Examiners pending misdemeanor charges against her, nor did she disclose to the State Bar after her admission to practice law her conviction of challenging another person in a public place to fight. When respondent was charged criminally, there was no formal record of those events before the Committee of Bar Examiners. It was therefore incumbent on respondent to timely and candidly disclose the charges and her later conviction so that the Committee of Bar Examiners could make adequate inquiry. The criminal charges and subsequent convictions were "material facts" within the meaning of Rules of Professional Conduct, rule 1–200(A). "Materiality" used in the context of this rule is a substantial likelihood that a reasonable person would consider it important in evaluating whether an applicant for admission to the practice of law is of requisite good moral character. Materiality for purposes of this rule does not mean facts that are necessarily outcome–determinative of a finding of moral character. Information is material for purposes of the rule when it is specifically required to be disclosed on the application for admission or is of the nature that it comes within the continuing duty to update the application. The information regarding respondent's criminal charges, when taken in the context of respondent's application for admission, would have been considered by the Committee of Bar Examiners as relevant to its determination of respondent's moral fitness or capacity to practice law and was therefore material, even though the information in all likelihood would not have affected the ultimate determination of moral fitness to practice law. *In the Matter of Pasyanos* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746. **[2a, b]**

251.31 Found

In the Matter of Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746.

251.35 Not Found

251.40 Support unqualified applicant (RPC 1-200(B); 1975 RPC 1-101)

251.41 Found

251.45 Not Found

252.00 Aid unauthorized practice (RPC 1-300(A); 1975 RPC 3-101(A))

Where respondent repeatedly failed to review bankruptcy petitions prepared by paralegal before they were filed; filed petitions and supporting documents that were incomplete and contained false statements; failed to investigate corporate status of entities on whose behalf she filed bankruptcy petitions, and failed to supervise her paralegal, respondent was culpable both of reckless failure to perform competently, and of aiding her paralegal's unauthorized practice of law. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[2 a, b]**

Where respondent entered into "legal representation agreements" with loan modification clients, but his standard procedure was that nonattorney employees performed all services contemplated by such agreements, and he was not involved unless his staff consulted him, respondent in essence created a lay negotiating service that permitted nonlawyers to practice law without his oversight. While some services provided under the agreements could legally have been performed by nonlawyers, when they were performed in respondent's law office, they nonetheless constituted the practice of law. Accordingly, respondent violated rule 1-300(A) of Rules of Professional conduct, which prohibits aiding the unauthorized practice of law. *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296 **[3]**

Where respondent was found culpable of aiding the unauthorized practice of law, in violation of rule 1-300(A) of the Rules of Professional Conduct, and charges that respondent lent his name for use by non-attorneys, in violation of Business and Professions Code section 6105, were based entirely on same facts, section 6105 charges were duplicative. *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296 **[4]**

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

Respondent aided a non-lawyer in the practice of law where the non-lawyer and the non-lawyer's staff worked in offices bearing respondent's name, answered phones in respondent's name, and conducted correspondence and negotiations in respondent's name, with little or no input from respondent. *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615. **[3]**

252.01 Found

In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391.

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

252.05 Not Found

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

252.10 Unauthorized practice in other jurisdiction (RPC 1-300(B); 1975 RPC 3-101(B)) (practice in other jurisdictions)

In order to find culpability under rule 1-300(B) of the Rules of Professional Conduct, the State Bar Court must examine applicable out-of-state authority to determine whether a California attorney has violated professional regulations in a foreign jurisdiction. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250 **[1]**

Respondent committed UPL in violation of authority in Wisconsin and New York, which only allow attorneys currently licensed in those states to practice law there, when he: 1) held himself out to clients in those states as an attorney with knowledge and authority to settle consumer debts; 2) represented to creditors that they should follow debt collection laws or his clients were prepared to take legal action; and 3) reviewed client files to determine whether they should file for bankruptcy despite having no license to perform bankruptcies outside of California. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250 **[2 a,b]**

Respondent violated seven states' UPL rules of professional conduct, which are either identical or substantially similar to the American Bar Association's Model Rules of Professional Conduct, rule 5.5(b), prohibiting a lawyer not licensed in a state from either: 1) establishing an office or other systemic and continuous presence in the state; or 2) holding out to the public or otherwise representing that the lawyer is admitted to practice law in the state. The form of communications used by respondent—specifically the use of the term "The Law Offices of" on Legal Services Agreements and cease and desist letters, and representations that the office acted as a "law firm" for clients and provided "legal services"—was evidence that he held himself out as entitled to practice law in states where he was unlicensed. By implying he was licensed in these seven states, respondent gave the false impression to clients and creditors that he held an advantage over a non-attorney debt negotiator. He also explicitly represented to clients he would perform legal services, and informed creditors that he was representing each client using law office letterhead. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250 **[3 a-c]**

Respondent's conduct did not fall under any safe harbor provision under American Bar Association's Model Rules of Professional Conduct, rule 5.5(b), which allows out-of-state attorneys to practice temporarily in states where they are not licensed without committing UPL. First, applying the factors defined by the model rule, respondent's contact with out-of-state clients was not reasonably related to his practice in California. Likewise, his contentions that the Model Rule enabled him to provide legal services related to bankruptcy law failed where his proposed legal services were not limited to issues of bankruptcy and he was not admitted to practice law in the federal courts or any of the seven states at issue. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250 **[4 a-c]**

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

Where respondent's representation of a client was not confined exclusively to the practice of law in federal court or before the EEOC but also included resolving the client's state tort claims as well as providing legal advice and counsel regarding the South Carolina Human Affairs Commission, the doctrine of federal preemption did not preclude a finding of culpability for the unauthorized practice of law. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[1a, b]**

Where respondent stated on much of her correspondence and her business card that she was licensed in California and was of counsel to the law office of a South Carolina attorney and designated her South Carolina office as an out of state administrative office and where respondent failed to advise clients that she was licensed only in California or that she was unlicensed in South Carolina, respondent held herself out as entitled to practice law. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[2]**

Ordinarily in disciplinary proceedings culpability must be established by convincing proof and to a reasonable certainty. However, this standard does not apply where otherwise provided by law. Therefore in finding a violation of rule 1–300, proof beyond a reasonable doubt is constitutionally required because the applicable South Carolina statute regulating the profession makes the unauthorized practice of law a crime. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[8]**

(Former) rule 3-101(B) of the Rules of Professional Conduct, by its terms, appears to have been designed to permit the California State Bar to discipline its members for making unauthorized appearances in courts other than California state courts, and is not a proper basis for disciplining members for appearing in California state courts while suspended or inactive. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[23]**

252.11 Found

In the Matter of Wittenberg (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418

In the Matter of Lenard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

252.15 Not Found

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

252.20 Law partnership with non-lawyer (RPC 1-310; 1975 RPC 3-103)

Respondent did not enter into a partnership involving the practice of law with a non-lawyer where the evidence established that the non-lawyer shared in the firm's profits, but failed to show that the non-lawyer had an ownership interest in the firm's assets or the clients' files, had an obligation to pay any portion of the firm's liabilities, held himself out as respondent's partner during the term of the relationship with respondent, or had access to respondent's general account or trust account. *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615. **[1]**

Where an attorney permitted a non-lawyer to misuse the attorney's name to conduct a large personal injury practice, the attorney could not be held separately culpable for each item of harm that resulted, without proof of his or her actual knowledge. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[3]**

Where respondent, oblivious to the Rules of Professional Conduct, intentionally created a personal injury practice in conjunction with a non-lawyer without adequate controls, and inadequately supervised the non-lawyer's conduct of the practice over a two-year period, acting with gross neglect and in a manner bordering on extreme recklessness, respondent's conduct violated the statute prohibiting acts of moral turpitude. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[4]**

Where respondent had passed professional responsibility examination 10 years earlier, but seemed to have learned nothing from that experience which would have helped him avoid disciplinary proceeding arising out of his abdicating responsibility for his law practice to a non-lawyer, it was appropriate to require respondent to take and pass California Professional Responsibility Examination prior to expiration of his actual suspension. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[8]**

Where respondent had been found culpable of misconduct arising from his abdication of responsibility for his law practice to a non-lawyer, review department recommended that hearing regarding respondent's fitness to return to practice focus on adequate assurance that respondent could institute a law practice with appropriate ethical safeguards. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[9]**

252.21 Found

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

252.25 Not Found

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

Note: For rule 1-311 (employing lawyer ineligible to practice), see topic number 252.60 et seq.

252.30 Sharing fee with non-lawyer (RPC 1-320(A); 1975 RPC 3-102(A))

Respondent shared fees with a non-lawyer where the non-lawyer received a percentage of the net fees on the cases he handled for respondent. *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615. **[2]**

The ethical prohibition against fee-splitting between lawyer and non-lawyer is directed at the risk posed by the possibility of control of legal matters by the non-lawyer, interested more in personal profit than the client's welfare. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[5]**

252.31 Found

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

252.35 Not Found

252.40 Improper referral fees (RPC 1-320(B); 1975 RPC 3-102(B))

252.41 Found

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

252.45 Not Found

252.50 Paid publicity (RPC 1-320(C); 1975 RPC 3-102(C))

252.51 Found

252.55 Not Found

252.60 Employment of lawyer not eligible to practice (RPC 1-311)

252.61 Found

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

252.65 Not Found

253.00 Improper solicitation (RPC 1-400(C); 1975 RPC 2-101(B))

Where client's unchallenged testimony was that photographer who appeared at scene of car accident gave client respondent's business card, and told client he would send photos to respondent and respondent would represent client, and respondent confirmed receipt of photos and sent staff person to obtain client's signature on retainer agreement, improper solicitation was shown by clear and convincing evidence, and Review Department reversed hearing judge's finding of no culpability. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 **[2]**

In a prosecution for a violation of Rules of Professional Conduct, rule 1-400(C), the review department rejected respondent's assertion that he reasonably believed he had a prior professional relationship with the client where the evidence established (1) that respondent knew that another attorney, rather than respondent, had been assigned to represent the client and (2) that even if respondent did not know this fact at the time he set up a meeting with the client, respondent was put on notice of the fact once the client stated to him at the meeting that he was represented by another attorney. The danger of solicitation is that lawyers, trained in persuasion, may attempt to use such skills on potential clients who are vulnerable and susceptible to manipulation, and the record in this case demonstrated that a concern about that danger is justified. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[13]**

Even if respondent had received messages to call each prospective client from a "friend" of the prospective client, his solicitation telephone call or calls to each prospective client violated rule 1-400(C) of the Rules of Professional Conduct because none of the prospective clients had requested the "friend" to ask respondent to call them. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[1]**

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

Where notice to show cause charging client solicitation did not identify clients allegedly solicited, but did name persons who were alleged to have performed such solicitations and fixed the period of charged misconduct, and where respondents were informed of identities of allegedly solicited clients well before most pre-trial discovery was completed, and at least six months before trial, respondents' motion to dismiss notice to show cause based on alleged vagueness, which was not made until first day of trial, was properly denied. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[1]**

The purpose of the notice to show cause in a disciplinary proceeding is to serve as a determination that probable cause exists to warrant formal charges. (Trans. Rules Proc. of State Bar, rule 510.) Accordingly, statements of probable cause, which identified clients allegedly involved in solicitation charged in notice to show cause, served as equivalent of amendments to notice to show cause. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[2]**

A State Bar disciplinary matter does not deal with civil responsibility where a party might be under a duty to mitigate harm or damages. The State Bar is entitled to investigate whatever information it acquires about misconduct without notifying the attorney involved contemporaneously, and it did not act improperly by failing to notify attorneys promptly when it learned of solicitation of clients by attorneys' agents. State Bar rules require only that attorneys be given an opportunity to explain or deny matters under investigation prior to issuance of notice to show cause. (Trans. Rules Proc. of State Bar, rule 509(b).) *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[3]**

Where respondents' non-lawyer agents solicited a client who, unknown to them, was a State Bar attorney, and invited that attorney to respondents' office, that attorney did not improperly search respondents' law office by reading papers spread out on table in front of him by respondents' staff, without touching papers or opening any cabinets, drawers, or files. Such conduct would not have been improper if committed by a police agency in collecting evidence in a criminal case. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[5]**

Culpability can be established in attorney disciplinary proceedings either by direct or circumstantial evidence, and circumstantial evidence has been considered on a regular basis in cases involving improper client solicitation by an attorney's agents. Culpability findings regarding charge of improper client solicitation were proper where, in addition to circumstantial evidence, there was inculpatory direct evidence in the record, and hearing judge properly evaluated and weighed witness testimony. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[10]**

Where respondents set up distant branch office with intent to be present only one day per week; authorized non-lawyer independent contractors to explain complex and unusual fee agreements to prospective clients; did not review cases or speak with clients until after clients had signed fee agreements; paid contractors in cash based on viability of cases, and implausibly characterized contractors as investigators; ignored indications of excessive non-lawyer control of cases; chose to disbelieve clients' reports that contractors had solicited them, and did not present convincing explanation about how they believed clients had come to retain them, hearing judge's findings that respondents knew of contractors' solicitation of clients were supported by clear and convincing evidence. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[11]**

Solicitation of clients may be constitutionally protected under the First Amendment depending on the occupation or profession involved and certain other circumstances. Free speech guarantees have been held not to prevent enforcement of California's rules governing in-person solicitation, and solicitation of clients for lawyers has long been illegal in California. Where accident victims were tempted by persuasiveness of respondents' non-lawyer agents who had superior access to police reports, and in one instance a victim was solicited minutes after returning from the hospital, such facts showed constitutional justification for prohibition of such in-person solicitation. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[12]**

Where respondents made a shared decision to operate a distant branch office using non-lawyer independent contractors paid in cash to sign up clients, respondents committed acts of moral turpitude by violating the client solicitation rules and conspiring to violate such rules; their involvement in repeated client solicitation constituted "corruption" within the meaning of the moral turpitude statute. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[13]**

253.01 Found

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

253.05 Not Found

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

253.10 False/misleading communication (RPC 1-400(D); 1975 RPC 2-101(A))

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

Illegal use of the Great Seal of the State of California on respondent's letterhead was inherently inappropriate even if no one was misled. Fact that no one was misled was only a mitigating circumstance. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[2]**

Because evidence established that respondent was at least reckless in allowing a misleading solicitation letter to be disseminated on his behalf by a temporary employee, he was technically culpable for violating the rule of professional conduct prohibiting misleading advertisements. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[6]**

Where notice to show cause charging client solicitation did not identify clients allegedly solicited, but did name persons who were alleged to have performed such solicitations and fixed the period of charged misconduct, and where respondents were informed of identities of allegedly solicited clients well before most pre-trial discovery was completed, and at least six months before trial, respondents' motion to dismiss notice to show cause based on alleged vagueness, which was not made until first day of trial, was properly denied. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[1]**

The purpose of the notice to show cause in a disciplinary proceeding is to serve as a determination that probable cause exists to warrant formal charges. (Trans. Rules Proc. of State Bar, rule 510.) Accordingly, statements of probable cause, which identified clients allegedly involved in solicitation charged in notice to show cause, served as equivalent of amendments to notice to show cause. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[2]**

A State Bar disciplinary matter does not deal with civil responsibility where a party might be under a duty to mitigate harm or damages. The State Bar is entitled to investigate whatever information it acquires about misconduct without notifying the attorney involved contemporaneously, and it did not act improperly by failing to notify attorneys promptly when it learned of solicitation of clients by attorneys' agents. State Bar rules require only that attorneys be given an opportunity to explain or deny matters under investigation prior to issuance of notice to show cause. (Trans. Rules Proc. of State Bar, rule 509(b).) *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[3]**

Where respondents' non-lawyer agents solicited a client who, unknown to them, was a State Bar attorney, and invited that attorney to respondents' office, that attorney did not improperly search respondents' law office by reading papers spread out on table in front of him by respondents' staff, without touching papers or opening any cabinets, drawers, or files. Such conduct would not have been improper if committed by a police agency in collecting evidence in a criminal case. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[5]**

Where respondents set up distant branch office with intent to be present only one day per week; authorized non-lawyer independent contractors to explain complex and unusual fee agreements to prospective clients; did not review cases or speak with clients until after clients had signed fee agreements; paid contractors in cash based on viability of cases, and implausibly characterized contractors as investigators; ignored indications of excessive non-lawyer control of cases; chose to disbelieve clients' reports that contractors had solicited them, and did not present convincing explanation about how they believed clients had come to retain them, hearing judge's findings that respondents knew of contractors' solicitation of clients were supported by clear and convincing evidence. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[11]**

Where respondents made a shared decision to operate a distant branch office using non-lawyer independent contractors paid in cash to sign up clients, respondents committed acts of moral turpitude by violating the client solicitation rules and conspiring to violate such rules; their involvement in repeated client solicitation constituted "corruption" within the meaning of the moral turpitude statute. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[13]**

Where respondents seriously disregarded their fiduciary duty to clients, including leaving it to non-lawyer contractors to explain complex retainer agreement without allowing clients to review it over time or discuss it with respondents, and where such retainer agreement, though purporting to be for contingent fees, contained unconscionable provision for minimum fee upon discharge, and where respondents' acts in seeking to enforce such provision damaged clients, respondents' conduct warranted greater actual suspension than 15 months recommended by hearing judge. Respondents' involvement in client solicitation alone warranted one-year actual suspension; their remaining offenses deserved an additional six months. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[14]**

A law firm is required by statute to remove from its business name the name of an attorney who is disbarred or resigns with discipline charges pending. The May 1989 Rules of Professional Conduct explicitly provide that a law firm's name can itself constitute a prohibited misleading communication, and the definition of "communication" in the predecessor rules was also broad enough to encompass law firm names. However, where a resigned attorney continued to work for his attorney son as a paralegal despite the son's adoption of a firm name which might have been construed to imply that the resigned attorney was a member of the firm, any possible misconduct by the son regarding his firm's name was not before the State Bar Court on the father's petition for reinstatement. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[17]**

253.11 Found

In the Matter of Respondent V (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

253.15 Not Found

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

253.20 Runners and cappers (1975 RPC 2-101(C))

Where notice to show cause charging client solicitation did not identify clients allegedly solicited, but did name persons who were alleged to have performed such solicitations and fixed the period of charged misconduct, and where respondents were informed of identities of allegedly solicited clients well before most pre-trial discovery was completed, and at least six months before trial, respondents' motion to dismiss notice to show cause based on alleged vagueness, which was not made until first day of trial, was properly denied. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[1]**

The purpose of the notice to show cause in a disciplinary proceeding is to serve as a determination that probable cause exists to warrant formal charges. (Trans. Rules Proc. of State Bar, rule 510.) Accordingly, statements of probable cause, which identified clients allegedly involved in solicitation charged in notice to show cause, served as equivalent of amendments to notice to show cause. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[2]**

A State Bar disciplinary matter does not deal with civil responsibility where a party might be under a duty to mitigate harm or damages. The State Bar is entitled to investigate whatever information it acquires about misconduct without notifying the attorney involved contemporaneously, and it did not act improperly by failing to notify attorneys promptly when it learned of solicitation of clients by attorneys' agents. State Bar rules require only that attorneys be given an opportunity to explain or deny matters under investigation prior to issuance of notice to show cause. (Trans. Rules Proc. of State Bar, rule 509(b).) *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[3]**

Where respondents' non-lawyer agents solicited a client who, unknown to them, was a State Bar attorney, and invited that attorney to respondents' office, that attorney did not improperly search respondents' law office by reading papers spread out on table in front of him by respondents' staff, without touching papers or opening any cabinets, drawers, or files. Such conduct would not have been improper if committed by a police agency in collecting evidence in a criminal case. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[5]**

Where respondents set up distant branch office with intent to be present only one day per week; authorized non-lawyer independent contractors to explain complex and unusual fee agreements to prospective clients; did not review cases or speak with clients until after clients had signed fee agreements; paid contractors in cash based on viability of cases, and implausibly characterized contractors as investigators; ignored indications of excessive non-lawyer control of cases; chose to disbelieve clients' reports that contractors had solicited them, and did not present convincing explanation about how they believed clients had come to retain them, hearing judge's findings that respondents knew of contractors' solicitation of clients were supported by clear and convincing evidence. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[11]**

Solicitation of clients may be constitutionally protected under the First Amendment depending on the occupation or profession involved and certain other circumstances. Free speech guarantees have been held not to prevent enforcement of California's rules governing in-person solicitation, and solicitation of clients for lawyers has long been illegal in California. Where accident victims were tempted by persuasiveness of respondents' non-lawyer agents who had superior access to police reports, and in one instance a victim was solicited minutes after returning from the hospital, such facts showed constitutional justification for prohibition of such in-person solicitation. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[12]**

Where respondents made a shared decision to operate a distant branch office using non-lawyer independent contractors paid in cash to sign up clients, respondents committed acts of moral turpitude by violating the client solicitation rules and conspiring to violate such rules; their involvement in repeated client solicitation constituted "corruption" within the meaning of the moral turpitude statute. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[13]**

Where respondents seriously disregarded their fiduciary duty to clients, including leaving it to non-lawyer contractors to explain complex retainer agreement without allowing clients to review it over time or discuss it with respondents, and where such retainer agreement, though purporting to be for contingent fees, contained unconscionable provision for minimum fee upon discharge, and where respondents' acts in seeking to enforce such provision damaged clients, respondents' conduct warranted greater actual suspension than 15 months recommended by hearing judge. Respondents' involvement in client solicitation alone warranted one-year actual suspension; their remaining offenses deserved an additional six months. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[14]**

253.21 Found

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

253.25 Not Found

253.30 Retain copies of communications (RPC 1-400(F); 1975 RPC 2-101(E))

253.31 Found

253.35 Not Found

255.00 Improper practice restrictions (RPC 1-500; 1975 RPC 2-109)

255.01 Found

255.05 Not Found

255.30 Improper legal service program (RPC 1-600(A); 1975 RPC 2-102(A))

255.31 Found

255.35 Not Found

256.00 Violation of ethics rules for judicial candidates (RPC 1-700)

Attorneys cannot be disciplined for speech that is protected by the First Amendment. However, because attorneys are officers of the court, reasonable speech restrictions may be imposed on them. Rule 1-700, which regulates speech by attorney candidates for judicial office, burdens a category of speech at the core of First Amendment freedoms, but false statements are not protected speech and may be basis for discipline if made intentionally or with reckless disregard for truth. Objective "reasonable attorney" test, rather than subjective test, is properly applied in determining whether statement was made with reckless disregard for truth. Attorney judicial candidate, who made a false claim that his opponent was involved in corporate fraud and bribery, was culpable of violating rule 1-700 because he made the factual misrepresentation knowingly or with reckless disregard for the truth as viewed under an objective standard. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[1 a-c]**

Rule 1-700, on its face, prohibits attorney judicial candidates only from making false statements, not misleading ones. State Bar has burden of proving falsity of statements by clear and convincing evidence. Attorney judicial candidate was not culpable for violating rule 1-700 for engaging in truthful but misleading or potentially misleading speech about his opponent. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[2 a,b]**

256.01 Found

In the Matter of Parish (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370

256.05 Not found

In the Matter of Parish (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370

256.50 Violation of ethics rules for adjudicators (RPC 1-710)

256.51 Found

256.55 Not Found

257.00 Communication with represented party (RPC 2-100; 1975 RPC 7-103)

Where respondent, who represented tenants in a negligence lawsuit against an apartment owner, communicated with an incarcerated individual, who was not a party to the negligence lawsuit but was nevertheless represented by counsel, such communications are not in violation of rule 2–100. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[1 a, b]**

The review department determined that respondent's office contacted a represented party where, after respondent's employee sent a letter to a particular employee at an insurance company, counsel representing the insurance company sent a letter notifying respondent that he had contacted a represented party, but respondent's employee nevertheless sent a second letter to the same employee at the insurance company. The only reasonable inference to be drawn from the letter sent to respondent by counsel for the insurance company was either that the insurance company employee held one of the positions listed in Rules of Professional Conduct, rule 2-100(B)(1) or that the statements or actions of the insurance company employee pertaining to the matter would be binding upon, imputed to, or constitute an admission on the part of the insurance company. Moreover, respondent appeared to concede that the insurance company employee constituted a represented party in his letter to the State Bar. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[11]**

Where respondent had been alerted to a problem in the way his employees ran his office but took no action to correct the problem, and it appeared that respondent failed to guide his staff and review their work, respondent was culpable of violating Rules of Professional Conduct, rule 3-110(A). *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[12]**

Respondent's communication with an opposing client when he knew that the opposing client was represented by counsel was a wilful violation of rule 2-100 (A), Rules of Professional Conduct. The contact occurred during litigation and respondent had no excuse for the communication. Had he meant to extend a courtesy to opposing counsel, a much different method and communication would have been appropriate. It is well settled that rule 2-100 (A) and its predecessor former rule 12 are therapeutic rules designed, in part, to shield the represented party from well-meaning, but misguided advances by an attorney to an adverse party as well as deliberately improper ones. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.**[1]**

Where it was not clear, given federal case law interpreting similar ABA ethics rule, that county employees contacted by respondent's office came within definition of "party" in rule prohibiting direct contact with opposing party represented by counsel, and where it was possible that such contact came within exception for communications with public officials or otherwise authorized by law, record did not establish by clear and convincing evidence that such contact violated rule. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[3]**

An attorney who is representing a client may not communicate directly or indirectly about the subject of the representation with a party whom the attorney knows to be represented by another lawyer in the matter, unless the attorney has the consent of the other lawyer. Where respondent represented a defendant in a criminal case,

and a co-defendant's lawyer had authorized respondent to communicate with the co-defendant only for the purpose of preparing a joint defense, respondent's communication with the co-defendant about a plea bargain without the other lawyer's consent was improper. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[6]**

When a party already represented by counsel seeks advice from an independent lawyer of the party's choice in order to hire new counsel or obtain a second opinion, attorneys may communicate with such party. However, where respondent represented a defendant in a criminal case, knew that another lawyer represented another defendant in the case, and conceded that a potential conflict existed between the interests of the two defendants, this potential conflict prevented respondent from acting as an independent attorney whom the other defendant might consult for an unbiased second opinion. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[7]**

Where respondent engaged in serious improper communications with a represented party, exposing the party to serious risks of harm, some of which occurred, and committed other stipulated wrongdoing, recommended discipline of four years probation conditioned on thirty days actual suspension was inconsistent with decisional law and insufficient. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[10]**

Statute which requires that if a party is represented by counsel, papers must be served on counsel rather than on the party, does not apply to the service of a summons or a writ. Therefore, respondent did not have to serve alternative writ and petition for writ on opposing party's counsel, but could serve opposing party personally. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[1]**

257.01 Found

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

257.05 Not Found

Where respondent, who represented tenants in a negligence lawsuit against an apartment owner, communicated with an incarcerated individual, who was not a party to the negligence lawsuit but was nevertheless represented by counsel, such communications are not in violation of rule 2–100. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[1 a, b]**

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

258.00 Fee splitting with other lawyers (RPC 2-200(A); 1975 RPC 2-108(A))

258.01 Found

258.05 Not Found

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

258.20 Referral fees to lawyers (RPC 2-200(B); 1975 RPC 2-108(B))

258.21 Found

258.25 Not Found

259.00 Improper sale of law practice (RPC 2-300)

259.01 Found

259.05 Not Found

260.00 Discrimination conduct in law practice (RPC 2-400)

260.01 Found

260.05 Not Found

265.00 Improperly revealing confidential client information (RPC 3-100)

265.01 Found

265.05 Not Found

270.30 Intentional, reckless, or repeated incompetence (RPC 3-110(A); 1975 RPC 6-101(A)(2)/(B))

Where respondent repeatedly failed to review bankruptcy petitions prepared by paralegal before they were filed; filed petitions and supporting documents that were incomplete and contained false statements; failed to investigate corporate status of entities on whose behalf she filed bankruptcy petitions, and failed to supervise her paralegal, respondent was culpable both of reckless failure to perform competently, and of aiding her paralegal's unauthorized practice of law. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[2 a, b]**

Respondent willfully violated section 3-110(A) by failing to prepare documents, failing to provide any service of value to clients, and failing to respond to her clients' phone calls and emails, particularly since the clients were concerned that the time to file a claim would expire. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. **[5]**

Attorney did not perform incompetently where attorney did not know that search warrant affidavit he completed was substituted with a deficient search warrant affidavit by out of state sheriff's deputy. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[4]**

Although noncompliance with a time limitation does not establish per se a failure to act competently, such noncompliance can constitute a violation of Rules of Procedure of the State Bar, rule 3–110(A) if it is not the result of mere negligence. Where respondent was counsel of record for a decade on a capital appeal, successfully moved for appointment of associate counsel, conferred with California Appellate Project staff counsel with respect to relevant issues, sufficiently familiarized himself with the record on appeal, and obtained eight extensions of time over almost two years to file an opening brief, respondent's failure to ultimately file an opening brief evidenced a reckless failure to perform legal services competently. Neither the Supreme Court's refusal to permit respondent's withdrawal nor perceived inadequacies of his draft opening brief by others excused respondent's failure to file a brief. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 **[1]**

Where respondent's conduct of intentionally making no further appearances on behalf of her indigent clients established culpability for failing to perform competently and where such conduct was duplicative of the conduct surrounding respondent's improper withdrawal, no additional weight was assigned to the recommended discipline. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[5 a, b]**

To find a violation of Rules of Professional Conduct, rule 3–110(A) due to respondent's failure to perform any service of benefit to his client, it must be determined that respondent acted in reckless disregard of his client's cause and not merely that respondent acted negligently. Where a client needed to urgently remedy her illegal immigration status, and where respondent waited at least nine months after being retained before completing meager research on the client's behalf, respondent's conduct constituted a reckless failure to perform in violation of rule 3–110(A). *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. **[1]**

Although respondent's contract for hire stated it was for "Purchase of Availability" and described his legal fee as a "True Retainer Fee,"such characterization did not determine the obligations of the parties. Where the contract did not define the term "True Retainer Fee" and did not expressly state that the fee was due and payable regardless of whether any professional services were actually rendered, where the contract did not require respondent to make any particular provision to allot or set aside blocks of time specifically devoted to pursuing the client's claims, where the contract did not set forth a specific period of time when respondent was obligated to turn away other business in order to proceed with the client's matter, and where the individual who paid the fee understood that the fee was an advance against respondent's future services, respondent had an obligation to take timely, substantive action on the client's behalf rather than merely make himself available to the client. *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. **[2 a–d]**

Where a client hired respondent to resolve the client's traffic violations in Arizona so that they would not result in the loss of the client's California license, respondent's payment of the client's traffic fines without conducting research or doing any investigation of the relationship of Arizona and California motor vehicle laws and their effect on the client's status as a licensed driver in California constituted a violation of Rules of Professional Conduct, rule 3–110(A). *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. **[5 a, b]**

Rule 3-110(A) of the Rules of Professional Conduct includes the duty to supervise the work of attorney and non-attorney staff. Respondent operated a high volume personal injury practice with multiple financial transactions occurring on a regular basis and that the office procedures she had in place were so lax that she could not possibly ensure the integrity of her clients' funds. Respondent did not sign checks drawn on her business or trust accounts. Instead, she authorized her staff to do so using a rubber stamp of her signature. Having delegated this significant authority to her staff, respondent had no procedures in place to ensure that client funds were protected. She did not regularly review these accounts, she did not review any trust account bank statement herself, she never compared the settlement checks she received with the deposits in the trust account, she never reconciled the trust account, nor did she review any of the cancelled checks for any of her accounts. The review department concluded that clear and convincing evidence was presented showing that respondent failed to supervise her non-attorney staff and thereby wilfully violated rule 3-110(A). *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627. **[1]**

Attorney's fiduciary duties to his clients require that he develop and maintain adequate management and accounting procedures for the proper operation of his law office. At a minimum, attorney must develop and maintain procedures for proper maintenance and protection of client files; calendaring court hearings and filing deadlines; tracking court hearing dates and filing deadlines; tracking correspondence and client communications; proper handling and accurate accounting of client trust funds and other property. Attorney must also train his staff on those procedures and supervise staff to ensure that procedures are followed. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[14]**

Attorney's fiduciary duty to develop and maintain adequate management and accounting procedures for proper operation of his law office is fundamental to fulfillment of multiple duties, including duties to competently perform legal services, adequately communicate with clients, protect client confidential information, and properly handle and account for client funds and other property. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[15]**

Even if an attorney of record did not have actual knowledge of a trial setting, if a notice of trial setting was properly served on him, his failure to appear at trial will not be excused for State Bar disciplinary purposes unless he establishes that he had office procedures in place that, at a minimum, required his staff (1) to promptly inform him each time a notice of court or administrative trial or hearing is delivered to office, (2) to promptly record date of the trial or hearing in attorney's court calendaring system and in client's file, and (3) to promptly give client actual notice of date, time, and location of the trial or hearing. Respondent did not have any such proper office procedures in place. Thus, where record established that a notice of a hearing was properly served on him in an immigration court case in which he was attorney of record for the alien, respondent's failures to inform client of hearing, to prepare himself for the hearing, and to counsel and prepare client for the hearing could not be excused even if respondent did not learn of the hearing until the day of the hearing. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[23 a-d]**

Principle that, in the normal course of operation of a law office, an attorney should not be at risk of discipline for failure to have knowledge of every item of information that comes in his office is based on presumptions that the attorney has adequate office procedures in place for the proper operation of his office, trains his staff on those procedures; employs safeguards to insure that procedures are followed, and supervises staff to insure they perform their jobs. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[24]**

Even if respondent failed to appear at an immigration court hearing because he simply forgot to record the date of the hearing in his calendar, his failure to appear must be viewed in light of the record as a whole because, even if an attorney does not act intentionally or recklessly, he violates the rule of professional conduct regarding attorneys' duty to competently perform legal services if he repeatedly fails to competently perform. Respondent's failure to appear at the hearing could not be excused for disciplinary purposes because, under record as a whole,

his failure to appear was not isolated, but one of many such failures. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[25]**

In a prosecution for intentionally, recklessly, or repeatedly failing to perform legal services competently, failing to refund an unearned fee after employment was terminated, and failing to deliver clients' funds promptly upon request, there was sufficient evidence that respondent represented the clients involved where one of the clients was referred to respondent and went to his office intending to hire him, saw his name on the door and some of his business cards in the reception area, made several appointments with him, received one of two receipts for payment on respondent's letterhead, and filled out forms for respondent at the request of a member of the office staff who was an employee or agent for respondent. Moreover, respondent had a key to the office, worked out of the office for at least a few hours each week, and, by failing to deny the fact upon accusation by the State Bar, admitted that the clients were his. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[7]**

The review department determined that respondent's office contacted a represented party where, after respondent's employee sent a letter to a particular employee at an insurance company, counsel representing the insurance company sent a letter notifying respondent that he had contacted a represented party, but respondent's employee nevertheless sent a second letter to the same employee at the insurance company. The only reasonable inference to be drawn from the letter sent to respondent by counsel for the insurance company was either that the insurance company employee held one of the positions listed in Rules of Professional Conduct, rule 2-100(B)(1) or that the statements or actions of the insurance company employee pertaining to the matter would be binding upon, imputed to, or constitute an admission on the part of the insurance company. Moreover, respondent appeared to concede that the insurance company employee constituted a represented party in his letter to the State Bar. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[11]**

Where respondent had been alerted to a problem in the way his employees ran his office but took no action to correct the problem, and it appeared that respondent failed to guide his staff and review their work, respondent was culpable of violating Rules of Professional Conduct, rule 3-110(A). *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[12]**

Because respondent failed to competently perform legal services both before and after the September 14, 1992, effective date of the revised version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110), he violated both the "former" and the "current" versions of that rule. Thus, State Bar erred when it amended the charges to "conform to proof" by deleting the charge that respondent violated the "current" rule and replacing it with a charge that he violated the "former" rule. State Bar should not have deleted the charge that respondent violated the "current" rule, but should have added to it a charge that respondent also violated the "former" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[2]**

Even though State Bar erroneously amended the charges to "conform to proof" by deleting the charge that respondent violated the revised (i.e., "current") version of the Rule of Professional Conduct requiring attorneys to competently perform legal services (rule 3-110 as amended eff. Sept. 14, 1992) and replacing it with a charge that respondent violated the "former" version of that rule instead of correctly amending the charges by adding, to the charged violation of the "current" rule, a charge that respondent also violated the "former" rule, no due process violation occurred when review department held that respondent was culpable of violating both the "former" rule and the "current" rule because (1) the text of both rules was virtually identical, (2) respondent did not argue lack of notice, and (3) the trial in hearing department covered respondent's conduct during the time period in which the "former" rule was in effect and after the effective date of the "current" rule. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[3]**

Respondent's deliberate and unjustified failure to attend a status conference in client's workers' compensation case was reckless failure to competently perform legal services and violated rule regarding attorneys' duty of competence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[4]**

Respondent's failure to perform any substantive work on client's workers' compensation case for more that five years was clearly repeated and reckless failure to competently perform legal services and violated rule regarding attorneys' duty of competence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[6]**

Culpability of violating Business and Professions Code section 6068, subdivision (m) cannot be sustained by a factual finding based on allegations that respondent gave a client incorrect legal advice. This is addressed

by rule 3-110(A) of the Rules of Professional Conduct, which was neither charged nor proved. Negligent legal representation, even that amounting to legal malpractice, does not establish a rule 3-110(A) violation. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[7 a, b, c]**

Respondent was found culpable of violating rule 3-110(A) of the Rules of Professional Conduct. Even if his client could not decide which remedy to pursue or even if his client was unable to provide respondent with needed information, respondent could not simply let the months pass with no action. Respondent's choice was to either pursue remedies warranted by the facts and law based on effective investigation and research or to withdraw from employment if and as appropriate under rule 3-700(C) of the Rules of Professional Conduct.*In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126. **[2 a-c]**

Reliance solely on a clerk's advice regarding a continuance of a motion, without ensuring that an order exists attesting to the continuance, constitutes negligence and might well be reckless on the part of an experienced practitioner. However, as respondent was newly admitted to practice, his practice consisted of appearing before administrative law judges on Social Security matters, and he had little experience in the superior court, the review department concluded that there was not clear and convincing evidence that respondent's conduct was reckless or intentional. Thus, the evidence did not support a culpability determination under rule 3-110 of the Rules of Professional Conduct. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[3]**

After determining that he no longer wished to represent his client, respondent remained the attorney of record for approximately one year. His failure to either progress the action to trial or take affirmative steps to be relieved as attorney of record was at least reckless and a violation of rule 3-110 of the Rules of Professional Conduct. The client's failure to cooperate in permitting respondent's withdrawal in no way excused respondent from making the necessary motion to be relieved as counsel of record. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[4]**

There is no clear and convincing evidence that respondent's failure to have his client's medical records available at the client's administrative hearing was either intentional or reckless. Thus, while such conduct was negligent, it did not reach the level of a disciplinable offense for failing to perform competently in violation of rule 3-110 of the Rules of Professional Conduct. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[7]**

Respondent's two serious instances of reckless failure to perform legal services which resulted in the dismissal of his clients' civil lawsuits, and respondent's failure to cooperate with the State Bar investigations warrants a discipline recommendation of 18-months stayed suspension, two years of probation, and a 90-day actual suspension. *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.**[4]**

Regardless of whether a criminal court erred in concluding that respondent did properly perfect an appeal, respondent's failure to perform services competently occurred as a result of his withdrawing and leaving his client in jail without counsel following the criminal court's ruling, whether that ruling was correct or not. Respondent had an ethical obligation to his client to perform competently regardless of the criminal court's ruling, especially in view of the client's incarceration and later release on a writ of habeas corpus. *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. **[2]**

Attorney's failure to communicate with a client may also constitute incompetent legal practice or abandonment of the client when facts demonstrate that attorney's failure to communicate resulted in the effective cessation of work on client's cause of action, foreclosed client from choices regarding her cause of action, or indicated a withdrawal from employment. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[5]**

An attorney is not responsible for every event that takes place in the attorney's office, but the attorney does have a duty to reasonably supervise his office staff. And, once alerted to them, an attorney's gross neglect in not adequately addressing problems in law office is disciplinable as a failure to competently perform legal services in violation of Rules of Professional Conduct. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[6]**

An attorney's failure to adequately communicate with a client may evidence the attorney's lack of time to perform legal services competently in violation of Rules of Professional Conduct. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[7]**

Former Rule of Professional Conduct 6-101(B)(2)'s express proscription of repeatedly accepting employment or continuing representation in legal matters by attorneys who do not have sufficient time and resources to provide competent legal representation is now encompassed within Rule of Professional Conduct 3-110's proscription of attorneys intentionally, recklessly, or repeatedly failing to perform legal services competently. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[8]**

The greatest amount of discipline is warranted for violations of probation which show a breach of a condition of probation significantly related to the misconduct for which probation was given, especially in circumstances raising a serious concern about the need for public protection. Where the misconduct which gave rise to the probation involved failure to perform and communicate, the law office management plan, ethics school, and law office management course conditions of probation directly addressed the misconduct and were therefore significantly related to the underlying misconduct. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[4]**

Respondent violated the prohibition against intentionally, recklessly, or repeatedly failing to provide competent legal services where he filed and served a complaint, but did not make claim on the client's purported insurance, did not take any other action to prosecute her case, did not cause any independent investigation to be made, did not perform any discovery, did not cause service to made of the amended complaint in such a manner to prevent a motion for discretionary dismissal, and remained counsel of record for three years after concluding that her case lacked merit. *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615. **[5]**

The failure to maintain an effective calendaring and follow-up system as a means of supervising employees and monitoring cases subjects an attorney to the risk of recklessly and repeatedly failing to provide competent legal services. It is his or her obligation to know the status of cases, and failure to have effective systems in place to provide that information is likely to be reckless and may be repeated. The absence of such a system was reckless in this case. *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608. **[1]**

Respondent recklessly provided incompetent legal services where he filed a compliant for a client, but did not serve the defendants within the three-year time limit or bring the case to trial within the five-year time limit under the Code of Civil Procedure. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[1]**

Respondent recklessly provided incompetent legal services where he filed a complaint for a client and then took no substantive action on the client's behalf for three and one-half years despite inquiries from the client about the status of the case. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[1]**

Respondent recklessly provided incompetent legal services where a matter presented serious evidentiary problems requiring timely and substantive action, but where he did not clearly advise the client of the problems and obtain her consent to a strategy for handling the matter, where he did not seek to terminate his employment, and where he did not aggressively pursue the matter. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[2]**

Decisions of the Supreme Court and the review department involving abandonment of a client's case where the attorney has no prior record of misconduct have typically resulted in discipline ranging from no actual suspension to 90 days of actual suspension. However, most of the past abandonment cases involved the attorney's inattention in civil matters. Balancing all relevant factors in this case involving an attorney's inattention in a criminal case involving an incarcerated client, and giving weight to, but not relying too heavily on, the State Bar's recommendation of respondent's 90-day actual suspension, the review department concluded that a 6-month actual suspension was appropriate. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. **[5]**

A client's nonpayment of fees did not excuse respondent's reckless and repeated failure to pursue the client's case diligently. Respondent had to seek permission from the court to withdraw, or pursue the case diligently. She did neither and therefore violated the rule of professional conduct regarding attorney competence. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[5]**

An attorney's habitual disregard of clients' interests involves moral turpitude even if such disregard results only from carelessness or gross negligence. Where respondent recklessly or repeatedly failed to provide competent legal services in seven matters and failed to return files properly to clients in four matters, these failures

together constituted habitual disregard of clients' interests and amounted to moral turpitude. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[8]**

Where respondent's entire course of conduct in handling his duties as the trustee of a testamentary trust amounted to a reckless failure to perform services competently, but the review department considered much of the same misconduct in reaching its conclusion that respondent committed moral turpitude through gross negligence in handling his duties as trustee, the failure to perform competently was given minimal weight as an aggravating circumstance in determining the appropriate discipline to recommend. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[6]**

Because an incarcerated client has a limited ability to assist an attorney or to stay apprised of the attorney's efforts, the abandonment of an incarcerated client is a serious matter warranting substantial discipline. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459 **[3]**

Where an attorney retained advanced fees long after failing to perform any legal services and agreeing to refund the unearned portion of the fees, such wrongful retention approached a practical appropriation of the client's property. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. **[4]**

Statute requiring attorneys to uphold law is not always proper vehicle for charging violation of State Bar Act when statute is already covered as a disciplinable offense in another part of the Act. Because statutes requiring written attorney fee agreements containing certain information specify non-disciplinary remedies for attorneys' failure to comply with them, and because failure to comply with such statutes may be charged as violations of Rules of Professional Conduct regarding illegal fees, competence, and communication with clients, violation of such statutes is not disciplinable under statute requiring attorneys to uphold law. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[11]**

Where respondent was grossly negligent in failing to respond to requests for information from client and successor counsel, and where respondent failed to maintain client's settlement check in safe place, respondent repeatedly failed to perform competently. However, where charge of repeated failure to perform competently addressed same misconduct as charges of failure to communicate with client and failure to keep client property in safe place, failure to perform competently was given no additional weight in determining appropriate discipline. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[19]**

Where record contained no evidence about circumstances of loss of client's settlement check, respondent could not be found culpable of reckless failure to perform competently based on such loss. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[20]**

Where failure to file complaint for client within statute of limitations was not mentioned in notice to show cause, such failure could not form basis for culpability, but where such failure, although not shown by clear and convincing evidence to be intentional or reckless, constituted part of series of repeated failures to perform competently which significantly harmed client, such failure constituted aggravating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[21]**

Where respondent's failure to supervise his personal injury practice and fulfill trust fund responsibilities was so remiss as to be reckless, and his mismanagement of his trust account included repeated failure to provide competent legal services by promptly paying medical liens, respondent violated rule regarding reckless or repeated failure to perform competently. However, where misconduct forming basis for such violation also underlay charge of moral turpitude supporting identical or greater discipline, review department gave violation of competence rule no additional weight in determining discipline. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[2]**

Where respondent failed to file required at-issue memorandum at time when former Rules of Professional Conduct were in effect, but such failure was not intentional or reckless, and respondent failed to perform several other required acts in same litigation after revised Rules of Professional Conduct became effective, review department held that respondent repeatedly failed to perform competently in violation of revised rule precluding intentional, reckless, or repeated failure to perform legal services competently, and did not reach question whether initial failure to file at-issue memorandum constituted duplicative violation of earlier version of same rule. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[8]**

Where respondent's mishandling of trust funds was not intentional, but respondent abdicated responsibility to supervise personal injury cases and recklessly disregarded trust account obligations, thereby committing acts of moral turpitude; where respondent also repeatedly failed to provide legal services competently and did not notify a client of receipt of a settlement; and where record did not show that problems resulting from respondent's disregard of his trust account obligations had ended or that respondent had established sound office management plan, appropriate discipline included three years probation with trust account audit and law office management requirements, three years stayed suspension, and actual suspension for eighteen months and until restitution was completed. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[15]**

Where there was no evidence that respondent acted intentionally in failing to notify statutory medical lienholder of settlement or in failing to honor statutory lien, but rather, respondent's state of mind was that he was not actually aware of existence of lien or his duties in regard to it because he took no steps to investigate his client's medical coverage or his obligations under law, respondent's conduct evidenced reckless disregard rather than intentional violation of law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[1]**

Where hearing judge did not find that respondent's lack of competence in failing to pay client's medical bill was intentional, reckless, or repeated, and record contained no clear and convincing evidence of anything more than negligence in this regard, respondent was not culpable of intentional, reckless, or repeated failure to perform competently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[6]**

Where respondent disbursed settlement funds to client without withholding funds to pay medical lien, in reliance on client's unverified representation that client had paid lien, and respondent had no reason to believe that lienholder had any alternative possible source of payment, respondent's error in fulfilling his fiduciary duties both to lienholder and to client, who was later sued by lienholder, was of sufficient magnitude to constitute reckless failure to perform competently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[7]**

Attorney who holds funds subject to legally enforceable lien has duty to lienholder to perform competently in handling those funds; such duty is inherent in attorney's role as fiduciary with respect to entrusted funds. Moreover, because failure to pay liens exposes clients to collection efforts by lienholders, it is for protection of client, not just lienholder, that attorney has duty to ensure that liens are properly paid. Where respondent recklessly disregarded his duty to pay statutory medical liens in personal injury matters, he was culpable of reckless failure to perform legal services competently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[19]**

An attorney retained by a parent to represent the parent's child in a personal injury matter is thereby put on notice that the injured client may be a minor, a fact of critical importance. Statutes requiring court approval of compromise of minors' claims are intended for protection of minors. Respondent's failure to ascertain client's age after being retained by client's parent was grossly negligent as a matter of law and constituted reckless failure to perform legal services competently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[20]**

A finding of reckless disregard, for the purpose of the rule prohibiting intentional, reckless or repeated failure to perform competently, cannot be premised on mere negligence. In matter where respondent failed to pay medical lien because it was negligently misplaced, and in matter where there was no evidence that failure to pay lien was result of anything other than simple negligence, respondent's conduct did not constitute a reckless failure to perform. Where counts involving failure to pay liens each involved different fact pattern, and did not involve deliberate indifference to lienholders' rights, record also did not show repeated failure to perform competently with respect to such liens. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[23]**

An attorney's duties to a client do not cease to exist because client is also represented by another attorney. Where respondent wished to be relieved of responsibility for defending client's deposition, but knew that successor counsel was not available to do so, respondent had obligation to take appropriate steps to avoid prejudice to client. Where respondent intentionally absented himself from client's deposition even though he was still officially counsel of record and knew client would be unrepresented in his absence, respondent intentionally failed to perform legal services competently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[28]**

Where respondent was culpable of one instance each of collection of an illegal fee and intentional failure to perform competently, and of multiple instances each of violating his duty to uphold the law; reckless failure to perform competently; withdrawing from employment without protecting clients from foreseeable prejudice; and failure to pay trust funds on demand, and where most severe applicable standard proposed three-month minimum

actual suspension for non-misappropriation trust fund offenses, and where respondent's mitigating evidence was not sufficient to justify deviating from applicable standard given respondent's record of numerous violations over extended time period, review department increased hearing judge's recommended actual suspension to 90 days, as condition of three-year probation, with one-year stayed suspension as justified by case law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[29]**

Prolonged delay in proceeding with an inherently urgent legal matter despite the client's repeated requests is sufficient to establish reckless disregard of an attorney's obligation to perform legal services with competence. Where respondent delayed filing bankruptcy petition despite need for prompt action to protect clients from creditors and despite one client's repeated requests that respondent proceed, and respondent also failed to communicate adequately with client regarding bankruptcy, respondent was culpable of reckless failure to perform competently. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[3]**

Where respondent's failure to file answers to interrogatories when due flowed from a simple calendaring error, and respondent handled other discovery timely, respondent was properly found not culpable of failure to provide competent legal services. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[1]**

Where a difference of opinion on the merits of a client's defense led respondent to withdraw from representing the client one month prior to trial, with the client's consent, the withdrawal did not violate the rule regarding the duty of competent representation. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[7]**

Given relatively short duration of respondent's representation of two clients and work respondent performed for them, there was insufficient evidence to support charge that respondent intentionally, or with reckless disregard, or repeatedly failed to perform legal services competently. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[4]**

Where respondent filed a late response to a motion to dismiss, the response was considered by the court, and the late filing was an isolated and at most negligent act, it did not amount to a violation of the rule of professional conduct prohibiting intentional, reckless or repeated failures to perform legal services competently. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[8]**

Where there was no clear and convincing evidence establishing services that were to be performed for fee paid, or establishing respondent's agreement to perform those services, evidence did not support charge of failing to perform services competently. Where, in addition, review department could not determine whether respondent's employment was ever terminated, as opposed to simply being completed, or whether respondent did not earn entire fee paid, review department did not find that respondent violated rule requiring attorneys to take reasonable steps to avoid foreseeable prejudice to clients prior to withdrawal from representation, or rule requiring prompt refund of any unearned fee. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[9]**

Where respondent negligently erred in failing to take proper steps to ensure payment of a medical lien, but the record did not contain clear and convincing evidence that respondent's misconduct was intentional, reckless, or repeated, respondent did not violate the former rule making intentional, reckless, or repeated incompetence a disciplinable offense. Respondent's conduct, which was invited by the client, in leaving his client open to a possible lawsuit by the medical lienholder, was not so extreme as to constitute recklessness. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[12]**

Duplicative allegations of misconduct serve little, if any purpose. It should be apparent by the time of the pretrial conference which charges are most apt, which other charges might show additional misconduct, and which are simply duplicative and unnecessary. Amendment or dismissal of charges, particularly at the time of filing the pretrial statement (rule 1222(k), Provisional Rules of Practice), serves the interest of litigant and judicial economy. Thus, where respondent failed to ensure payment of a medical lien when settling a personal injury case, there was no benefit to charging respondent with failing to act competently, when the charge that respondent violated the rule requiring proper payment of entrusted funds addressed the alleged misconduct far more aptly and supported identical or greater discipline. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[13]**

Where respondent did not believe his client had a strong case and thought more evidence was needed in order to prevail, he had a choice: proceed diligently in advancing the client's legitimate claims, or promptly advise the client that she had no meritorious claims and withdraw from representation if the client insisted on pursuing her

claim. He could not simply let excessive time pass, lead his client to believe he would advance her claim and neither do so nor take appropriate action to withdraw so the client might consult other counsel. This course of action warranted a finding that respondent was culpable of incompetent representation. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[4]**

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

Where both respondent's admission in discovery and client's testimony supported finding that respondent accepted responsibility for proceeding with lawsuit on client's behalf, and there was no evidence that contradicted or undercut respondent's admission, no additional corroboration was necessary to find that respondent agreed to prosecute case, and respondent could therefore be found culpable of misconduct based on failure to perform legal services requested by client. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[1]**

Where a notice to show cause alleged that respondent failed to perform services competently, and set forth in separate paragraphs specific facts which in the aggregate charged a lack of diligence upon which that violation was based, the alleged misconduct in the notice was pled with sufficient particularity and was adequately correlated with the rule violation charged to have provided respondent with reasonable notice of the specific charges at issue. There is no requirement that each paragraph of a single count in a notice to show cause must allege a violation of a rule or statute. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[2]**

Hearing judge's refusal to permit respondent to present evidence that value of one estate asset increased during respondent's delay in completing probate did not entitle respondent to relief, where such increase in value did not justify respondent's misconduct in delaying distribution of other estate assets. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[7]**

Hearing judge's denial of respondent's request for continuance to research probate practices in respondent's county was not error, where respondent had had ample time prior to trial to prepare his defense, and evidence sought would have had very little probative value as custom and practice in respondent's county would not explain or excuse respondent's prolonged delay in closing estate at issue. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[8]**

Compliance with the time limitations set forth in the Probate Code is not a defense to a charge that the attorney failed to act competently, nor does noncompliance with such time limitations establish per se a failure to act competently. The focus of the inquiry on a charge of failure to act competently is whether the attorney intentionally, recklessly, or repeatedly failed to apply the learning, skill, and diligence necessary to discharge the duties arising from the attorney's employment or representation. Compliance with the time limitations of the Probate Code is but one factor to be considered in making this determination. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[11]**

An attorney has an obligation to perform services diligently and if the attorney knows he or she does not have or will not acquire sufficient time to do so, the attorney must not continue representation in the matter. Reckless or repeated inattention to client needs need not involve deliberate wrongdoing or purposeful failure to attend to duties in order to constitute wilful violation of duty to perform competently. Fact that respondent performed some services for a probate estate did not excuse his misconduct in delaying closure of the estate, especially where respondent's asserted justification for delay was that he was busy on other matters. Respondent's repeated failure to perform acts needed to distribute assets and close estate for five years, knowing that beneficiaries desired earliest possible distribution, constituted wilful violation of the duty to perform services competently. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[12]**

An attorney's failure to accept responsibility for, or to understand the wrongfulness of, his or her actions may be an aggravating factor unless it is based on an honest belief in innocence. Where respondent's assertions in defense of failure to perform services did not reflect an honest belief in innocence, but rather reinforced the conclusion that respondent simply did not understand or appreciate the requirement to devote diligence necessary to discharge duties arising from employment, respondent's assertions exhibited a disturbing lack of insight into misconduct which in turn caused concern that he would repeat his misdeeds. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[16]**

Where respondent's misconduct in both first and second disciplinary matters involved similar lack of diligence causing delay in closing a simple probate estate, discipline in second matter ordinarily would warrant only slightly greater discipline than in first matter. However, where respondent had failed to understand or appreciate misconduct, causing concern about handling future cases, and in light of absence of mitigating factors and presence of several aggravating factors, significantly greater discipline than in first matter was appropriate in second matter, and review department recommended two-year stayed suspension, three years probation, and six months actual suspension. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[17]**

Where hearing judge properly accepted client's testimony that advanced funds were for transcript costs and not for respondent's fees, and where applicable written fee agreement provided for respondent to advance costs, respondent's failure to pursue litigation because of client's failure to advance cost of transcripts constituted both a wrongful withdrawal from employment and a wilful violation of duty to perform legal services competently. Respondent was also culpable for failing to deposit the advanced funds in a trust account and for failing to return the client's file promptly upon demand. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[6]**

It is not inherently inconsistent to conclude that an attorney who withdrew from employment and failed to perform legal services competently is also culpable of failing to communicate with the client thereafter. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[7]**

In matters involving abandonment of a single client by an attorney with no prior record of discipline, discipline imposed by Supreme Court has ranged from no actual suspension to 90 days of actual suspension. Where respondent's misconduct was serious, harmed client, and included trust account violation as well as abandonment and failure to communicate, but respondent presented impressive mitigating evidence, including services to disadvantaged clients and to minority community, and respondent expressed sincere aspiration not to be involved in disciplinary proceedings again, review department recommended actual suspension of 30 days, with stayed suspension of six months and one year of probation. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[9]**

A finding of a wilful violation of a Rule of Professional Conduct does not necessarily indicate intent to violate ethical guidelines, but merely an intent to perform an act which results in a violation. Even where there was no evidence of intentional misconduct, evidence of repeated acts of negligence justified finding respondent culpable of wilfully violating the rule regarding failure to perform services competently. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181. **[1]**

An attorney's failure to communicate with and reckless or repeated inattention to the needs of a client have long been grounds for discipline. Such misconduct need not involve deliberate wrongdoing or a purposeful failure to attend to the duties due to a client, and the attorney's acts need not be shown to be wilful where there is a repeated failure of the attorney to attend to the needs of the client. Where respondent received several notices regarding the inheritance taxes owed by his client in a probate matter, and did not notify his client of any of them, and the client was reasonably relying on respondent to provide her with such notice, respondent failed to perform legal services competently in wilful violation of the applicable Rule of Professional Conduct. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175. **[1]**

Private reproval was appropriate discipline for isolated and relatively minor incident of failure to perform services competently which occurred early in respondent's career and was followed by respondent's candor and cooperation, improvement in office procedures, and voluntary participation in State Bar's ethics course. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175. **[2]**

Respondent violated duty to communicate with client where, after receiving notice that client disputed respondent's use of client's settlement proceeds to pay respondent's bill for services to client's family, respondent failed to communicate with client to ensure that client's father had been authorized to discharge family's

indebtedness for fees out of client's personal injury recovery. Such failure to communicate violated the duty to perform legal services competently. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[18]**

When, without the client's consent, an attorney waived a client's rights to trial by jury, the presence of a shorthand reporter at the court proceeding, the preparation of findings of fact and conclusions of law and the right to appeal, the attorney's conduct constituted a failure to perform services competently. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[1]**

Disbarment was the appropriate sanction for an attorney's misappropriation of a very large sum of client funds over many years, which was surrounded by utter disregard of the attorney's fiduciary and trust account duties, and aggravated by incompetent representation of the client and prosecution of a lawsuit without the client's consent, demonstrating a lack of basic understanding of the fundamental responsibilities of an attorney. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[10]**

Where there was no evidence that an attorney's failure to bring a client's lawsuit to trial within the statutory deadline resulted from anything other than the attorney's simple error in miscalculating the date, and the attorney had expended substantial efforts on the client's behalf, there was not clear and convincing evidence of a reckless failure to perform legal services competently. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[4]**

While a lack of adequate communication with a client may warrant a finding of failure to perform legal services competently, it would be duplicative to draw such a conclusion when the attorney has been found culpable of violating the statutory duty to communicate with clients. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[6]**

Wilfulness, for the purpose of finding a violation of the Rules of Professional Conduct, is defined as having acted or omitted to act purposely to do the act forbidden by the rule or not to do the act required by the rule. Where there was no evidence that respondent was incapable of forming the requisite purpose or intent, the review department upheld a finding that respondent was capable of the wilfulness necessary to commit the charged rule violation (accepting employment without resources to perform competently.) *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[24]**

Where an attorney was willing to accept employment when the attorney knew or should have known that the attorney was not in the position to represent the client competently, the attorney violated the (former) rule of professional conduct prohibiting knowingly accepting or continuing employment without the resources to perform competently. Respondent's acceptance of employment in four matters and subsequent abandonment of the clients demonstrated a violation of the rule. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[25]**

Where a client's matter involved a large amount of money and the client was concerned that his reputation would be affected by the dispute, the client's anxiousness to resolve the matter as quickly as was practical, and his periodic attempts to learn the status of the matter, were reasonable. His attorney's failure to complete necessary legal services and to return the client's calls thus violated the duty to respond to reasonable status inquiries and to provide competent legal services. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[5]**

Where client needed immediate action, and respondent recommended that client seek a temporary restraining order, respondent's failure to bring TRO application to hearing for over two months constituted reckless incompetence, and respondent's inaccessibility to the client, even though not as severe or protracted as in many disciplinary cases, violated the statutory duty to communicate with clients. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[8]**

Failure to perform competently, with reckless disregard, was demonstrated by respondent's failure to take any steps whatsoever to bring a client's case to trial, or to pursue it at all, prior to the expiration of the five-year statute, causing the client to lose a cause of action irrevocably. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[10]**

An attorney's being busy with other personal and client-related matters at the time of the attorney's misconduct does not constitute mitigation; if the attorney is too busy to handle a matter competently and complete the necessary work within an appropriate time frame, the attorney should not take on the case. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[28]**

The duty of an attorney to act competently requires the attorney to take timely positive, substantive action on a client's behalf, or, if appropriate, to withdraw from employment; if an impasse develops between the attorney and the client, the attorney cannot simply fail to take action. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[6]**

Where respondent repeatedly misused his trust account as a personal account, twice failed to return unearned advanced costs promptly on request, and failed to perform services competently in one matter, the gravest aspect of the misconduct was that relating to respondent's violation of the rule governing trust accounts and client funds, and this misconduct warranted at least a three-month actual suspension. Where such misconduct was aggravated by prior discipline for neglect of four client matters, and aggravating circumstances predominated over mitigating circumstances, it was appropriate to recommend a three-year stayed suspension, six months actual suspension, and five years of monitored probation for the protection of the public. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[10]**

Suspended attorneys are expressly precluded by statute from practicing law. On the other hand, one of the Rules of Professional Conduct requires an attorney to perform the services for which he or she is hired, because the failure to do so can be an intentional or reckless failure to perform competently in violation of the rule. Thus, requiring a suspended attorney to comply with both the unauthorized practice statute and the rule regarding competent performance would result in incompatible duties. For this reason, the rule regarding failure to act competently has no applicability to attorneys practicing while suspended. The suspended attorney's only duty is to stop practicing until reestablished as an attorney in good standing. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[6]**

There is no reason to require suspended attorneys to comply with the rules requiring competent representation and prohibiting prejudicial withdrawal even while they are precluded from practicing because suspended. A full range of discipline is available to protect the public, courts and profession for unauthorized practice alone. Recklessness or incompetence in the unauthorized practice of law, or a precipitous withdrawal, would cause harm to the client and would constitute an aggravating factor which justifies greater discipline than would have been appropriate if no harm had occurred. In order to minimize harm to clients, suspended attorneys should take all steps to avoid foreseeable prejudice, short of practicing law. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[8]**

Where attorney's alleged failure to perform competently occurred after effective date of revised version of rule governing duty of competence, and notice to show cause charged attorney only with violating previous version of rule and notice was not amended, attorney was properly found not culpable of violating earlier version of rule. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[6]**

Where attorney's decision not to pursue client's damages action was not made until after effective date of revised rule regarding duty to perform competently, attorney's conduct in deciding not to pursue damages was covered by revised rule and attorney could not be found culpable of violating earlier version of rule. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[7]**

Where attorney agreed to seek recovery of a client's vehicle and damages for loss of its use, and attorney promptly recovered vehicle but decided not to pursue damages because vehicle was inoperable, attorney was not culpable of violating either original or revised version of former rule regarding duty to perform competently. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[8]**

Attorney who failed to distribute settlement funds and pay medical liens promptly, as a result of his grossly negligent office practices and failure to supervise employees, was culpable of repeated or reckless failure to perform competently. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[7]**

Where attorney held settlement draft uncashed pending review of adequacy of settlement amount, attorney's misconduct consisted of failure to follow through, and improper handling of client funds, rather than misappropriation. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[13]**

Attorney's failure to apply the diligence necessary to discharge the duties arising from his employment, by failing to pursue his client's appeal in a timely fashion, did not establish reckless disregard or repeated failure to perform legal services competently. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[6]**

An attorney's obligation to perform services competently must be construed to have covered the entire period that the attorney represented the clients, even after the clients' case was dismissed. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[11]**

Where clients hired an attorney to represent them, and were not informed that the attorney had delegated responsibility for the case to an associate, the clients rightly looked to the attorney to pursue their claims diligently. Accordingly, the attorney's failure to supervise the associate's handling of the case amounted to a failure to perform services competently. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[12]**

Where an attorney acted in good faith, and was kept in the dark by his associate either by design or negligence, his good faith did not relieve the attorney from culpability for failure to perform services competently, based on the attorney's prolonged failure to monitor his associates' handling of the case, after the ethics rule regarding competence was amended to delete the good faith exception. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[13]**

Finding that respondent was culpable of prejudicial withdrawal from representation and of failure to perform competently was based only on respondent's failure to render services while not under suspension; during suspension, respondent was precluded from practicing law, and misconduct in that connection is governed by statute precluding unauthorized practice of law. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[3]**

Where notice to show cause failed to charge respondent with failing to perform services in a certain matter, and notice to show cause was not amended to conform to proof at hearing, review department struck hearing department's finding of culpability with respect to that matter. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[1]**

Preliminary consultations with client created attorney-client relationship, but attorney was not culpable of misconduct for failure to proceed to file suit in absence of clear and convincing evidence that he had agreed to do so. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[5]**

Client's issuance of check to attorney marked "for filing fees" was insufficient evidence to show clearly and convincingly that attorney was obligated to file suit on behalf of client. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[8]**

If State Bar intends to charge violation of rule of professional conduct regarding duty of competence, there must be an allegation that respondent intentionally or with reckless disregard or repeatedly failed to perform legal services competently, and notice should state what particular conduct is characterize as violating this standard. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[12]**

Respondent's failure to complete the services he undertook for his client and his de facto withdrawal from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client were wilful, and violated applicable Rules of Professional Conduct. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[2]**

Attorney's failure to perform legal services as agreed, and abandonment of three clients, constituted very serious misconduct. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[2]**

Respondent wilfully failed to provide legal services competently, where although respondent's attention was repeatedly directed to clients' legal needs for which he had accepted significant advanced fees and costs, respondent failed to provide promised services for a year, resulting in prejudice to clients due to defendant's bankruptcy. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[4]**

270.31 Found

In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391.

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

Where attorney allowed a paralegal to conduct most of the negotiations regarding settlement of a client's case, granted the same paralegal unchecked authority over the law office accounts without providing adequate supervision or training, resulting in significant misappropriations, and ceded day-to-day operations of the firm to the same paralegal, respondent abdicated his duty to supervise the paralegal and thereby failed to perform legal services competently in violation of rule 3-110(A). *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[5]**

In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Sullivan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Layton (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

270.35 Not Found

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

In the Matter of Respondent P (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

270.50 Improper sexual relations with client (RPC 3-120)

270.51 Found

270.55 Not Found

271.00 Malicious/frivolous litigation (RPC 3-200; 1975 RPC 2-110)

Respondent was culpable of maintaining unjust actions where he unreasonably persisted in pursuing numerous lawsuits after unqualified losses at trial and on appeal, repeatedly filed unmeritorious motions, pleadings, and other papers, engaged in tactics that were frivolous or intended to cause unnecessary delay, and acted with disregard for two vexatious litigant rulings. However, charges of violations of rule 3-200(A) based on same facts were properly dismissed as duplicative. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360 **[1 a-d]**

Even though attorneys have duty to zealously represent their clients and assert unpopular position in advancing clients' legitimate objectives, attorneys, as officers of the court, have duty to judicial system to assert only legal claims or defenses warranted by law or supported by good faith belief in correctness.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[5]**

Respondent's frivolous appeal was a violation of section 6068 subdivision (c) of the Business and Professions Code and rule 3-200(A) of the Rules of Professional Conduct. However, since the rule 3-200(A) violation is essentially redundant, for purposes of assessing degree of discipline, the review department found respondent culpable of only the section 6068 subdivision (c) violation. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[3]**

271.01 Found

271.05 Not Found

In the Matter of Kinney (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

272.00 Advising violation of law (RPC 3-210; 1975 RPC 7-101)

Where respondent did not simply advise client of consequences of not paying child support order, but actively counseled client on ways to accomplish goal of violating order, respondent was culpable of violating statute requiring attorneys only to counsel actions that appear legal or just, and rule prohibiting attorneys from advising the violation of any law or court order. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[5]**

In light of all relevant evidence and comparable case law, as well as heightened concern regarding enforcement of child support orders, respondent's very serious misconduct of advising and aiding a client in avoiding a child support order, which misconduct was substantially aggravated by respondent's overreaching in arranging real property transactions between the client and respondent's father, warranted increasing recommended discipline to one-year actual suspension coupled with three years of probation, even though review department found respondent culpable of less misconduct than did hearing judge. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[12]**

Due to difference in applicable standards of proof, a civil court finding is not binding on the State Bar Court for purposes of discipline. Where, upon evidence presented to civil court plus additional testimony, hearing judge concluded, contrary to civil court's decision, that respondent's loan to a client was not a sham transaction, then, resolving all reasonable doubts in respondent's favor, it was appropriate to dismiss charges that the loan transaction violated statutory duties to counsel only legal or just actions and to employ only truthful means of maintaining clients' causes; constituted act of moral turpitude; and violated rule against advising violations of law. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[1]**

272.01 Found

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

272.05 Not Found

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

273.00 Improper transaction with client (RPC 3-300; 1975 RPC 5-101)

No attorney/client relationship existed between respondent and her friend at the time respondent purchased duplex from her. The duration of an attorney/client relationship is dependent on the nature and scope of the

relationship. Respondent had previously informally represented the friend in four minor matters, but these matters had no relationship to the purchase of the duplex and respondent did not obtain confidential or financial information during the earlier representation that she used in subsequent negotiations. Moreover, almost two and a half years elapsed between the services provided and the purchase of the duplex. The State Bar also provided insufficient evidence that the attorney/client relationship was resurrected at the time of the sale, and the review department afforded a presumption of validity to the findings in a civil matter that no attorney/client relationship existed during the negotiation and sale of the duplex and no legal services were provided at that time. *In the Matter of Allen* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198 **[6 a,b,c]**

Rule 3-300 does not apply to a former client where, during transaction in question, respondent did not exercise undue influence over former client regarding the purchase agreement and their prior attorney/client relationship did not give respondent any advantage over former client. *In the Matter of Allen* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198 **[7]**

In limited circumstances, rule 3-300 may apply to transactions between attorneys and former clients involving the fruits of the attorney's representation, if there is evidence that the client placed his trust in the attorney because of that representation. But, the Supreme Court has not been inclined to dramatically extend the definition of an attorney/client relationship beyond its common understanding. Whether an attorney/client relationship exists is a question of law. *In the Matter of Allen* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198 **[8 a,b,c]**

Respondent did not acquire a pecuniary or financial interest in his client's former condominium under rule 3-300. The fact that a second client, to whom the condominium was transferred, gave respondent's minor son a 50 percent ownership interest to induce respondent to manage the condominium did not create on the part of the respondent any ownership, possessory, security, or other interest in the property. To violate rule 3-300, an attorney must be a party to or financially gain from the business transaction. Respondent's role in the negotiations did not make him a party to the purchase of the condo, nor did his management of the condo or the ownership interest acquired by his son make him a third party beneficiary to the transaction. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117 **[1 a–b]**

Review department recommended five years' stayed suspension and three years' actual suspension where, in a single client matter, (1) respondent committed multiple violations of Rules of Professional Conduct, rule 3-300; (2) respondent engaged in acts involving moral turpitude by concealing important information about a business transaction from his client and by overreaching his client; (3) respondent failed to report a civil fraud judgment to the State Bar; and (4) there were several factors in aggravation and two factors in mitigation, including respondent's long years of practice without prior discipline. *In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615. **[3 a-g]**

In a prosecution for a violation of Rules of Professional Conduct, rule 3-300, where respondent borrowed $25,000 from clients in 1994, an attorney-client relationship existed at the time of the loan where the clients had an ongoing relationship with respondent since the 1970's and sought and received legal advice from respondent intermittently from that time through 1996. *In the Matter of Peavey* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483. **[1 a-c]**

Where respondent sold his residential real property to his client, the fact that the sale price was at or about the fair market value does not constitute compliance with the basic requirement that the transaction be both fair and reasonable to the client. The question is not merely whether the sale price is fair and reasonable, but rather whether the entire transaction is fair and reasonable. All of the client's circumstances must be considered to determine whether the transaction is a prudent investment for a person in the client's circumstances. Moreover, all terms of the transaction must be fully disclosed and transmitted in writing to the client in a manner that the client should reasonably understand. Where respondent failed to disclose to the client many potential problems and risks involved with the manner of the sale of the property, and it was clear that the client was not otherwise aware of these risks, respondent was overreaching and acting at least in part for his own benefit. Under these circumstances, the transaction constituted a breach of a fiduciary obligation and violated Rules of Professional Conduct, rule 3-300. *In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[1a-d]**

The requisite elements of a violation of the first subdivision of the former rule of professional conduct governing business transactions with clients (i.e., subdivision (A) of former rule 3-300) were that the transaction

was unfair to the client or that the terms of the transaction were not disclosed and transmitted to the client in writing in a manner that the client should have been able to understand. The requisite elements of a violation of the second subdivision of that former rule (i.e., subdivision B of former rule 3-300) were that the client was not advised, in writing, of the right to seek advice from an independent attorney of the client's choice or that the client was not given a reasonable opportunity to exercise that right. None of these elements are addressed in the special finding under which the jury in a prior civil proceeding in which respondent was a party found, by clear and convincing evidence, that respondent "was guilty of malice, oppression or fraud in the conduct upon which [the jury based its] finding of [respondent's] liability for either breach of fiduciary duty or fraud." Thus, collateral estoppel does not establish that respondent violated the former rule governing business transactions with clients.*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195. **[8]**

The State Bar proved that respondent used over $500,000 of his client's assets for speculative ventures in which he had a financial or ownership interest without any disclosures of the investments or his interests to the client and without providing any periodic accountings to her. In view of the evidence presented, to defend the charges, it was incumbent on respondent to present adequate, contemporaneous records showing that he had complied with the ethical and fiduciary duties of an attorney. He failed to do so. The lack of minimal formality and recordkeeping by respondent supports the hearing judge's findings and conclusions and erodes respondent's defense. *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.**[1]**

Respondent's assertion of a broad power of attorney from his client did not relieve him of the duties of former rule 5-101 of the Rules of Professional Conduct of the State Bar regarding standards for attorneys engaged in business transactions with a client. *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.**[2]**

Considering that respondent treated a significant amount of his client's money as a ready pool to further his and his wife's forays into championship horse breeding and realty acquisition, there was little difference for moral turpitude purposes between this case and the traditional trust funds wilful misappropriation cases. 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. This case meets that definition without doubt. *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.**[3]**

Where respondent violated rule of professional conduct which prohibits an attorney from improperly obtaining an interest in a client's property and/or entering into a business transaction with a client, and that misconduct was the same misconduct underlying the charge that respondent violated statutory duty to uphold law on account of his violation of provisions of the Probate Code which prohibit self-dealing by trustees, and where discipline did not depend on whether respondent violated both rule and statute, statutory violation was cumulative and review department did not address it. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[1]**

Non-clients may be treated as an attorney's clients for purposes of discipline where the attorney assumes a fiduciary relationship with the non-clients. Thus, where respondent was the trustee of a testamentary trust, and thus assumed a fiduciary relationship with the beneficiaries of that trust, the rule regulating attorneys' business transactions with their clients applied to respondent's dealings with the trust, as if the trust beneficiaries were respondent's clients. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[4]**

Where respondent, as trustee of a testamentary trust, loaned himself money from the trust, and one of the loans was unsecured and the loans lacked a due date for repayment of the principal, the loans were not fair and reasonable to the beneficiaries, and respondent thereby violated the rule against improper business transactions with clients. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[5]**

Improper business transactions with clients have resulted in discipline ranging from reproval to suspension. Where, despite respondent's asserted intent to advance interests of beneficiaries of trust of which respondent was trustee, respondent realized significant benefits from improper loans from trust to himself, and where respondent also was grossly negligent in handling his duties as trustee, in view of the seriousness of respondent's misconduct, and comparable case law, the review department recommended three years stayed suspension, three years probation, and 60 days actual suspension. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[7]**

Rule governing attorneys' business transactions with clients requires that terms and conditions of loan from client to attorney be fair and reasonable to client; that terms be explained in terms client understands; that client be advised to seek advice of independent counsel, and that client consent to transaction in writing. A violation of any portion of such rule is sufficient to constitute misconduct. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[8]**

A loan from a client, like all attorney-client business transactions, is scrutinized for unfairness, and when such transactions are called into question, attorney has burden to prove that they were fair and reasonable to client. Where client's loan to attorney was unsecured in situation where security would ordinarily be considered essential, and where no periodic payments were provided for despite client's financial circumstances, such facts were evidence that terms and conditions of loan transaction were unfair to client. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[9]**

Client's written consent to loan transaction with respondent was not knowing consent, where respondent knew that client lacked capacity to give informed consent because of her poor health, frequent use of alcohol, lack of business experience, and limited education. Respondent was obligated to insure that terms and conditions of loan were fully known and understood by client, and was required not merely to inform client of her right to consult another attorney, but to advise client to do so. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[10]**

Fact that attorney obtained loan from client improperly, in violation of rule governing business transactions with clients, did not automatically convert attorney's acquisition of loan funds into misappropriation, and did not invalidate underlying loan transaction. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[11]**

Where respondent, as attorney and close family member of client, exploited superior knowledge and position of trust to detriment of vulnerable client in obtaining loan from client with grossly unfair provisions, attorney's overreaching constituted act of moral turpitude. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[13]**

There is no requirement, for purposes of the rule of professional conduct prohibiting an attorney from improperly obtaining an interest in a client's property and/or entering into a business transaction with a client, that the attorney represent the client with regard to the particular transaction in question. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[7]**

Where there was no evidence that respondent was a party to or benefited financially from property transactions between respondent's client and respondent's parents in which respondent was closely involved, respondent was not culpable of improperly obtaining an interest in a client's property and/or entering into a business transaction with a client. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[8]**

The rule governing acquisition of adverse interests in clients' property, which requires adequate disclosure, written advice regarding consultation with independent counsel, and written client consent to the transaction, encompasses transactions where it is reasonably foreseeable that the interest acquired may become detrimental to the client. When an attorney acquires the ability to extinguish a client's interest in property, the attorney's interest is adverse, no matter what the motivation. Where respondent drafted a trust agreement for an elderly, infirm couple, naming them as trustees and himself as successor trustee, and included in the trust agreement a clause giving trustees unrestricted power to borrow trust assets without any security or oversight, respondent thereby acquired an adverse interest to his clients in the trust property, and the rule applied. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[4]**

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

Business transactions between clients and their attorneys are closely scrutinized. The burden is on the attorney to demonstrate that the dealings are fair and reasonable. Where respondent loaned a large sum to one client so that the client could repay a debt to another client, respondent owed a fiduciary duty to both clients and was obligated to explain his role in the transaction and the impact it could have on his continued representation of their interests. Where one client, notwithstanding his written consent, did not understand the full implications of the transaction, and the other client did not consent in writing, respondent violated the rule governing business transactions with clients. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[2]**

A violation of any part of the rule governing business transactions with clients gives rise to culpability. The practice of using confessions of judgment to collect legal fees presents an opportunity for overreaching beyond judicial scrutiny which justifies a per se prohibition. Respondent's use of a confession of judgment to secure repayment of a loan to a client, a portion of which represented attorney's fees already owed by the client, made the transaction inherently unfair. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[3]**

Where respondent had obtained a deed of trust on property owned by his client's relatives to secure a loan owed to respondent by the client, and respondent subsequently became the attorney for the relatives in a suit which involved in part the conveyance to respondent of the deed of trust, respondent had an interest adverse to his clients which warranted the disclosures and written consent required by the rule governing business transactions with clients, even though the transfer had actually occurred two years earlier. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[4]**

Where respondent had made a loan to a client, and later represented that client in a lawsuit in which respondent was a codefendant, and where, in order to secure the client's debt to him, respondent had obtained an ownership interest in property which was a subject of that lawsuit and respondent later sued to foreclose on that interest, the fact that respondent's original business transaction with the client became the subject matter of litigation aggravated his initial misconduct in failing to comply with the rule governing business transactions with clients, but did not constitute a separate ethical violation. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[5]**

Where respondent filed a foreclosure suit in good faith against persons whom he was representing in another lawsuit, his violation of his fiduciary duties under the rule governing adverse interests to clients did not constitute a per se violation of the statute regarding acts of moral turpitude or dishonesty by attorneys. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[6]**

Where respondent represented a client in the client's bankruptcy and at the same time represented the client's landlord, a company owned by respondent, in negotiating and drafting a new lease with the client, respondent was culpable, as charged, of representing conflicting interests. In addition, respondent's failure to comply with the requirements for business transactions with clients, including giving the client a reasonable opportunity to seek independent counsel, constituted an aggravating factor as uncharged misconduct. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[9]**

Where respondent not only made a bad loan to a client without complying with the rule governing business transactions with clients, but also thereafter exhibited profound misjudgment which prompted lengthy litigation against an existing client, and which harmed the administration of justice, two-month actual suspension was appropriate discipline despite respondent's initial motive to aid the client and despite his long legal career and the high personal and financial cost he had already paid for his poor judgment. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[16]**

Advancing expenses to clients is not a generally accepted practice because it may cause clients to choose attorneys on the basis of the loans they are willing to make rather than the services they offer and may also create an attorney-client conflict. The rule permitting attorneys to advance client expenses is limited to expenses related to litigation or legal services. Where, after respondent was retained by a client in a personal injury action, he made an interest-free, unsecured loan to the client to cover funeral costs and other expenses, such advance was not permitted by the rule even though the expenses might be recoverable as damages in the litigation. The loan was also improper because respondent did not obtain the client's informed written consent. However, where there was no evidence of client harm, the violation was not serious. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[9]**

In a loan transaction between an attorney and a client, the facts that the loan is unsecured and its terms are not in writing are sufficient to place the fairness of the transaction in doubt. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[3]**

Where an attorney offered to pay a usurious interest rate in order to induce a reluctant client to make the attorney a loan, without advising the client that the high interest rate could render the interest on the loan uncollectible, and the attorney's financial condition was not disclosed to the client, the resulting unsecured transaction was not fair and reasonable to the client. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[4]**

The absence of security for a loan, when security would ordinarily be considered essential to the client, is an indication of unfairness in a business transaction between an attorney and a client. Thus, respondent's admission that he should have provided security for a loan from his client was an indication that the transaction was not fair and reasonable to the client. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[1]**

The characterization of a transaction between an attorney and a client as a loan or an investment is not critical to whether there was a violation of the rule governing attorneys' business transactions with clients. The rule prohibits attorneys from entering into business transactions with clients or acquiring an adverse interest in a client's property without compliance with the rule. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[2]**

When an attorney-client business transaction is involved, the attorney bears the burden of showing that the dealings between the parties were fair and reasonable and were fully known and understood by the client. Attorneys are subject to discipline for inducing clients to invest in business enterprises without fully apprising them of the risks. Where respondent admitted entering into a business transaction with a client and failed to show full disclosure to the client regarding the risks involved in the transaction, a violation of the rule was established. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[3]**

The Supreme Court has not overruled or otherwise negated the requirement that an attorney advise a client to seek independent counsel before entering into a business transaction with the attorney. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[4]**

One of the purposes of the rule of professional conduct governing business transactions with clients is to protect clients from their attorneys' personal use of financial information gained from confidences disclosed during the attorney-client relationship. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[6]**

Where client's father authorized respondent in advance to apply client's share of recovery in personal injury matter to respondent's fees for services to client and family in other matters, this did not establish that respondent obtained a pecuniary interest in the recovery adverse to that of client, in violation of rules governing business transactions with clients. Even if a pecuniary interest was acquired, respondent was not culpable of knowingly requiring such interest, where respondent did not rely on the initial authorization, and specifically sought authorization to apply the recovery to fees at the time the personal injury settlement proceeds were distributed. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[19]**

A transaction whereby a client signs a promissory note secured by the client's property to serve as security for the payment of an attorney's fees is subject to the provisions of the rule regulating business transactions with clients. However, where the failure to comply with the requirements of that rule resulted from the negligence of the attorney's employee, and the evidence clearly and convincingly established that the attorney had taken appropriate actions to guide office personnel as to proper steps to comply with the rule, the attorney was properly found not culpable of violating the rule. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[8]**

Where a client gave an attorney an assignment of a promissory note and deed of trust, but the attorney did not record the assignment or collect payments under the note until after issuance of court order assigning the note to the attorney in payment of attorney's fees, and the attorney did not make any use of the executed assignment that was unfair or detrimental to the client until after the court order, the attorney did not knowingly acquire an interest in the client's property until after the issuance of the court order, and the attorney's conduct did not violate

the rule governing business transactions with clients. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[13]**

Intent is a necessary element of an assignment. Where the physical transfer of an assignment of a promissory note and deed of trust from client to attorney was not intended to transfer an interest in the promissory note to the attorney, the transfer did not result in an acquisition by the attorney of an interest in the client's property, and thus did not violate the rule governing attorneys' business transactions with clients. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[14]**

Absent unconscionable circumstances in its creation, an agreement granting an attorney express authority to sign a client's name on documents is clearly not contrary to public policy. Indeed, it is essential that express authority be obtained by an attorney seeking the power to sign the client's name to documents on the client's behalf. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[10]**

The inclusion in a fee agreement of a special power of attorney, authorizing the attorney to sign the client's name on settlement drafts and other documents, does not create a conflict of interest in and of itself such that it requires compliance with the ethical rules governing attorneys' business transactions with clients. The attorney does not acquire any adverse interest by virtue of the special power of attorney, and the rules governing attorney-client business transactions have never been interpreted to apply in such circumstances. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[11]**

Where an attorney was not charged in the notice to show cause with violating the ethical rules governing attorneys' business transactions with clients, then even if compliance with those rules were required under the facts, the attorney could not be found culpable of violating those rules. It is a fundamental constitutional and statutory requirement that an attorney must be given notice of all charges and a reasonable opportunity to prepare his defense thereto. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[12]**

Where the first sentence of a paragraph in a notice to show cause referred to a single transaction and the rest of the same paragraph referred to multiple transactions, and where it was unclear whether some or all of the loans described earlier in the notice were alleged not to have been fair or reasonable, there was unnecessary ambiguity in the alleged misconduct with respect to the charge of improper business transactions with clients. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[13]**

When an attorney and his wholly-owned company, which the attorney did not represent as counsel, engaged in a deceptive business transaction with a company that employed the attorney as its counsel, the attorney violated the ethical rule regarding adverse interests between attorneys in their personal capacities and their clients, but did not violate the ethical rule prohibiting representation of clients with conflicting interests. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[2]**

Attorney violated ethical rule governing business transactions with clients where he acquired (through his wholly-owned company) a licensing agreement for a product of his client-employer, without disclosing his ownership interest in the licensee; the licensee's incapacity to fulfill the terms of the license; or his negotiations for sublicenses on more profitable terms. The true identity of the licensee was a material fact which the attorney had a fiduciary duty to disclose, even though the terms of the license were revealed and may not have been unfair. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[6]**

273.01 Found

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387.

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

273.05 Not Found

In the Matter of Allen (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

273.30 Conflicts of interest (RPC 3-310; 1975 RPC 4-101 & 5-102)

Where respondent stipulated he accepted representation of clients, and evidence showed respondent did not obtain clients' informed written consent to waive potential conflict, and case was later transferred to new attorney without clients' knowledge or consent, Review Department reversed hearing judge and found respondent culpable of violations of rules 3-310(C)(1) and 3-700(A)(2), and section 6068(m). *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 **[4 a,b]**

Where respondent believed that his contingency fee would be independent of the amount of fees his client was obligated to pay a prior attorney after fee arbitration, there is not clear and convincing evidence that respondent knew he had a financial interest in the outcome of the client's fee arbitration with the prior attorney and respondent was therefore not culpable of failing to disclose that interest to his client in writing before accepting or continuing his representation of the client. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. **[5 a, b]**

A corporation's attorney must abstain from taking part in controversies amount corporation's directors and shareholders to avoid being placed in a position requiring attorney to choose between conflicting duties or to reconcile conflicting interests. As attorney for corporation, respondent's professional obligations were to corporation; not its officers, directors, or shareholders whether in their representative or individual capacities. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[6]**

A corporation is a statutory person that can speak only through its constituent officers, directors, shareholders, and agents. Faced with dispute over who was authorized to speak for corporate client, respondent should have first looked at corporation's organizational documents and other pertinent agreements.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[7 a, b]**

Because there was an actual conflict in intractable dispute between corporation's president, who was one of corporation's four directors, and corporation's remaining three directors over control of the corporation, respondent's proper course of conduct in representing corporation was to obtain informed written consent of each of board member or to withdraw from representation if he could not do so. But respondent did not do so; he chose to join the fray asserting only the president's interest while representing the corporation. Because of respondent's multiple conflicts, he lost any objectivity or neutrality and gravely compromised his duty of loyalty to corporate client, which is a serious aggravating circumstance as uncharged, but proved misconduct under aggravation standard for attorney sanctions for professional misconduct with respect to surrounding violations of State Bar Act or Rules of Professional Conduct.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[8 a-c]**

Where respondent represented wife in marital dissolution proceeding, and at respondent's suggestion, husband also hired respondent to represent both clients in joint bankruptcy proceeding, and where there was no evidence that respondent had obtained any pertinent confidential information from wife, respondent's representation of husband did not violate former rule precluding attorneys from accepting employment adverse to a client in a matter in which the attorney has obtained confidential information from the client. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[1]**

Where respondent represented wife in marital dissolution proceeding, and at respondent's suggestion, husband also hired respondent to represent both clients in joint bankruptcy proceeding, and where consent to such joint representation signed by husband stated misleadingly that there was no conflict of interest between clients, and wife consented to joint representation orally but not in writing, respondent violated former rule prohibiting representation of clients with conflicting interests without written consent of all clients. However, where husband had consulted with separate counsel before retaining respondent; potential conflict was remote and no actual conflict materialized; and neither client was harmed, respondent's misconduct was substantially mitigated by surrounding circumstances and was relatively minor. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[2]**

Respondent's simultaneous representation of a client and of respondent's father during the time that respondent arranged real property transactions between the client and the father was an aggravating circumstance in that the dual representation was rife with potential and actual conflicts of interest that could have been, if charged, the basis for additional culpability for violating the rule regarding representation of conflicting interests. The fact that respondent was not found culpable of any misconduct involving the real property transactions did not preclude treating respondent's conduct therein as an aggravating factor, because other related misconduct involving the same client was surrounded by and followed by the attorney's conduct in the real property transactions. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[11]**

Where respondent was initially hired by a married couple to protect their interests arising out of their relationship with an elderly couple to whom they had given in-home care, and respondent subsequently undertook to represent the elderly couple and drafted a proposed agreement between the two couples regarding further in-home care, and the interests of the two couples were in clear conflict, respondent was required to obtain the written consent of all parties at the outset of his representation of the elderly couple. Even if respondent's representation of the two couples was consecutive rather than concurrent, written consent of all affected clients was still required, because the second employment involved the same subject matter as the first. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[8]**

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

Where respondent withdrew $2,500 for attorney's fees from a client's bank account at a time when his representation of the client was improper due to a conflict of interest, restitution of the funds to the client's estate was an appropriate condition of probation. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[13]**

Where respondent represented a client in the client's bankruptcy and at the same time represented the client's landlord, a company owned by respondent, in negotiating and drafting a new lease with the client, respondent was culpable, as charged, of representing conflicting interests. In addition, respondent's failure to comply with the requirements for business transactions with clients, including giving the client a reasonable opportunity to seek independent counsel, constituted an aggravating factor as uncharged misconduct. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[9]**

Under the former rule providing that an attorney shall not accept employment adverse to a client or former client relating to a matter in which the attorney has obtained confidential information, except with the written consent of the client, actual possession of confidential information was not required to be demonstrated; showing a substantial relationship between representations was enough to establish a conclusive presumption that the attorney possessed confidential information adverse to the client. Where respondent represented a client in many actions, most of which related to the client's financial status, respondent's representation of his own company against the client in unlawful detainer actions while representing the client in bankruptcy court constituted not only a violation of the former rule regarding adverse representation and confidential information, but also a representation of conflicting interests. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[10]**

Where respondent not only made a bad loan to a client without complying with the rule governing business transactions with clients, but also thereafter exhibited profound misjudgment which prompted lengthy litigation against an existing client, and which harmed the administration of justice, two-month actual suspension was appropriate discipline despite respondent's initial motive to aid the client and despite his long legal career and the high personal and financial cost he had already paid for his poor judgment. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[16]**

A notice to show cause in a disciplinary proceeding meets the requirements of due process when it specifies the conduct at issue and the rule charged. Where a notice to show cause named the clients involved in each count, identified them as driver and passenger, averred that respondent agreed to represent each in a personal injury case without advising them of their potential conflict and obtaining their written consent, and cited the rule regarding representation of adverse interests, respondent was given adequate notice of the charge against him. Given the specificity of the factual allegations, adequate notice was given even in a count which did not specify the subsection of the rule being charged. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[5]**

Although the former rule of professional conduct governing representation of clients with conflicting interests did not expressly state that it encompassed potential as well as actual conflicts of interest, once the rule had been interpreted in case law to make it clear that potential conflicts between clients required written consent for a single attorney to represent them in civil litigation, and in light of the prophylactic intent of the rule, an attorney had a duty to obtain the clients' informed consent before agreeing to represent both driver and passenger in an automobile accident case where there was no bar to a claim by the passenger against the driver. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[6]**

In a disciplinary proceeding, a culpability determination must not be debatable. Accordingly, where the applicable rule of professional conduct did not expressly require written consent to joint representation of clients with potentially conflicting interests, the issue for the court was whether the case law at the time of an attorney's alleged violation of the rule made it clear that such consent was required in civil litigation. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[7]**

By failing to disclose to clients the potential conflict between driver and passenger in an automobile accident case, and to secure their written consent to joint representation, an attorney exposes the clients to sharing confidences without realizing the potential impact of doing so; to possible delay if the attorney is later disqualified due to the development of an actual conflict; and to reduction of the passenger's recovery through failure to allege the driver's negligence. However, where it was not clear that respondent's clients would not have given their informed consent if they had been afforded the opportunity do so, respondent's violation of the rule requiring him

to obtain such consent was not serious. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[8]**

An attorney can be disciplined only for misconduct charged in the notice to show cause or an amendment thereto. Where notice to show cause charged violation of rule against representing clients with conflicting interests, and respondent served interrogatory requesting identification of all such alleged conflicts, charges against respondent were limited to those identified in State Bar's answer to such interrogatory, and respondent could not be found culpable of violating conflict of interest rule based on a conflict not listed therein. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[9]**

The former rule of professional conduct prohibiting an attorney from representing clients with conflicting interests without written client consent was violated where the attorney favored one client at the expense of another client. An attorney has a duty to secure as large a recovery as possible for a client and the attorney violates this duty when the representation of one client might have induced the attorney to negotiate a low settlement for another client. A conflict of interest between jointly represented clients occurs whenever their common lawyer's representation of one is rendered less effective by reason of the lawyer's representation of the other. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[10]**

Representing over 700 clients by majority rule posed risk of conflicting interests among clients, since respondent owed same ethical obligations to each client, not just those in majority. However, respondent's representation of multiple clients did not violate the former rule of professional conduct prohibiting an attorney from representing clients with conflicting interests without written client consent where the clients' interests were compatible, not conflicting; respondent was not put in a position of choosing between conflicting duties or of attempting to reconcile conflicting interests; there was no clear and convincing evidence that respondent's representation of one group of clients rendered his representation of the other group less effective; and there was not clear and convincing evidence that potential conflicts or favoritism ever materialized. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[11]**

Respondent violated former rule of professional conduct prohibiting representation of clients with conflicting interests when he accepted more signatories to a settlement than were required, because interests of required signatories conflicted with interests of extra signatories, whose participation in settlement reduced amounts received by required signatories and by previous extra signatories. Where such violation of conflict of interest rule was not charged, it could not be basis of culpability, but could be relied on in aggravation. However, because of novelty of situation, which involved extremely unusual settlement, uncharged violation was given minimal aggravating weight. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[12]**

When an attorney and his wholly-owned company, which the attorney did not represent as counsel, engaged in a deceptive business transaction with a company that employed the attorney as its counsel, the attorney violated the ethical rule regarding adverse interests between attorneys in their personal capacities and their clients, but did not violate the ethical rule prohibiting representation of clients with conflicting interests. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[2]**

273.31 Found

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

273.35 Not Found

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

273.50 Intimate relationship with opposing counsel (RPC 3-320)

273.51 Found

273.55 Not Found

274.00 Limiting liability to client (RPC 3-400; 1975 RPC 6-102)

Rule adopted in 1989, unlike former similar rule, precludes only actual contracts prospectively limiting an attorney's malpractice liability, not attempts to contract. The rule only applies to prospective claims, not to exposure for past malpractice. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[5]**

Respondent's letters to client demanding release from all liability, including for malpractice, in exchange for settling outstanding business disputes between them, violated rule prohibiting attorneys from attempting to exonerate themselves from liability for malpractice except in settlement of a malpractice claim. However, respondent's attempt to persuade client to withdraw State Bar complaint did not violate statute prohibiting attorneys from requiring as a condition of malpractice settlement that plaintiff agree to not file a complaint with the State Bar. The plain language of the statute is limited to settlements involving the agreement not to file a disciplinary complaint. The effect of withdrawal of charges is not the same as not filing them. Once the State Bar becomes aware of possible misconduct by the filing of a complaint, it does not need a complaining witness in order to go forward with its investigation. (Trans. Rules Proc. of State Bar, rule 507.) *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[11]**

It was not improper for an attorney to request written confirmation from a client that the attorney had been discharged as counsel. Such a letter was not a release from liability of the type prohibited by the Rules of Professional Conduct. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[2]**

274.01 Found

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

274.05 Not Found

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

274.30 Failure to disclose uninsured status (RPC 3-410)

274.31 Found

274.35 Not Found

275.00 Failure to communicate with client (RPC 3-500)

Attorney's fiduciary duty to develop and maintain adequate management and accounting procedures for proper operation of his law office is fundamental to fulfillment of multiple duties, including duties to competently perform legal services, adequately communicate with clients, protect client confidential information, and properly handle and account for client funds and other property. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[15]**

Attorney's failure to communicate with a client may also constitute incompetent legal practice or abandonment of the client when facts demonstrate that attorney's failure to communicate resulted in the effective cessation of work on client's cause of action, foreclosed client from choices regarding her cause of action, or indicated a withdrawal from employment. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[5]**

An attorney's failure to adequately communicate with a client may evidence the attorney's lack of time to perform legal services competently in violation of Rules of Professional Conduct. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[7]**

An attorney's duty to communicate with a client includes the duty to communicate to persons who reasonably believe they are clients to the attorney's knowledge at least to the extent of advising them that they are not clients. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[4]**

In a prior case, the Supreme Court expressed concern for the privacy of the targeted attorney's clients, and further noted that the proceedings of the State Bar were conducted in strict confidence. While such formal proceedings are now public, the investigative process is conducted in the same strict confidence that the Supreme Court noted in the prior case. In addition, in the event the records are sought to be used in a subsequent public proceeding following a confidential investigation, the attorney's duty of informing the client or clients whose trust account information may become public of that fact would come into play. The client or clients would then have the opportunity to seek relief from the State Bar Court under the rules of procedure that create a method for sealing portions of the record. *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 535. **[3]**

Statute requiring attorneys to uphold law is not always proper vehicle for charging violation of State Bar Act when statute is already covered as a disciplinable offense in another part of the Act. Because statutes requiring written attorney fee agreements containing certain information specify non-disciplinary remedies for attorneys' failure to comply with them, and because failure to comply with such statutes may be charged as violations of Rules of Professional Conduct regarding illegal fees, competence, and communication with clients, violation of such statutes is not disciplinable under statute requiring attorneys to uphold law. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[11]**

Where respondent was grossly negligent in failing to respond to requests for information from client and successor counsel, and where respondent failed to maintain client's settlement check in safe place, respondent repeatedly failed to perform competently. However, where charge of repeated failure to perform competently addressed same misconduct as charges of failure to communicate with client and failure to keep client property in safe place, failure to perform competently was given no additional weight in determining appropriate discipline. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[19]**

Where respondent misused client trust account as personal account, failed to respond to client's reasonable status inquiries, did not keep client's settlement check in safe place, and did not respond to State Bar investigation, and where at time of disciplinary hearing respondent still suffered from chronic depression which was major cause of misconduct, and had been ineligible to practice law for two years, appropriate discipline was three years stayed suspension, four years probation, and actual suspension for one year and until respondent proved rehabilitation, fitness to practice competently, including mental fitness, and present learning and ability in the law. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[24]**

Where respondent spoke with clients approximately eight or nine times during short period of representation, there was insufficient evidence to support charge that respondent failed to communicate with clients. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[5]**

275.01 Found

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

275.05 Not Found

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

275.30 Failure to communicate settlement offer (RPC 3-510; 1975 RPC 5-105)

An attorney must promptly communicate a written offer of settlement to the client regardless of whether the offer is significant or binding under contract law. *In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788 **[1]**

275.31 Found

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

275.35 Not Found

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

276.00 Duty to organization as client (RPC 3-600)

Because insurance settlement check that respondent deposited into his client trust account was made payable to his corporate client, he became a fiduciary of all members of corporation's board of directors who asserted a claim to those funds on corporation's behalf, and he owed those directors the same high duty of honestly and obedience to fiduciary duty as if he were their attorney. Respondent breached that duty when he distributed $50,000 of settlement funds to corporation's president, who was one of corporation's four directors, in the president's individual capacity without knowledge or consent of remaining three directors because he knew that president and other three directors were in intractable dispute over control of corporation and that corporation's board had suspended president and denied him access to corporation's funds. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[1]**

Where respondent had certain knowledge of dispute over his fees and where respondent ignored explicit directive of board majority to immediately cease representing corporation, respondent violated rule of professional conduct requiring disputed funds to be held in trust when he withdrew $29,875.89 of corporate client's funds from his trust account as his attorney's fees. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[2]**

Once respondent deposited insurance settlement check that was made payable to his corporate client into his client trust account, he had a fiduciary duty to protect the settlement funds on behalf of all the members of the corporation's board of directors regardless of whether he considered them authorized to act on corporation's behalf. Respondent willfully misappropriated $50,000 of those funds when he disbursed $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors as he knew of intractable dispute between president and other three directors over control of the corporation and corporation's board had suspended president and denied him access to corporation's funds. Respondent's misappropriation involved moral turpitude. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[3 a-c]**

When respondent, without the knowledge or consent of all of the directors, withdrew $29,875.89 of corporate settlement funds as his attorney's fees for representing the corporation in bankruptcy proceeding, he knowingly and intentionally misappropriated the $29,875.89 for his own purpose without an honest belief in his right to those funds because (1) he knew a majority of directors vigorously disputed his right to represent corporation and to incur legal fees; (2) he knew president could authorize payment of only $100 of respondent's fees; (3) he acknowledged, under penalty of perjury in a bankruptcy court declaration, he did not have right to withdraw fees

from trust account without court's approval; yet, there is no evidence respondent ever obtained such court approval before paying himself; (4) he deceived and misled corporation's chairman and his legal counsel about existence and location of insurance settlement funds; (5) he refused to provide records of settlement check and funds to State Bar. Respondent's knowing and intentional misappropriation of $29,875.89 involved moral turpitude in violation of statute prohibiting acts of moral turpitude and dishonesty. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[4 a-d]**

A corporation's attorney must abstain from taking part in controversies amount corporation's directors and shareholders to avoid being placed in a position requiring attorney to choose between conflicting duties or to reconcile conflicting interests. As attorney for corporation, respondent's professional obligations were to corporation; not its officers, directors, or shareholders whether in their representative or individual capacities. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[6]**

A corporation is a statutory person that can speak only through its constituent officers, directors, shareholders, and agents. Faced with dispute over who was authorized to speak for corporate client, respondent should have first looked at corporation's organizational documents and other pertinent agreements. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[7 a, b]**

Because there was an actual conflict in intractable dispute between corporation's president, who was one of corporation's four directors, and corporation's remaining three directors over control of the corporation, respondent's proper course of conduct in representing corporation was to obtain informed written consent of each of board member or to withdraw from representation if he could not do so. But respondent did not do so; he chose to join the fray asserting only the president's interest while representing the corporation. Because of respondent's multiple conflicts, he lost any objectivity or neutrality and gravely compromised his duty of loyalty to corporate client, which is a serious aggravating circumstance as uncharged, but proved misconduct under aggravation standard for attorney sanctions for professional misconduct with respect to surrounding violations of State Bar Act or Rules of Professional Conduct. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[8 a-c]**

Where respondent misappropriated $50,000 of $79,875.89 insurance settlement funds he held in his trust account for his corporate client by disbursing $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors; where respondent violated his fiduciary duty to remaining three directors by disbursing the $50,000 to president without their knowledge or consent; where respondent knowingly and intentionally misappropriated remaining $29,875.89 of settlement funds for his own use and benefit by withdrawing them from his trust account as attorney's fees without the knowledge and consent of remaining three directors; where respondent violated rule of professional conduct requiring disputed funds to be held in trust by withdrawing $29,875.89 in fees from his trust account when his right to collect fees was disputed; where respondent repeatedly refused to account for proceeds of insurance settlement check in accordance with requests of chairman of corporations board of directors; where there was extensive aggravation, including concealment, overreaching, and failure to make restitution, with mitigation for strong good character testimony, extensive community service, no prior record of discipline, and lack of additional misconduct in more than five years; and where misconduct involved only a single client matter; and even though standard for attorney sanctions for professional misconduct for willful misappropriation called for and Supreme Court has repeatedly held that usual discipline for willfully misappropriation of client funds is disbarment, appropriate discipline recommendation was not disbarment, but four years' stayed suspension, four years' probation on conditions, which included two years' actual suspension continuing until respondent pays restitution of $29,875.89 with interest. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[9 a-d]**

Attorneys cannot recover for services rendered if services are rendered in contradiction of attorney professional responsibility. And where attorney improperly withdraws fees from a trust account, restitution to client or client's estate is appropriate. Thus, where respondent withdrew $29,875 from his client trust account as his attorney's fees without his corporate client's authorization, respondent should make restitution of $29,875 plus interest to either corporate client, its successor, appropriate recipient of its assets after its dissolution, or if such successor or recipient of assets after dissolution cannot be identified, the Client Security Fund. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[10 a,b]**

276.01 Found

276.05 Not Found

277.10 Withdrawal without court permission (RPC 3-700(A)(1); 1975 RPC 2-111(A)(1))

Where respondent was appointed as counsel of record in cases involving indigent clients, where those clients disclosed confidential information to respondent, and where respondent provided legal advice to those clients, respondent's contention that such individuals were not her clients was disingenuous and respondent's failure to obtain approval of the court to withdraw from her cases violated rule 3–700(A)(1). *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[7 a, b]**

277.11 Found

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

277.15 Not Found

277.20 Prejudicial withdrawal (RPC 3-700(A)(2); 1975 RPC 2-111(A)(2))

Where respondent stipulated he accepted representation of clients, and evidence showed respondent did not obtain clients' informed written consent to waive potential conflict, and case was later transferred to new attorney without clients' knowledge or consent, Review Department reversed hearing judge and found respondent culpable of violations of rules 3-310(C)(1) and 3-700(A)(2), and section 6068(m). *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 **[4 a,b]**

The duty to take reasonable steps to avoid foreseeable prejudice to the rights of a client when a member withdraws from employment continues until a court grants leave to withdraw and applies whether or not prejudice actually occurs. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[8 a, b]**

It is not necessarily duplicative to find culpability for failure to communicate with clients and culpability for improperly withdrawing from employment when respondent's failure to communicate arose from her failure to inform clients of crucial information regarding representation and respondent's improper withdrawal was based on her failure to take reasonable steps to protect her clients' interests. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[4 a, b]**

Where respondent's conduct of intentionally making no further appearances on behalf of her indigent clients established culpability for failing to perform competently and where such conduct was duplicative of the conduct surrounding respondent's improper withdrawal, no additional weight was assigned to the recommended discipline. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[5 a, b]**

An attorney may effectively withdraw from a case without an intent to do so when the attorney virtually abandons a client and is grossly negligent in communicating with the client. If an attorney is essentially withdrawing from employment he or she is obligated to give due notice to the client. Whether or not an attorney's ceasing to provide services amounts to an effective withdrawal depends on the surrounding circumstances. Where respondent's strategy was to do nothing in anticipation that the immigration laws might be amended to be more favorable to his client, where respondent did not advise his client of his intention to adopt a wait–and–see approach, where respondent failed to communicate with his client for nearly one year, and where time was plainly of the essence to the services requested, respondent's failure to timely provide the necessary services constituted an effective withdrawal which prejudiced his client's ability to file a timely application for asylum in violation of Rules of Professional Conduct, rule 3–700(A)(2). *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. **[3 a–c]**

Respondent's duty under Rules of Procedure of the State Bar, rule 3–700(A)(2) to not withdraw from employment until reasonable steps are taken to avoid foreseeable client prejudice did not exonerate respondent from culpability under Business and Professions Code section 6104 for his continued appearances on behalf of his clients after the clients had discharged him. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[3]**

Because review department relied on respondent's repeated and reckless failure to communicate with client to establish his culpability for violating rule of professional conduct prohibiting attorneys from abandoning clients and withdrawing from employment without taking adequate steps to protect their clients' interests, review department did not adopt hearing judge's finding that respondent violated statute requiring attorneys to adequately communicate with their clients, but dismissed charge with prejudice as being duplicative. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[22]**

Because Rules of Professional Conduct 3-700(A)(2) (prohibiting prejudicial withdrawal from employment) and 3-700(D)(1) (mandating return of client property) have not been amended or modified since they were first adopted and became effective on May 27, 1989, there are no "former" versions of those rules. Thus, the review department deemed the charged and found violations that State Bar and the hearing judge incorrectly described as violations of "former" rules 3-700(A)(2) and 3-700(D)(1) to be charged and found violations of rules 3-700(A)(2) and 3-700(D)(1), which became effective on May 27, 1989. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[1]**

Rule prohibiting prejudicial withdrawal from employment (rule 3-700(A)(2)) is more comprehensive than rule requiring an attorney whose employment has been terminated to release the client's file upon the client's request (rule 3-700(D)(1)). Rule prohibiting prejudicial withdrawal, mandates compliance with rule requiring release of client files. Thus, attorney's failure to properly release a client's file in accordance with rule requiring release of client files may be a portion of the conduct disciplinable as a violation of rule prohibiting prejudicial withdrawal. Because respondent's failure to release the client's file in accordance with the client's request was relied on as part of the basis for finding that respondent violated rule prohibiting prejudicial withdrawal, review department rejected the use that same failure to find a separate violation of rule requiring release of client files. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[7]**

Even though client who respondent was representing in a case before the Workers' Compensation Appeals Board terminated respondent's employment, respondent remained client's attorney of record in her case before the Workers' Compensation Appeals Board and continued to have duty, under rule prohibiting prejudicial withdrawal from employment, to take reasonable steps to avoid foreseeable prejudice to the client's rights until either a substitution of counsel was filed or a motion relieving respondent as attorney of record was granted. After client terminated respondent's employment, respondent violated rule prohibiting prejudicial withdrawal because he did not (1) advise client of dates of upcoming events such as the trial date and briefing schedule, (2) properly respond to client's request for her file, and (3) properly remove himself as client's attorney of record in her case before the Workers' Compensation Appeals Board. Fact that client, without respondent's knowledge, learned dates of the important upcoming events did not relieve respondent of his obligation to advise client of those dates, to properly respond to client's request for her file, and to remove himself as client's attorney of record. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[8]**

Rule 3-700(A)(2), which requires that an attorney not withdraw from employment until the attorney has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, applies to an attorney's taking active steps to prejudice the rights of a client in an effort to withdraw. Respondent, who in his declaration in response to an order to show cause regarding dismissal of his client's action, offered his view that he would not be opposed to sanctions being levied against his client, and that he would personally like to see his client's action dismissed, is culpable of a violation of rule 3-700(A)(2) of the Rules of Professional Conduct. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[5]**

Respondent's leaving a client in the midst of a hearing is an abandonment of a client and a violation of rule 3-700(A)(2) of the Rules of Professional Conduct. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[6]**

Attorney's failure to communicate with a client may also constitute incompetent legal practice or abandonment of the client when facts demonstrate that attorney's failure to communicate resulted in the effective cessation of work on client's cause of action, foreclosed client from choices regarding her cause of action, or indicated a withdrawal from employment. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[5]**

Respondent did not withdraw from employment without taking reasonable steps to avoid foreseeable prejudice to a client where his failure to act promptly for the client may have inspired a dismissal motion, but where

his successor counsel had ample time to resist the motion. *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615. **[6]**

The rule of professional conduct prohibiting an attorney from withdrawing from employment unless the attorney has taken reasonable steps to avoid foreseeable prejudice to the client's rights applies to attorneys who are discharged as well as to attorneys who withdraw. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[1]**

Where respondent disbursed settlement funds to client without withholding funds to pay medical lien, in reliance on client's unverified representation that client had paid lien, this conduct constituted failure to take steps to avoid foreseeable prejudice to client in course of termination of respondent's employment. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[8]**

Whether attorney or client initiates termination of attorney-client relationship, attorney's ethical duties upon such termination remain the same. An attorney of record in pending litigation remains counsel of record, and continues to have duty to take actions essential to avoid foreseeable prejudice to client's interests, until substitution of counsel is filed or court grants leave to withdraw. Rule requiring withdrawing or terminated counsel to protect client from foreseeable prejudice does not require that such prejudice actually occur. Where respondent failed to appear to defend client's deposition, it was foreseeable that client might be prejudiced. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[27]**

Where respondent was culpable of one instance each of collection of an illegal fee and intentional failure to perform competently, and of multiple instances each of violating his duty to uphold the law; reckless failure to perform competently; withdrawing from employment without protecting clients from foreseeable prejudice; and failure to pay trust funds on demand, and where most severe applicable standard proposed three-month minimum actual suspension for non-misappropriation trust fund offenses, and where respondent's mitigating evidence was not sufficient to justify deviating from applicable standard given respondent's record of numerous violations over extended time period, review department increased hearing judge's recommended actual suspension to 90 days, as condition of three-year probation, with one-year stayed suspension as justified by case law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[29]**

Where, at time client requested file, respondent had already transferred client's file to successor attorney, respondent was not culpable of failure to release file to client on demand. However, where, upon transferring file to successor counsel and withdrawing from representation, respondent had failed to give client due notice, and had allowed client to believe that respondent remained conduit for contact with successor counsel, respondent violated rule prohibiting withdrawal without taking steps to avoid foreseeable prejudice to client. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[3]**

Respondent's failure to notify counsel for the opposing side that respondent was no longer representing a client violated the rule of professional conduct requiring attorneys to take steps to avoid foreseeable prejudice to their clients prior to withdrawal from employment. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[3]**

Where there was no clear and convincing evidence establishing services that were to be performed for fee paid, or establishing respondent's agreement to perform those services, evidence did not support charge of failing to perform services competently. Where, in addition, review department could not determine whether respondent's employment was ever terminated, as opposed to simply being completed, or whether respondent did not earn entire fee paid, review department did not find that respondent violated rule requiring attorneys to take reasonable steps to avoid foreseeable prejudice to clients prior to withdrawal from representation, or rule requiring prompt refund of any unearned fee. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[9]**

In light of comparable case law and absence of mitigating circumstances, public reproval was appropriate discipline for respondent who failed to refund promptly an unearned legal fee and failed to take reasonable steps to avoid prejudice to clients prior to withdrawal from representation. Hearing judge's recommended discipline of stayed suspension was therefore modified. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[13]**

Where respondent's failure to adhere to statutory requirement of written attorney-client fee agreements was at heart of both matters in which he had been charged with misconduct, and respondent's attention needed to be directed to written fee agreements and also to his obligations upon withdrawal from employment, public reproval was properly conditioned on completion of State Bar Ethics School. Its format of classroom instruction, followed by a test, would better remedy these problems than the more passive experience of the California Professional Responsibility Examination. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[14]**

Where record established that respondent agreed to handle litigation and thereafter abandoned case; former and current Rules of Professional Conduct were virtually identical regarding duties imposed on an attorney who wishes to withdraw from employment; both rules were charged in notice to show cause, and violation clearly occurred during period when either one rule or the other was in effect, review department found respondent culpable of improper withdrawal despite lack of evidence regarding exactly when relevant events occurred. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[2]**

Where hearing judge properly accepted client's testimony that advanced funds were for transcript costs and not for respondent's fees, and where applicable written fee agreement provided for respondent to advance costs, respondent's failure to pursue litigation because of client's failure to advance cost of transcripts constituted both a wrongful withdrawal from employment and a wilful violation of duty to perform legal services competently. Respondent was also culpable for failing to deposit the advanced funds in a trust account and for failing to return the client's file promptly upon demand. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[6]**

It is not inherently inconsistent to conclude that an attorney who withdrew from employment and failed to perform legal services competently is also culpable of failing to communicate with the client thereafter. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[7]**

In matters involving abandonment of a single client by an attorney with no prior record of discipline, discipline imposed by Supreme Court has ranged from no actual suspension to 90 days of actual suspension. Where respondent's misconduct was serious, harmed client, and included trust account violation as well as abandonment and failure to communicate, but respondent presented impressive mitigating evidence, including services to disadvantaged clients and to minority community, and respondent expressed sincere aspiration not to be involved in disciplinary proceedings again, review department recommended actual suspension of 30 days, with stayed suspension of six months and one year of probation. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[9]**

Where the hearing judge found the complaining witness worthy of belief on the crucial factual issues, and that witness's testimony was bolstered by other evidence in the record, and respondent's contrary contention that he had been discharged by his clients was not corroborated by documents that ordinarily would have been prepared by an attorney upon discharge, the hearing judge's conclusion that respondent abandoned his clients without notifying them was supported by the record, even though the complaining witness's testimony was not uniformly reliable regarding exact details. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[9]**

For a failure to communicate with a client which occurred prior to the enactment of the statute requiring such communication, grounds for discipline remain under the common law doctrine underlying this duty. However, where the information the attorney most significantly failed to convey was notice of the attorney's withdrawal from representation, the attorney's conduct violated former the rule against prejudicial withdrawal, and finding culpability of a common law failure to communicate would be unnecessarily duplicative. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[10]**

Where a client's matter involved a large amount of money and the client was concerned that his reputation would be affected by the dispute, the client's anxiousness to resolve the matter as quickly as was practical, and his periodic attempts to learn the status of the matter, were reasonable. His attorney's failure to complete necessary legal services and to return the client's calls thus violated the duty to respond to reasonable status inquiries and to provide competent legal services. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[5]**

The rule regarding prejudicial withdrawal from representation applies when an attorney ceases to provide services, even absent formation of an intent to withdraw as counsel. Whether or not an attorney's ceasing to provide services amounts to an effective withdrawal depends on the surrounding circumstances. Where time is

of the essence, failure to provide services constitutes an effective withdrawal even if the attorney's period of inaction is relatively brief. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[7]**

An attorney's total cessation of services to a client for a period of two years, standing alone, and even though unintentional, was clear and convincing evidence that the attorney effectively withdrew from employment without taking steps to protect the client's interests. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[9]**

There is no reason to require suspended attorneys to comply with the rules requiring competent representation and prohibiting prejudicial withdrawal even while they are precluded from practicing because suspended. A full range of discipline is available to protect the public, courts and profession for unauthorized practice alone. Recklessness or incompetence in the unauthorized practice of law, or a precipitous withdrawal, would cause harm to the client and would constitute an aggravating factor which justifies greater discipline than would have been appropriate if no harm had occurred. In order to minimize harm to clients, suspended attorneys should take all steps to avoid foreseeable prejudice, short of practicing law. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[8]**

The Rule of Professional Conduct which sets forth the duties and obligations of an attorney who withdraws from employment applies when an attorney ceases to provide services, even absent formation of an intent to withdraw as counsel for the client. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[9]**

The Rule of Professional Conduct which provides that an attorney shall not withdraw until he or she takes steps to avoid foreseeable prejudice to the rights of the client requires, by its express terms, that the attorney continue representing the client until the attorney has taken steps to avoid foreseeable prejudice. This obligation directly contradicts the duty of a suspended attorney to cease practicing law immediately. It is unreasonable to hold an attorney to a duty of having to continue to represent his or her client for a reasonable period of time to avoid prejudice prior to withdrawal, if the attorney has an absolute duty to stop practicing due to a suspension. Thus, the rule against prejudicial withdrawal has no applicability to attorneys while they are suspended. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[10]**

Where attorney completed all work he could have reasonably performed for client, attorney neither withdrew from employment nor was discharged, and was not culpable of prejudicial withdrawal from employment. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[1]**

The rule prohibiting prejudicial withdrawal from employment applies to attorneys who are discharged as well as to those that withdraw. Where respondent was discharged by a client, but nevertheless took reasonable steps to avoid prejudice to the client, record did not support a violation of the rule. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[2]**

The rules of ethics regarding the duties of an attorney upon withdrawal apply to attorneys who are discharged as well as those who withdraw. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[3]**

Finding that respondent was culpable of prejudicial withdrawal from representation and of failure to perform competently was based only on respondent's failure to render services while not under suspension; during suspension, respondent was precluded from practicing law, and misconduct in that connection is governed by statute precluding unauthorized practice of law. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[3]**

Charge of prejudicial withdrawal from representation was established by clear and convincing evidence, even though respondent did continue to communicate with one of two joint clients through a certain date, where there was no evidence that respondent had communicated with either client, or taken any action on clients' behalf, during extended period of time between that date and filing of notice to show cause. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[4]**

Rule prohibiting prejudicial withdrawal from representation may reasonably be construed to apply when attorney ceases to provide services, even in absence of intent to withdraw as counsel. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[5]**

Preliminary consultations with client created attorney-client relationship, but attorney was not culpable of misconduct for failure to proceed to file suit in absence of clear and convincing evidence that he had agreed to do so. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[5]**

Attorney's failure to discuss case with client after assuring her that he would investigate it upon receiving a copy of complaint from her, and his inaction and eventual abandonment of her case, warranted finding of culpability of misconduct even though attorney had obtained extensions of time to answer in effort to protect client's rights. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[7]**

Client's issuance of check to attorney marked "for filing fees" was insufficient evidence to show clearly and convincingly that attorney was obligated to file suit on behalf of client. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[8]**

To uphold a finding of culpability of withdrawal without taking steps to avoid foreseeable prejudice to the client, it is not necessary that the precise nature of the prejudice to the client be foreseeable. A finding that it was reasonably foreseeable that some prejudice would result to the client is sufficient to support culpability. Where respondent ended his association with running and capping in a hasty manner, and failed to give adequate notice of withdrawal and change of counsel, prejudice to clients was foreseeable even though evidence did not show that successor counsel's subsequent dishonesty was foreseeable. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[7]**

Respondent's failure to complete the services he undertook for his client and his de facto withdrawal from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client were wilful, and violated applicable Rules of Professional Conduct. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[2]**

Attorney's failure to perform legal services as agreed, and abandonment of three clients, constituted very serious misconduct. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[2]**

277.21 Found

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

277.25 Not Found

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

277.30 Failure to withdraw when required (RPC 3-700(B); 1975 RPC 2-111(B))

277.31 Found

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

277.35 Not Found

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

277.40 Improper permissive withdrawal (RPC 3-700(C); 1975 RPC 2-111(C))

Because there was an actual conflict in intractable dispute between corporation's president, who was one of corporation's four directors, and corporation's remaining three directors over control of the corporation, respondent's proper course of conduct in representing corporation was to obtain informed written consent of each of board member or to withdraw from representation if he could not do so. But respondent did not do so; he chose to join the fray asserting only the president's interest while representing the corporation. Because of respondent's multiple conflicts, he lost any objectivity or neutrality and gravely compromised his duty of loyalty to corporate client, which is a serious aggravating circumstance as uncharged, but proved misconduct under aggravation standard for attorney sanctions for professional misconduct with respect to surrounding violations of State Bar Act or Rules of Professional Conduct. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[8 a-c]**

Respondent was found culpable of violating rule 3-110(A) of the Rules of Professional Conduct. Even if his client could not decide which remedy to pursue or even if his client was unable to provide respondent with needed information, respondent could not simply let the months pass with no action. Respondent's choice was to either pursue remedies warranted by the facts and law based on effective investigation and research or to withdraw from employment if and as appropriate under rule 3-700(C) of the Rules of Professional Conduct. *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126. **[2 a-c]**

A client's nonpayment of fees did not excuse respondent's reckless and repeated failure to pursue the client's case diligently. Respondent had to seek permission from the court to withdraw, or pursue the case diligently. She did neither and therefore violated the rule of professional conduct regarding attorney competence. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[5]**

Where an attorney in a contingent fee case has a contractual lien for the attorney's fees, but withdraws before completion of the case, this renders uncertain both the amount, if any, which the attorney is entitled to be paid, and the attorney's entitlement to enforce the lien; they depend on whether the attorney had justifiable cause for withdrawing. Thus, in the event of such a withdrawal, the attorney's right to enforce the lien and the extent of the attorney's recovery cannot be determined unilaterally by the attorney. If the attorney and client cannot reach a new agreement, then the attorney's sole recourse is to an independent tribunal with the funds remaining in trust in the interim. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[23]**

Where an attorney began to doubt his client's credibility and therefore believed he could not give the client effective representation, the attorney's difficulty in working with the client justified his consensual withdrawal. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[25]**

277.41 Found

277.45 Not Found

277.50 Failure to release client papers/property (RPC 3-700(D)(1); 1975 RPC 2-111(A)(2))

By waiting at least two months to send client files to the client's new attorney and by not providing the client files until after the client's new attorney sent three additional requests, respondent violated Rules of Professional Conduct, rule 3–700(D)(1). *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. **[6]**

A client's file, absent uncommunicated attorney work product, is the property of the client and must be surrendered to the client promptly upon request once the representation has been terminated. An express element of a Rules of Professional Conduct, rule 3–700(D)(1) violation is the client's request for return of the property. Where a client requested a case file approximately eight months before respondent's services were terminated, and where there was no request for the client file made after the date of termination, respondent was still obligated to follow the directives of rule 3–700(D)(1) because it is unnecessary for a client who has already requested return of papers and property prior to an attorney's discharge to be required to repeat that request after discharge occurs. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[5 a, b]**

A client has an absolute right to retain counsel of choice and may discharge his or her attorney at any time, with or without cause. It is reasonable to assume that when a new attorney is retained, he or she will be able to communicate with and obtain the client's file from the former attorney. While the former attorney has the right and

duty to ensure that the new attorney is acting with client consent, where the record showed that the new attorney attempted to communicate with respondent for several months before receiving a response and that respondent made no effort to obtain (1) specific proof that the clients had hired the new attorney or (2) permission to contact the clients to verify their authorization, respondent's failure to forward the clients' file to the new attorney promptly upon request constituted a willful violation of Rules of Professional Conduct, rule 3-700(D)(1). *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[4]**

Absent a motion by the State Bar to amend the notice of disciplinary charges in a way that would have given respondent a sufficient opportunity to defend, the hearing judge should have sustained respondent's objection to evidence of uncharged misconduct on the ground that it was beyond the scope of the charge set forth in the notice of disciplinary charges. In view of respondent's timely and specific objection, the review department declined to adopt the finding of uncharged misconduct as an aggravating circumstance. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[16]**

Because Rules of Professional Conduct 3-700(A)(2) (prohibiting prejudicial withdrawal from employment) and 3-700(D)(1) (mandating return of client property) have not been amended or modified since they were first adopted and became effective on May 27, 1989, there are no "former" versions of those rules. Thus, the review department deemed the charged and found violations that State Bar and the hearing judge incorrectly described as violations of "former" rules 3-700(A)(2) and 3-700(D)(1) to be charged and found violations of rules 3-700(A)(2) and 3-700(D)(1), which became effective on May 27, 1989. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[1]**

Rule prohibiting prejudicial withdrawal from employment (rule 3-700(A)(2)) is more comprehensive than rule requiring an attorney whose employment has been terminated to release the client's file upon the client's request (rule 3-700(D)(1)). Rule prohibiting prejudicial withdrawal, mandates compliance with rule requiring release of client files. Thus, attorney's failure to properly release a client's file in accordance with rule requiring release of client files may be a portion of the conduct disciplinable as a violation of rule prohibiting prejudicial withdrawal. Because respondent's failure to release the client's file in accordance with the client's request was relied on as part of the basis for finding that respondent violated rule prohibiting prejudicial withdrawal, review department rejected the use that same failure to find a separate violation of rule requiring release of client files. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.**[7]**

An attorney did not promptly release a client's papers where the attorney failed to turn over the client's file for six months after a request from the client's new counsel. *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608. **[3]**

The rule of professional conduct prohibiting an attorney from withdrawing from employment unless the attorney has taken reasonable steps to avoid foreseeable prejudice to the client's rights applies to attorneys who are discharged as well as to attorneys who withdraw. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[1]**

Where clients terminated respondent's employment and demanded the return of their file, the rule of professional conduct regarding withdrawal from employment required respondent to deliver the clients' file promptly. Such delivery did not depend on the clients' signing a substitution of attorney. By waiting two months to send the file, respondent violated that rule. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[3]**

Where the notice to show cause erroneously charged a violation of former rule 2-111(A)(2) of the Rules of Professional Conduct, but where the factual allegations of the notice stated that respondent had not refunded unearned fees, the subject of former rule 2-111(A)(3) of the Rules of Professional Conduct, respondent had adequate notice of a charge under former rule 2-111(A)(3). *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[6]**

An attorney's habitual disregard of clients' interests involves moral turpitude even if such disregard results only from carelessness or gross negligence. Where respondent recklessly or repeatedly failed to provide competent legal services in seven matters and failed to return files properly to clients in four matters, these failures together constituted habitual disregard of clients' interests and amounted to moral turpitude. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[8]**

Even under the threat of a malpractice action by a client, an attorney is not excused from complying with the duty to provide the client with his or her file. The trial court's determination of the requirements of discovery in the malpractice case is irrelevant to this ethical obligation. Where a client sued respondent for malpractice and respondent failed to turn over the client's file on request, respondent violated the rule requiring release of the client's file, but his misconduct was mitigated by his adherence to the discovery conditions allowing access to the client's files ordered by the trial judge in the malpractice case. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[12]**

Where, at time client requested file, respondent had already transferred client's file to successor attorney, respondent was not culpable of failure to release file to client on demand. However, where, upon transferring file to successor counsel and withdrawing from representation, respondent had failed to give client due notice, and had allowed client to believe that respondent remained conduit for contact with successor counsel, respondent violated rule prohibiting withdrawal without taking steps to avoid foreseeable prejudice to client. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[3]**

Portion of client's file which is client's property must be surrendered promptly upon request to client or client's new counsel once representation has terminated. Client's failure to sign substitution of counsel did not excuse failure to release file, where respondent did not take position that file was needed to protect client's legal interests until client signed substitution. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[4]**

Where respondent with no prior record of discipline failed to communicate reasonably with two clients and failed to relinquish their files promptly, causing harm to clients, six-month stayed suspension, with no actual suspension, was well within appropriate range of discipline as indicated by comparable cases. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[5]**

An attorney's failure to turn over client's file to successor counsel is not excused by fact that client has copies of documents in file. However, where respondent's employment was of limited duration, work respondent performed was of minimal nature, and there was no evidence that file contained any documents that had not been previously released to client, there was insufficient evidence to support charge that respondent failed to return file. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[7]**

An attorney is responsible for the reasonable supervision of the attorney's staff. Where a client repeatedly demanded her file from respondent's office over a six-month period, this was sufficient to establish respondent's lack of reasonable supervision. Respondent's ignorance of the client's demands and lack of prior notice of his staff's failure to inform him of client communications did not absolve respondent from culpability absent additional evidence demonstrating his reasonable supervision of his staff. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[2]**

Where respondent received two letters from client's new counsel after respondent claimed to be confused as to whether client was discharging him, respondent's confusion did not excuse his delay in contacting successor counsel and forwarding client's file. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[3]**

Where respondent had wrongfully retained client's personal property, review department recommended condition of probation requiring respondent to provide proof of return of such property to client. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[11]**

The Rule of Professional Conduct which sets forth the duties and obligations of an attorney who withdraws from employment applies when an attorney ceases to provide services, even absent formation of an intent to withdraw as counsel for the client. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[9]**

The rules of ethics regarding the duties of an attorney upon withdrawal apply to attorneys who are discharged as well as those who withdraw. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[3]**

277.51 Found

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Sullivan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

277.55 Not Found

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

277.60 Failure to refund unearned fees (RPC 3-700(D)(2); 1975 RPC2-111(A)(3))

Although respondent performed some services for clients, her work was incomplete and she never provided any work product or advice to them. Thus, clients were entitled to a refund of entire fees since they received nothing of value from respondent. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263.**[6]**

There was sufficient evidence to find that respondent failed to refund an unearned fee promptly upon the termination of employment where: the fee agreement provided for a fixed nonrefundable retainer fee and a contingent fee and provided that any modifications to the agreement had to be in writing and signed by both parties; respondent orally requested and received another $5,000 from the client above the amount called for in the written fee agreement; there was never a written modification to the fee agreement, such that respondent never earned the additional $5,000 fee; and respondent refused for approximately six months after the client obtained a judgment against him to refund the $5,000. The review department concluded that it could not consider whether the value of respondent's services exceeded the price for which he had agreed to perform them, since respondent would have been entitled to the entire fee set forth in the agreement if the services had been worth less than the price set forth in the fee agreement. Further, because respondent drafted the fee agreement, any ambiguities should be interpreted against him. The fiduciary relationship between an attorney and a client is of the very highest character, and transactions between them which are beneficial to the attorney are closely scrutinized for unfairness.*In the Matter of Lindmark* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668.**[2 a-g]**

There was no evidence that respondent earned a fee so as to justify failing to refund the fee to a client after his employment was terminated where (1) there was insufficient evidence to establish an amount of work which, at the quoted rate, would have justified retention of the fee and (2) respondent failed to obtain the result for which he was retained. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[2]**

Respondent could not have earned any fee in a probate case absent prior court approval of his fee. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[3]**

In a prosecution for intentionally, recklessly, or repeatedly failing to perform legal services competently, failing to refund an unearned fee after employment was terminated, and failing to deliver clients' funds promptly upon request, there was sufficient evidence that respondent represented the clients involved where one of the clients was referred to respondent and went to his office intending to hire him, saw his name on the door and some of his business cards in the reception area, made several appointments with him, received one of two receipts for payment on respondent's letterhead, and filled out forms for respondent at the request of a member of the office staff who was an employee or agent for respondent. Moreover, respondent had a key to the office, worked out of the office for at least a few hours each week, and, by failing to deny the fact upon accusation by the State Bar, admitted that the clients were his. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[7]**

The fee agreement itself established that respondent's fee was not a true retainer but an advanced fee, since the fee was paid not to ensure respondent's availability either for this matter or for a given period of time, but rather to pay respondent in advance for his services. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[9]**

In a prosecution for violating Rules of Professional Conduct, rule 3-700(D)(2), there was insufficient evidence in the record to establish that respondent earned the $1,000 fee. The fee agreement, as interpreted by respondent and as applicable here, provided for the client to pay respondent an hourly fee plus costs for consultants if the matter settled without a hearing. The actual cost due for one consultant was $100, but because respondent never paid the consultant, the client never became liable for such cost. In addition, respondent could not have reviewed the client's records because he never received them, did not have long telephone conversations with the consultant

regarding the client's case, and performed insufficient research to have earned the $1,000 fee. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[10]**

The agreement between respondent and his client's subsequent counsel for respondent to refund $500 in unearned fees was sufficient to defeat the client's small claims suit against respondent to collect the advanced fee the client had paid him. Nonetheless, their agreement does not affect the ethical conclusion that respondent failed to earn any part of the fee paid. *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. **[2 a, b]**

A retainer agreement's characterization of a fee as a "non-refundable retaining fee" is not determinative in ascertaining whether the fee was a true retainer and whether respondent's failure to refund it promptly upon the termination of his employment violated rule 3-700(D)(2) of the Rules of Professional Conduct. A true retainer is paid to secure the availability of an attorney over a given period of time and is earned when paid regardless of whether the attorney actually performs services for the clients. Where the fee was intended to cover the initial 10 hours of respondent's work, the clients understood the fee to be an advanced payment for services, the bills sent to the client showed the fee as a credit for services to be rendered, the retainer agreement did not specify a period of time for which respondent was to be available to the clients and the record did not show that respondent set aside a particular period of time to devote to the clients' matter, the fee was not a true retainer and respondent had to comply with the requirement of rule 3-700(D)(2) to refund any unearned part of an advanced fee promptly upon termination. *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907. **[6]**

Where an attorney retained advanced fees long after failing to perform any legal services and agreeing to refund the unearned portion of the fees, such wrongful retention approached a practical appropriation of the client's property. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. **[4]**

Where an attorney retained unearned advanced fees for years and failed to prove factors justifying relief from actual suspension before the completion of restitution, the hearing judge erred in not requiring the attorney to make restitution forthwith. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. **[6]**

The rule of professional conduct regarding withdrawal from employment requires an attorney who withdraws to refund promptly any part of a fee that has been paid in advance, but has not been earned. This rule also applies when a client terminates the employment of an attorney. By failing to return advanced fees after performing only minimal preliminary services, an attorney who withdraws from employment violates the rule. Yet an attorney who withdraws from employment after performing some services and providing an accounting does not necessarily violate the rule. Respondent did not violate the rule where she communicated regularly with the clients, negotiated a settlement which would have achieved the clients' purpose, sent them a billing statement showing a credit balance several months before they discharged her, was owed more than this balance by the time of her discharge, and agreed with the clients to call matters even. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[4]**

Where the notice to show cause erroneously charged a violation of former rule 2-111(A)(2) of the Rules of Professional Conduct, but where the factual allegations of the notice stated that respondent had not refunded unearned fees, the subject of former rule 2-111(A)(3) of the Rules of Professional Conduct, respondent had adequate notice of a charge under former rule 2-111(A)(3). *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[6]**

A true retainer fee is one which is paid solely to ensure the attorney's availability over a given period of time, and is earned when paid since the attorney is entitled to it regardless of whether any actual services are performed. Where respondent did not devote certain blocks of time to certain clients' claims or turn away other business to proceed with their matters, and it was evident that clients were paying for more than respondent's ability, respondent was not excused from accounting for an advanced fee on the ground that it was a retainer earned on receipt. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[2]**

Attorneys are not permitted to set their fees unilaterally. If a client contests fees charged or paid, the disputed fees must be placed in a trust account until the conflict is resolved. The duty to account for client funds includes a duty to maintain adequate records of fees drawn against an advanced fee and of fee payments made thereafter, and to provide clients with an appropriate accounting. In evaluating the promptness and adequacy of such an

accounting, it was appropriate to look to the standards set forth in the statute governing attorneys' bills for fees and costs, even where a violation of that statute was not charged. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[3]**

Respondent's failure to return the unearned portion of an advanced legal fee for over a year violated the rule of professional conduct requiring that unearned fees be promptly returned to the client. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[2]**

Where there was no clear and convincing evidence establishing services that were to be performed for fee paid, or establishing respondent's agreement to perform those services, evidence did not support charge of failing to perform services competently. Where, in addition, review department could not determine whether respondent's employment was ever terminated, as opposed to simply being completed, or whether respondent did not earn entire fee paid, review department did not find that respondent violated rule requiring attorneys to take reasonable steps to avoid foreseeable prejudice to clients prior to withdrawal from representation, or rule requiring prompt refund of any unearned fee. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[9]**

In light of comparable case law and absence of mitigating circumstances, public reproval was appropriate discipline for respondent who failed to refund promptly an unearned legal fee and failed to take reasonable steps to avoid prejudice to clients prior to withdrawal from representation. Hearing judge's recommended discipline of stayed suspension was therefore modified. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[13]**

Where respondent was not charged with failure to return an unearned advance fee, no finding of culpability for such misconduct could be entered absent an amendment of the charges. Where evidence was insufficient to support such charge, motion to amend was properly denied as an idle act. However, where, despite a clear directive as to the need to amend and an opportunity to move for such amendment in advance of trial, deputy trial counsel waited until after evidence was in to move to amend to conform to proof, motion to amend could also have been denied simply for inexcusable delay in seeking amendment. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[3]**

It is common in State Bar matters involving failure to perform services to require as a rehabilitative condition, restitution of unearned fees kept by the attorney and to deem as unearned the entire fee when only preliminary services were performed which did not result in benefit to the client. It is also common to recommend the payment of interest incident to such restitution. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[12]**

When an attorney withdraws from employment or the client terminates the attorney's employment, the attorney must promptly refund any unearned part of an advance fee. However, where respondent faced competing demands regarding the funds used to pay an advance fee, from a client and from a third party to whom respondent owed a fiduciary duty, respondent had a duty to retain the funds in trust until the client's entitlement to the funds was established, and therefore did not commit misconduct by declining to refund the advance fee. Respondent's motives for retaining the funds in trust were irrelevant because the issue turned on a question of law, not motivation. The State Bar had the burden of proving that the client was entitled to receive the funds. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[9]**

Where respondent did some work on a lawsuit and provided a contemporaneous accounting of time to the client, the charge that respondent had retained unearned advanced fees was not supported by the record. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[16]**

Advances by the client for expenses incurred during representation are not encompassed by the rule requiring the prompt refund of unearned advanced fees upon request. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[17]**

Because the retention of unearned advanced fees is a violation of an express duty under the Rules of Professional Conduct, it would be duplicative to find the same conduct to constitute an act of moral turpitude, and such a finding is not supported by the case law. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[20]**

A finding of failure to return the unearned portion of an advanced fee upon termination of employment was legally independent of the validity of a related fee arbitration award. Where respondent took an advance fee, failed to complete the work, was discharged by the client, agreed to return the unearned portion of the fee, and then failed to do so, respondent was culpable of misconduct notwithstanding alleged defects in a subsequent fee arbitration proceeding. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[5]**

Even if respondent's advanced fee originally was a non-refundable "true retainer," respondent's subsequent oral agreement to refund the unearned balance modified the retainer agreement to make the unearned portion of the fee refundable. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[6]**

Attorney who rendered services to client before committing misconduct was entitled to collect fee earned prior to commencement of misconduct. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[3]**

The Rule of Professional Conduct which sets forth the duties and obligations of an attorney who withdraws from employment applies when an attorney ceases to provide services, even absent formation of an intent to withdraw as counsel for the client. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[9]**

An attorney must, upon withdrawal, promptly return any unearned fees. An attorney is not required to practice law in order to comply with this rule, and it therefore continues to apply even if an attorney is suspended. Moreover, a suspended attorney is legally precluded from practicing law and therefore, the attorney's agreement to provide legal services in exchange for a fee is illegal. Permitting a suspended attorney to retain any of the money paid him by a client for services rendered while suspended would condone the attorney's unauthorized practice of law and would be contrary to public policy. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[11]**

The rules of ethics regarding the duties of an attorney upon withdrawal apply to attorneys who are discharged as well as those who withdraw. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[3]**

Where an attorney had performed some work on a client's case and believed he was entitled to retain the entire advance fee, it was reasonable for him to postpone refunding the fee until a small claims court had determined that a refund was required. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[4]**

Where client denied seeing drafts or final copy of trust agreement which contained largely "boiler-plate" language and little if any unique or specially tailored provisions, record supported conclusion that respondent did not earn advanced fees for formation of family trust. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[6]**

Where attorney was hired to handle two matters, but retainer agreement made clear that advanced fee was attributable only to one of the matters, attorney was obligated to return entire advanced fee after failing to perform any services on that matter, even though attorney did perform some services on the other matter. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[6]**

An attorney's conversion of advanced attorney's fees and costs without performing any services is regarded most seriously by the Supreme Court. Taking money for services not performed or not to be performed is close to the crime of obtaining money by false pretenses. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[9]**

277.61 Found

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

277.65 Not Found

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

280.00 Trust account/commingling (RPC 4-100(A); 1975 RPC 8-101(A))

Where disciplinary charges were filed two years after respondent's withdrawal of funds from trust account, and remained pending for more than three years afterwards, respondent remained obligated to maintain trust account records despite expiration of five-year retention period required by Rules of Professional Conduct. Attorney handling client funds cannot escape culpability for misconduct by failing to maintain adequate records. *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239 **[2 a,b]**

The review department found no merit to the State Bar's argument that money in a client trust account is presumed to belong to the clients and that it was respondent's burden to prove otherwise. The State Bar alleged in the notice of disciplinary charges that client money was stolen and it had the burden to present clear and convincing evidence proving that allegation. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627. **[3]**

Because insurance settlement check that respondent deposited into his client trust account was made payable to his corporate client, he became a fiduciary of all members of corporation's board of directors who asserted a claim to those funds on corporation's behalf, and he owed those directors the same high duty of honestly and obedience to fiduciary duty as if he were their attorney. Respondent breached that duty when he distributed $50,000 of settlement funds to corporation's president, who was one of corporation's four directors, in the president's individual capacity without knowledge or consent of remaining three directors because he knew that president and other three directors were in intractable dispute over control of corporation and that corporation's board had suspended president and denied him access to corporation's funds. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[1]**

Where respondent had certain knowledge of dispute over his fees and where respondent ignored explicit directive of board majority to immediately cease representing corporation, respondent violated rule of professional conduct requiring disputed funds to be held in trust when he withdrew $29,875.89 of corporate client's funds from his trust account as his attorney's fees. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[2]**

Where respondent misappropriated $50,000 of $79,875.89 insurance settlement funds he held in his trust account for his corporate client by disbursing $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors; where respondent violated his fiduciary duty to remaining three directors by disbursing the $50,000 to president without their knowledge or consent; where respondent knowingly and intentionally misappropriated remaining $29,875.89 of settlement funds for his own use and benefit by withdrawing them from his trust account as attorney's fees without the knowledge and consent of remaining three directors; where respondent violated rule of professional conduct requiring disputed funds to be held in trust by withdrawing $29,875.89 in fees from his trust account when his right to collect fees was disputed; where respondent repeatedly refused to account for proceeds of insurance settlement check in accordance with requests of chairman of corporations board of directors; where there was extensive aggravation, including concealment, overreaching, and failure to make restitution, with mitigation for strong good character testimony, extensive community service, no prior record of discipline, and lack of additional misconduct in more than five years; and where misconduct involved only a single client matter; and even though standard for attorney sanctions for professional misconduct for willful misappropriation called for and Supreme Court has repeatedly held that usual discipline for willfully misappropriation of client funds is disbarment, appropriate discipline recommendation was not disbarment, but four years' stayed suspension, four years' probation on conditions, which included two years' actual suspension continuing until respondent pays restitution of $29,875.89 with interest. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[9 a-d]**

Attorneys cannot recover for services rendered if services are rendered in contradiction of attorney professional responsibility. And where attorney improperly withdraws fees from a trust account, restitution to client or client's estate is appropriate. Thus, where respondent withdrew $29,875 from his client trust account as his attorney's fees without his corporate client's authorization, respondent should make restitution of $29,875 plus interest to either corporate client, its successor, appropriate recipient of its assets after its dissolution, or if such successor or recipient of assets after dissolution cannot be identified, the Client Security Fund. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[10 a,b]**

Attorney's fiduciary duty to develop and maintain adequate management and accounting procedures for proper operation of his law office is fundamental to fulfillment of multiple duties, including duties to competently perform legal services, adequately communicate with clients, protect client confidential information, and properly handle and account for client funds and other property.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[15]**

An attorney has a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. These duties are nondelegable. This does not mean that an attorney is culpable of a moral turpitude violation by not personally managing his or her trust account, provided that attorney reasonably relies on a partner, associate, or other responsible employee to care for that account. However, even that reasonable reliance on another to care for the trust account does not relieve the attorney from the professional responsibility to properly maintain funds in that account. That is, in the handling of client funds, an attorney has a direct professional responsibility to his or her client, and the attorney does not avoid that direct professional responsibility by, even reasonable, reliance on a partner, associate or responsible employee.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[5]**

Because respondent allowed herself to be disconnected from management of her law office over extended period of time and did not undertake any effort to fulfill her personal and nondelegable duty to monitor client funds and her trust account, hearing judge properly accepted parties' stipulation and correctly found, on respondent's plea of nolo contendere, that respondent was culpable of violating trust account rules even though respondent relied on her husband and law partner to manage the trust account.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[6]**

Respondent's conduct of depositing personal funds in his client trust accounts and using those accounts for his personal expenses constituted commingling within the meaning of rule 4-100 of the Rules of Professional Conduct, even where there were no clients funds in the trust account. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.**[1]**

Even if an attorney returns money that he or she misappropriates, the attorney is still be culpable of the original misappropriation. Thus, restitution is not a defense to a misappropriation charge. Rather, it is a mitigating circumstance that could possibly support a reduction in the discipline. Respondent had the burden of proving mitigating circumstances, including restitution. Where there was no evidence that respondent paid the money back, he did not meet his burden of proving that restitution had been paid. Under these circumstances, restitution was an appropriate component of the discipline. *In the Matter of Elliott* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541. **[1]**

Misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, and generally warrants disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. Where respondent did not meet that burden, disbarment was recommended. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[1]**

Respondent wilfully violated the rule of professional conduct which requires that all funds received for the benefit of clients be deposited in a trust account (rule 4-100(A)), where he failed to ensure that a settlement check was made out to the client and himself and was deposited in his trust account. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[6]**

When respondent accepted money on behalf of a third party who was not his client, he had a duty not to misuse the money. Nevertheless, no authority provides that respondent was required or allowed under rule 4-100, Rules of Professional Conduct, to funnel the non-client's business funds through respondent's client trust account. *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420. **[1]**

By placing a non-client's funds in his trust account for the purpose of allowing the trust account to be used by the non-client as a business account, and by failing to maintain and supervise the account, respondent violated both the letter and the spirit of rule 4-100(A) of the Rules of Professional Conduct. *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420. **[2]**

Even though client had agreed to lend respondent all but a small amount of client's net settlement proceeds, character of such settlement proceeds remained mixed. Respondent's failure to place entire settlement proceeds into client trust account and to properly disburse small amount owed to client violated trust account rules. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[14]**

Where respondent misused client trust account as personal account, failed to respond to client's reasonable status inquiries, did not keep client's settlement check in safe place, and did not respond to State Bar investigation, and where at time of disciplinary hearing respondent still suffered from chronic depression which was major cause of misconduct, and had been ineligible to practice law for two years, appropriate discipline was three years stayed suspension, four years probation, and actual suspension for one year and until respondent proved rehabilitation, fitness to practice competently, including mental fitness, and present learning and ability in the law. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[24]**

Attorneys must put all funds received for benefit of clients in a trust account. In event of dispute over amount owed to medical lienholder, attorney cannot withdraw funds from trust account and put them in general account. Where respondent retained funds to pay lien, but withdrew them from trust account, respondent violated trust account rule. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[4]**

Even if attorney has no fiduciary obligation to client's medical provider due to absence of enforceable lien or judgment, attorney still has duty to client to keep all client funds in trust. Where respondent withdrew client funds from trust account which he later used to pay client's medical provider, respondent violated rule requiring client funds to be held in trust even though provider had no lien. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[6]**

Where respondent's mishandling of trust funds was not intentional, but respondent abdicated responsibility to supervise personal injury cases and recklessly disregarded trust account obligations, thereby committing acts of moral turpitude; where respondent also repeatedly failed to provide legal services competently and did not notify a client of receipt of a settlement; and where record did not show that problems resulting from respondent's disregard of his trust account obligations had ended or that respondent had established sound office management plan, appropriate discipline included three years probation with trust account audit and law office management requirements, three years stayed suspension, and actual suspension for eighteen months and until restitution was completed. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[15]**

Where respondent had not paid a medical lien, but there was no evidence that respondent had failed to retain the appropriate sum to pay the lien in his trust account, respondent was not culpable of misappropriating the lien funds. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[5]**

Attorneys are not permitted to set their fees unilaterally. If a client contests fees charged or paid, the disputed fees must be placed in a trust account until the conflict is resolved. The duty to account for client funds includes a duty to maintain adequate records of fees drawn against an advanced fee and of fee payments made thereafter, and to provide clients with an appropriate accounting. In evaluating the promptness and adequacy of such an accounting, it was appropriate to look to the standards set forth in the statute governing attorneys' bills for fees and costs, even where a violation of that statute was not charged. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[3]**

Where respondent honestly believed that he was entitled to retain portions of his clients' cost advances, even though this belief was unreasonable and unsubstantiated, respondent's retention of the funds did not necessarily warrant a conclusion that his conduct was dishonest, especially where respondent's gross negligence in handling the same funds had already been held to violate the moral turpitude statute. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[5]**

Where hearing judge concluded that respondent misappropriated a portion of client's cost advance under trust account rule, and violated moral turpitude statute by gross negligence in supervising client trust funds, it was unnecessary for review department to amend hearing judge's conclusions to establish that those sections were violated, and review department declined to adopt additional conclusion that respondent acted dishonestly in misappropriating client's funds. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[6]**

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

Where respondent established a law practice in total disregard of the principles of the rule requiring client funds to be held in trust accounts, respondent could have been charged with and found culpable of violating that rule based on mishandling of trust funds by non-lawyer who ran practice, at least as to cases which respondent was aware were being handled in respondent's name. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[1]**

The trust fund and trust account rules are designed to safeguard client funds from the serious risk of loss or misappropriation, whether through carelessness or design. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[6]**

Evidence that respondent paid court-ordered sanctions with a trust account check, and that the client had not provided the funds, established respondent's improper use of the trust account, either by commingling trust and personal funds or by misappropriating funds belonging to other clients. Weighing all reasonable doubts in respondent's favor, a finding of commingling, the less serious offense, was appropriate. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[13]**

The amount of client trust funds that an attorney mishandles goes to the issue of discipline, not culpability, and the mishandling of even an insignificant amount can constitute a disciplinable offense. No de minimis exception applies to the determination of culpability for mishandling trust funds. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[7]**

A client's objection to respondent taking any legal fee from a settlement triggered the provision of the rule of professional conduct requiring respondent to retain disputed funds in a trust account pending a resolution of the dispute even though respondent later reduced his legal fee. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[8]**

A disciplinary proceeding is seldom the proper forum for attorney fee disputes. In a matter arising from a dispute between attorneys, where respondent did not mishandle any sum that could be considered trust funds and respondent's instruction to staff to endorse the other attorney's name to settlement drafts was not dishonest, corrupt, or reflective of bad moral character, the review department affirmed the dismissal of the proceeding. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[1]**

Supreme Court and review department look to elements of trust account rule, and their purposes, in determining whether a particular transaction violates the rule. Under this analysis, funds received by a member of the State Bar which are the subject of a medical lien held by the client's medical provider for services rendered in the matter for which the client hired the attorney are trust funds within the meaning of the trust account rule, for they are, in effect, funds held for the benefit of clients. Similarly, funds of certain third parties which come into a lawyer's hands are required to be treated as trust funds. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[5]**

State Bar Court can and should look to label and treatment of funds by attorney and client when considering whether they are trust or non-trust funds. However, it is the character and nature of the funds, not their label by either attorney or client, which must ultimately determine their status. Despite respondent's labelling of clients' prior attorney's claim for quantum meruit fees as a "lien," in the absence of adequate proof of creation of a lien, the funds claimed by the prior attorney for fees for services rendered were not trust funds within the meaning of the trust account rule. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[6]**

Attorney fees for legal services already performed are personal obligations of a client, and funds held to pay them are not trust funds within the meaning of the trust account rule. A claim for attorney fees for past services

has been raised to trust status within the meaning of the trust account rule only where such fees were legally recognized as a lien on the client's recovery. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[7]**

Where hearing judge properly accepted client's testimony that advanced funds were for transcript costs and not for respondent's fees, and where applicable written fee agreement provided for respondent to advance costs, respondent's failure to pursue litigation because of client's failure to advance cost of transcripts constituted both a wrongful withdrawal from employment and a wilful violation of duty to perform legal services competently. Respondent was also culpable for failing to deposit the advanced funds in a trust account and for failing to return the client's file promptly upon demand. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[6]**

An attorney holding funds for a person who is not a client is held to the same fiduciary duties in dealing with those funds as if there were an attorney-client relationship. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[4]**

An attorney is prohibited from deviating from the rule requiring client funds to be deposited in a trust account even when the attorney has the client's consent to place trust funds in an account other than a trust account. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[5]**

An attorney's appropriation of client funds based on an unreasonable but honest belief of entitlement to the funds constitutes only a violation of the rule of professional conduct regarding client trust funds, and not an act of moral turpitude or dishonesty. However, where respondent could not have held an honest belief that he was entitled to some of the money he withdrew from a client trust account, his misappropriation of those funds not only violated the rule governing client trust funds, but also involved moral turpitude. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[10]**

An attorney's withdrawal of client funds after the client disputed the attorney's right to receive that money was a violation of the rule of professional conduct requiring disputed client funds to be held in trust. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[11]**

Even though notice to show cause did not expressly charge violation of rule requiring client funds to be held in trust, respondent could be found culpable of violating such rule by misappropriating client funds, where such charge was clearly encompassed within allegations in support of moral turpitude charge. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[15]**

Where, as justification for taking client trust funds, respondent asserted that his written fee agreements had been modified to provide for a large contingent fee in one matter and a large flat fee in another matter, but did not produce any documents to support this contention, and offered varying characterizations of the alleged change in the fee arrangements, and, in contrast, the client testified credibly that he had never consented to a change in the fee agreements and had never been billed for additional fees, respondent failed to establish entitlement to the claimed fees. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[2]**

Restitution of client funds taken by an attorney is no defense to disciplinary charges of misappropriation. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[3]**

Disbarment was the appropriate sanction for an attorney's misappropriation of a very large sum of client funds over many years, which was surrounded by utter disregard of the attorney's fiduciary and trust account duties, and aggravated by incompetent representation of the client and prosecution of a lawsuit without the client's consent, demonstrating a lack of basic understanding of the fundamental responsibilities of an attorney. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[10]**

Where a client authorized respondent to deduct attorney fees for one matter from settlement proceeds in another matter, respondent had no reason to keep the fees which were due to her in a trust account, and did not violate the trust account rules by failing to do so. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[2]**

Absent guidelines from the State Bar, it was reasonable for respondent to keep $121.83 of personal funds in her trust account to pay for bank charges, as permitted by the trust account rules. This sum did not threaten the integrity of the clients' funds. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[3]**

Where respondent inadequately supervised her trust accounts over a period of several months and carelessly wrote a check which reduced the balance in a trust account slightly below the necessary amount, respondent's conduct did not amount to gross negligence, and thus did not constitute moral turpitude, but respondent did violate the rule requiring client funds to be held in trust. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[5]**

An allegation of an act of moral turpitude or dishonesty encompasses the lesser allegation of a violation of the trust account rules, where the pleading clearly raises the issue of the misuse of trust funds. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[6]**

Although an attorney cannot be held responsible for every detail of office operations, the attorney violates the trust account rules if the attorney does not manage funds as required by the rules, regardless of the attorney's intent or the absence of injury to anyone. Violations resulting from serious and inexcusable lapses in office procedure may be deemed wilful despite the absence of deliberate wrongdoing. If an attorney's trust account balance drops below the necessary amount, an inference of misappropriation may be drawn. The burden then shifts to the attorney to show that office procedures were adequate. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[7]**

Not every trust account violation rises to the level of misappropriation. Because of the serious opprobrium attaching to the term "misappropriation," the term is appropriate only when the level of misconduct rises at least to gross negligence. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[8]**

An attorney who receives money on behalf of a party who is not the attorney's client becomes a fiduciary to the party. Where an attorney assumes the responsibility to disburse funds as agreed by the parties in an action, the attorney owes an obligation to the party who is not the attorney's client to ensure compliance with the terms of the agreement. If there is a dispute between the client and the third party, the attorney must retain the funds in trust until the resolution of the dispute. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[11]**

Where respondent negligently committed a minor trust account violation, made voluntary restitution prior to any complaint to the State Bar, presented extensive character evidence, and was on the verge of retiring from a very respectable 40-year career, respondent was appropriately the subject of a private reproval. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[6]**

Where the original notice to show cause alleged misappropriation, and the examiner amended the notice to charge respondent with commingling resulting from his bookkeeper's negligence, and there was no evidence that respondent's defense was thereby prejudiced, respondent had sufficient notice of the charges to satisfy his due process rights, because the duty to keep client funds safe is a personal obligation of the attorney and nondelegable, and the attorney was therefore on notice that he could be culpable if his staff's conduct resulted in a violation of that duty. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[2]**

Where respondent was involved in a dispute with a former client over the fees and costs incurred for the client, and discovered that three years earlier the client had mistakenly been billed for, and had paid, an expert witness fee which respondent had not paid, respondent should have either paid the bill, reimbursed the client, or, pending the resolution of the dispute, put the erroneous cost reimbursement into a trust account. Having instead kept the funds in his general account, respondent was culpable of commingling and of failing to maintain the funds in trust. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[9]**

The duty to keep clients' funds safe is a personal, nondelegable obligation of an attorney. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[4]**

Where an attorney representing a bankrupt client had possession of the proceeds of a court-ordered sale of estate assets, did not place the funds in a trust account, did not pay them as directed by the bankruptcy court, and did not otherwise account for the funds, the evidence supported a finding that the attorney misappropriated the funds, violated the rule requiring prompt payment of client funds on request, and committed an act of moral turpitude. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[21]**

A finding that the amount respondent withdrew from a client trust account was not an earned fee, even though the client did not dispute respondent's testimony that it was an earned fee, was consistent with the evidence that respondent had not performed any legal services during the period of time for which he withdrew the funds; that what work was done by the attorney occurred after the trust funds had been withdrawn; that no value had been placed on the attorney's services during that time, and that the attorney had otherwise been inattentive to the client's case. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[3]**

An attorney's withdrawal of client trust funds based on a reasonable or unreasonable but honest belief of entitlement to fees may constitute only a violation of the rule of professional conduct regarding client trust funds, and not an act of moral turpitude or dishonesty. However, where an attorney could not have held an honest belief that he was entitled to most of the money he withdrew from a client trust account, his misappropriation of the funds not only violated the rule governing client trust funds, but also involved moral turpitude and dishonesty. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[4]**

Misappropriation of client funds is a particularly serious ethical violation, which breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the legal profession. Misappropriation generally warrants disbarment of the attorney involved unless clearly extenuating circumstances are present. In assessing the appropriate discipline to recommend for a respondent who had misappropriated a large amount of client funds and also abandoned the client, the review department focused on the misappropriation, the most serious aspect of the misconduct. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[6]**

An attorney wilfully violated the rule against commingling by placing his personal funds into his client trust account and issuing checks from that account to pay business expenses, even though at times there were no trust funds in the improperly used client trust account. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[1]**

Where respondent treated advanced costs as essentially part of a retainer package which could be used to satisfy fees if the retainer fee portion was used up, such treatment was contrary to the requirement that client funds, including advanced costs, be held in trust, and the failure to return the unused portion of such funds promptly when requested violated the rule requiring prompt payment of client funds on demand. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[5]**

Where respondent repeatedly misused his trust account as a personal account, twice failed to return unearned advanced costs promptly on request, and failed to perform services competently in one matter, the gravest aspect of the misconduct was that relating to respondent's violation of the rule governing trust accounts and client funds, and this misconduct warranted at least a three-month actual suspension. Where such misconduct was aggravated by prior discipline for neglect of four client matters, and aggravating circumstances predominated over mitigating circumstances, it was appropriate to recommend a three-year stayed suspension, six months actual suspension, and five years of monitored probation for the protection of the public. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[10]**

General charges in a notice to show cause of disbursing trust funds without permission or knowledge of the beneficiary did not give adequate notice of a charge of misappropriation of such funds, without further specification as to the facts giving rise to the accompanying charge of committing acts of moral turpitude. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[8]**

Improper withdrawal of entrusted funds in violation of duty to maintain funds in trust, and of fiduciary duty to opposing party, does not necessarily rise to the level of an act of moral turpitude. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[9]**

In a matter in which respondent prematurely disbursed entrusted funds to repay client for expenses later determined to have been properly reimbursable, and also withdrew funds for attorney's fees but later replaced those funds, the gravamen of the case, for the purpose of assessing the appropriate discipline, was the prolonged deceit perpetuated by respondent on opposing counsel and the courts regarding the unauthorized disbursements. Respondent's extended practice of deceit on courts and counsel made respondent's case far more serious as to discipline than the trust violations. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[10]**

Premature withdrawal of trust funds in a marital dissolution to pay community debts, without misrepresentations or financial loss to the opposing party or opposing counsel, combined with impressive character testimony, would warrant discipline in the neighborhood of 30 days actual suspension, not lengthy suspension or disbarment. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[11]**

Violations of trust account rules which do not involve a misappropriation found to constitute an act of moral turpitude are not treated, for the purpose of determining appropriate discipline, as misappropriations within the contemplation of standard 2.2(a), Standards for Attorney Sanctions for Professional Misconduct, for which disbarment is the presumed sanction. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[16]**

Any objection that a client raised to attorney's fees and costs, upon client's receipt of accounting of settlement funds, would have to be resolved prior to attorney's withdrawal of funds from trust account to pay fees and reimburse advanced costs. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[7]**

Where a notice to show cause alleged that the respondent attorney had misappropriated funds to his own use and purposes, and charged the attorney with acts of moral turpitude in violation of section 6106, but did not charge the attorney with a breach of the ethical rule concerning the proper handling of client trust funds, and the notice to show cause did not clearly put the attorney on notice of a charge that he had violated the trust funds rule, the attorney therefore could not be found culpable of violating that rule in light of the mandate that the attorney be given adequate notice of all charges and a reasonable opportunity to respond thereto. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[18]**

Under California law, absent an enforceable contractual lien, an attorney commits a trust account violation by unilaterally determining his or her fee and withdrawing trust funds to satisfy the fee, even though the attorney may be entitled to a fee in the withdrawn amount. Fact that small claims court eventually found in favor of attorney on fee dispute was not a defense to such violation; client should not have had to sue attorney after fees were taken. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[22]**

Where an attorney in a contingent fee case has a contractual lien for the attorney's fees, but withdraws before completion of the case, this renders uncertain both the amount, if any, which the attorney is entitled to be paid, and the attorney's entitlement to enforce the lien; they depend on whether the attorney had justifiable cause for withdrawing. Thus, in the event of such a withdrawal, the attorney's right to enforce the lien and the extent of the attorney's recovery cannot be determined unilaterally by the attorney. If the attorney and client cannot reach a new agreement, then the attorney's sole recourse is to an independent tribunal with the funds remaining in trust in the interim. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[23]**

Possession of client funds in the form of a cashier's check is no defense to a charge of commingling. However, an attorney who held client funds outside his trust account in the form of cashier's checks, notified his client promptly of the receipt of the funds, forwarded them to the client promptly upon demand, and had adequate funds at all times to pay what he owed the client, did not commit misappropriation, violate obligation to deliver client funds promptly upon demand, or commit any act of moral turpitude or dishonesty. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[9]**

Practice of keeping minimal amounts of attorney's personal funds in "dormant" client trust accounts violates rule against commingling personal funds in trust accounts, regardless of rationale for so doing. Exception to this rule permitting trust accounts to contain non-client funds to extent necessary to pay bank charges has been strictly construed. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[9]**

An attorney who repeatedly withdraws small amounts of cash for personal use from his or her trust account strongly indicates by such conduct that the attorney is improperly treating the trust account as a personal or general office account, and either allowing the attorney's own funds to remain in the trust account longer than they should (thus violating the rule against commingling), or misappropriating funds that properly belong to his or her clients. This is true regardless of the means by which the withdrawals are accomplished. Use of an ATM card for this purpose may slightly increase the risk of inadequate recordkeeping, but is not itself improper. Use of ATM cards to transfer funds from client trust accounts is not precluded by the Rules of Professional Conduct provided that the transfer is proper and adequate records are kept. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[13]**

If respondent displayed a reckless or indifferent attitude toward his recordkeeping duties with regard to client trust funds, by using an ATM card to make repeated cash withdrawals of personal funds from his client trust account, this could constitute a factor in aggravation of commingling charges. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[14]**

An attorney's practice of paying personal injury clients' doctor out of the attorney's own general account, including in some instances making such payments even before the clients' cases had closed, did not entitle the attorney to treat the doctor as the attorney's own creditor. The debt to the doctor was owed by the clients, and the attorney had a duty to honor the clients' agreement. Even with the doctor's consent, the attorney could not transform settlement funds earmarked for payment of medical liens into general funds. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[2]**

Attorney's fiduciary duty to personal injury clients did not end with payment to them of their share of the recovery in their cases; the attorney had an ongoing fiduciary duty to hold in trust the remaining settlement funds, subject to clients' directions regarding disbursement. This duty did not end until the clients' debt to their treating physician was paid. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[3]**

Assuming that an attorney was entitled to delay payment to a medical lienholder until resolution of a dispute with the clients' insurance company regarding settlement funds, the attorney was required nonetheless to place the amount earmarked for satisfaction of the medical lien in the attorney's trust account until payment to the lienholder in accordance with the terms of the lien. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[4]**

Respondent's conduct in placing trust funds in his personal account, using such funds, and delaying payment thereof to his clients' medical lienholder for a year and a half after demand for payment constituted commingling and misappropriation and involved moral turpitude. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[5]**

Where hearing department found unpersuasive client's testimony that he did not consent to respondent's application of client trust funds to respondent's outstanding legal fees, State Bar did not demonstrate trust account irregularities or misappropriation by clear and convincing evidence. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[9]**

Attorney's responsibility for maintaining entrusted funds on deposit in trust account does not end when checks purporting to distribute entrusted funds are issued; responsibility continues until the checks have cleared the account. Where attorney's trust account balance fell below amount of entrusted funds after checks were written but before they cleared, attorney thereby misappropriated funds and violated trust account rules. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[2]**

Respondent's failure to substantiate with documentary evidence his claim that he had earned funds which he claimed were advanced legal fees was properly considered by hearing panel in determining that respondent was not credible on this issue, even though burden of proof was not respondent's. Giving great weight to hearing panel's credibility determination and resolution of conflicting facts against respondent, review department found no basis to reject panel's finding that funds were advanced costs which respondent misappropriated. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[5]**

The mere fact that the balance in an attorney's trust account falls below the amounts deposited and purportedly held in trust therein supports a conclusion of misappropriation. The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[6]**

Respondent's admission that he used his trust account as an operating account and deposited his personal funds into his trust account when client funds were in the account supported finding of commingling in violation of rules governing use of trust accounts. Commingling is committed when a client's money is intermingled with that of the attorney and its separate identity lost so that it may be used for the attorney's personal expenses. Use of the trust account for personal purposes is absolutely prohibited, even if client funds are not on deposit. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[7]**

Attorney's failure to keep sums owed to clients' treating physician in a proper trust account and to promptly pay the sums to the doctor as requested constituted a wilful violation of rules requiring keeping client funds in trust account and paying them promptly upon demand. *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[2]**

Respondent's admission to a State Bar investigator that he misused advanced costs given to him by his clients and failed to place them in a trust account, and his clients' testimony that he did no work on the matter for which the costs were advanced and failed to refund or account for the advanced costs, established respondent's wilful violation of his duties to hold the funds in a trust account, to render an accounting for the funds, and to refund them on request. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[7]**

Trust accounts, open or closed, are never to be used for personal purposes, barring the very narrow exceptions outlined in the rule governing such accounts. Using checks drawn on a client trust account to pay personal debts constituted a violation of the rule prohibiting use of a client trust account for personal purposes, even though there was no evidence that there were any client funds in the account. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[5]**

Where the balance in a client trust account falls below the total of those client funds deposited and held in trust, that fact alone can support a finding of misappropriation. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[6]**

An attorney's failure to deposit into his trust account settlement funds received for the benefit of a client is a direct violation of the Rules of Professional Conduct governing client trust funds. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[9]**

280.01 Found

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308.

In the Matter of Song (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 273.

In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Elliott (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

280.05 Not Found

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

280.20 Notify client re receipt of funds (RPC 4-100(B)(1); 1975 RPC 8-101(B)(1))

An attorney has a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. These duties are nondelegable. This does not mean that an attorney is culpable of a moral turpitude violation by not personally managing his or her trust account, provided that attorney reasonably relies on a partner, associate, or other responsible employee to care for that account. However, even that reasonable reliance on another to care for the trust account does not relieve the attorney from the professional responsibility to properly maintain funds in that account. That is, in the handling of client funds, an attorney has a direct professional responsibility to his or her client, and the attorney does not avoid that direct professional responsibility by, even reasonable, reliance on a partner, associate or responsible employee.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[5]**

Where respondent's mishandling of trust funds was not intentional, but respondent abdicated responsibility to supervise personal injury cases and recklessly disregarded trust account obligations, thereby committing acts of moral turpitude; where respondent also repeatedly failed to provide legal services competently and did not notify a client of receipt of a settlement; and where record did not show that problems resulting from respondent's disregard of his trust account obligations had ended or that respondent had established sound office management plan, appropriate discipline included three years probation with trust account audit and law office management requirements, three years stayed suspension, and actual suspension for eighteen months and until restitution was completed. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[15]**

An uncharged violation of the rule requiring prompt notification to clients when client funds are received could be considered as an aggravating circumstance, where the respondent was put on notice of the nature of the uncharged misconduct in the notice to show cause and did not object to a finding of culpability under a different rule for the same conduct. Evidence of uncharged misconduct may not be used as ground of discipline, but may be considered for other relevant purposes. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[10]**

Where attorney's reluctance to inform client of arrival of partial settlement check was prompted by concern that client would demand payment rather than allowing funds to be held to satisfy medical and attorney's fee liens, this explanation did not excuse attorney's delay in informing client of receipt of funds and was not a defense to culpability for violating rule requiring prompt notice to clients of receipt of client funds. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[2]**

Moral turpitude is not demonstrated simply by an attorney's failure to notify a client that a medical payment draft has arrived and that the attorney has endorsed it for the client. Although this conduct clearly violates the rule requiring attorneys to notify clients promptly upon receipt of client funds, it does not amount to dishonesty or other misconduct in any way characterizable as moral turpitude. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[17]**

Possession of client funds in the form of a cashier's check is no defense to a charge of commingling. However, an attorney who held client funds outside his trust account in the form of cashier's checks, notified his client promptly of the receipt of the funds, forwarded them to the client promptly upon demand, and had adequate funds at all times to pay what he owed the client, did not commit misappropriation, violate obligation to deliver client funds promptly upon demand, or commit any act of moral turpitude or dishonesty. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[9]**

Where respondent, represented by experienced counsel, stipulated to facts which respondent conceded supported uncharged violation of failing to notify clients of receipt of client funds, and respondent did not object to referee's amendment of notice to show cause to reflect such charge, review department held that any such

objection was waived, and found culpability despite omission of charge from notice to show cause. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[6]**

Reference in notice to show cause to undisclosed loans made from client trust funds would appear to charge violation of rule requiring disclosure of receipt of client funds, but not of rule requiring payment of funds to client on demand, since clients would not be in a position to demand funds which they were unaware were transferred out of trust. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[10]**

280.21 Found

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

280.25 Not Found

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

280.30 Preserve client property (RPC 4-100(B)(2); 1975 RPC 8-101(B)(2))

An attorney has a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. These duties are nondelegable. This does not mean that an attorney is culpable of a moral turpitude violation by not personally managing his or her trust account, provided that attorney reasonably relies on a partner, associate, or other responsible employee to care for that account. However, even that reasonable reliance on another to care for the trust account does not relieve the attorney from the professional responsibility to properly maintain funds in that account. That is, in the handling of client funds, an attorney has a direct professional responsibility to his or her client, and the attorney does not avoid that direct professional responsibility by, even reasonable, reliance on a partner, associate or responsible employee.*In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[5]**

Where record clearly and convincingly established that respondent had not kept client's settlement check in safe place, but did not specify whether respondent lost check before or after effective date of revised Rules of Professional Conduct, respondent violated either former or current version of rule requiring attorneys to keep client property in place of safekeeping. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[18]**

Where respondent was grossly negligent in failing to respond to requests for information from client and successor counsel, and where respondent failed to maintain client's settlement check in safe place, respondent repeatedly failed to perform competently. However, where charge of repeated failure to perform competently addressed same misconduct as charges of failure to communicate with client and failure to keep client property

in safe place, failure to perform competently was given no additional weight in determining appropriate discipline. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[19]**

Where respondent misused client trust account as personal account, failed to respond to client's reasonable status inquiries, did not keep client's settlement check in safe place, and did not respond to State Bar investigation, and where at time of disciplinary hearing respondent still suffered from chronic depression which was major cause of misconduct, and had been ineligible to practice law for two years, appropriate discipline was three years stayed suspension, four years probation, and actual suspension for one year and until respondent proved rehabilitation, fitness to practice competently, including mental fitness, and present learning and ability in the law. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[24]**

280.31 Found

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

280.35 Not Found

280.40 Maintain records of client funds (RPC 4-100(B)(3); 1975 RPC 8-101(B)(3))

The obligation to render appropriate accounts to the client found in Rules of Professional Conduct, rule 4–100(B)(3) does not require as a predicate that the client demand such an accounting. *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. **[4]**

Where respondent misappropriated $50,000 of $79,875.89 insurance settlement funds he held in his trust account for his corporate client by disbursing $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors; where respondent violated his fiduciary duty to remaining three directors by disbursing the $50,000 to president without their knowledge or consent; where respondent knowingly and intentionally misappropriated remaining $29,875.89 of settlement funds for his own use and benefit by withdrawing them from his trust account as attorney's fees without the knowledge and consent of remaining three directors; where respondent violated rule of professional conduct requiring disputed funds to be held in trust by withdrawing $29,875.89 in fees from his trust account when his right to collect fees was disputed; where respondent repeatedly refused to account for proceeds of insurance settlement check in accordance with requests of chairman of corporations board of directors; where there was extensive aggravation, including concealment, overreaching, and failure to make restitution, with mitigation for strong good character testimony, extensive community service, no prior record of discipline, and lack of additional misconduct in more than five years; and where misconduct involved only a single client matter; and even though standard for attorney sanctions for professional misconduct for willful misappropriation called for and Supreme Court has repeatedly held that usual discipline for willfully misappropriation of client funds is disbarment, appropriate discipline recommendation was not disbarment, but four years' stayed suspension, four years' probation on conditions, which included two years' actual suspension continuing until respondent pays restitution of $29,875.89 with interest. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[9 a-d]**

An attorney has a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. These duties are nondelegable. This does not mean that an attorney is culpable of a moral turpitude violation by not personally managing his or her trust account, provided that attorney reasonably relies on a partner, associate, or other responsible employee to care for that account. However, even that reasonable reliance on another to care for the trust account does not relieve the attorney from the professional responsibility to properly maintain funds in that account. That is, in the handling of client funds, an attorney has a direct professional responsibility to his or her client, and the attorney does not avoid that direct professional responsibility by, even reasonable, reliance on a partner, associate or responsible employee. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[5]**

Respondent did not disclose the costs sanctions he received from an insurance company in his accounting to his client. In the absence of an express agreement or court order to the contrary, any costs or attorney's fees awarded by a court as sanctions are for the account of the client. Respondent therefore failed to properly account to his client in violation of rule 4-100(B)(3) of the Rules of Professional Conduct. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[4]**

A true retainer fee is one which is paid solely to ensure the attorney's availability over a given period of time, and is earned when paid since the attorney is entitled to it regardless of whether any actual services are performed. Where respondent did not devote certain blocks of time to certain clients' claims or turn away other business to proceed with their matters, and it was evident that clients were paying for more than respondent's ability, respondent was not excused from accounting for an advanced fee on the ground that it was a retainer earned on receipt. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[2]**

Attorneys are not permitted to set their fees unilaterally. If a client contests fees charged or paid, the disputed fees must be placed in a trust account until the conflict is resolved. The duty to account for client funds includes a duty to maintain adequate records of fees drawn against an advanced fee and of fee payments made thereafter, and to provide clients with an appropriate accounting. In evaluating the promptness and adequacy of such an accounting, it was appropriate to look to the standards set forth in the statute governing attorneys' bills for fees and costs, even where a violation of that statute was not charged. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[3]**

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

Where there was clear conflict in testimony with regard to whether respondent provided clients with an accounting, and hearing judge was unable to resolve such conflict, there was insufficient evidence to support charge that respondent did not provide accounting. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[6]**

Supreme Court and review department look to elements of trust account rule, and their purposes, in determining whether a particular transaction violates the rule. Under this analysis, funds received by a member of the State Bar which are the subject of a medical lien held by the client's medical provider for services rendered in the matter for which the client hired the attorney are trust funds within the meaning of the trust account rule, for they are, in effect, funds held for the benefit of clients. Similarly, funds of certain third parties which come into a lawyer's hands are required to be treated as trust funds. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[5]**

State Bar Court can and should look to label and treatment of funds by attorney and client when considering whether they are trust or non-trust funds. However, it is the character and nature of the funds, not their label by either attorney or client, which must ultimately determine their status. Despite respondent's labelling of clients' prior attorney's claim for quantum meruit fees as a "lien," in the absence of adequate proof of creation of a lien, the funds claimed by the prior attorney for fees for services rendered were not trust funds within the meaning of the trust account rule. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[6]**

Attorney fees for legal services already performed are personal obligations of a client, and funds held to pay them are not trust funds within the meaning of the trust account rule. A claim for attorney fees for past services has been raised to trust status within the meaning of the trust account rule only where such fees were legally recognized as a lien on the client's recovery. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[7]**

Invoice to client for hourly fees should not have included time spent on personal injury matter which was covered by a separate contingency fee agreement, because of potential client confusion. More importantly, respondent should have given clients an opportunity to review such bill before, not after, receiving authorization to pay portion of bill out of client's share of proceeds of personal injury matter. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[17]**

Where respondent chose to place entrusted client funds in a complex series of numerous trust accounts, cashier's checks, and certificates of deposit, and failed to produce any accounting of the funds for more than three years after the client requested it, respondent's contention that his efforts to provide an accounting were impeded

by an office fire which destroyed most of the records of the client's funds was unpersuasive given that a timely response to the client's request would have avoided the difficulties resulting from the loss of the records three years thereafter. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[4]**

The duty to keep clients' funds safe is a personal, nondelegable obligation of an attorney. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[4]**

Even though attorney belatedly supplied accountings to his clients, he violated duty to keep adequate records by failing to require his staff to maintain office records adequate to ensure that he would know of receipt of client funds and distribute them promptly upon receipt. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[8]**

Where attorney held settlement draft uncashed pending review of adequacy of settlement amount, attorney's misconduct consisted of failure to follow through, and improper handling of client funds, rather than misappropriation. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[13]**

An attorney's accounting regarding the funds belonging to his client that he had received, which was transmitted solely to the client's new counsel, did not satisfy the attorney's duty to render appropriate accounts to his client, since the attorney was not directed by the client to render the account to her new counsel and since the obligation ran directly to the client. Nevertheless, the possibility that the attorney was relying on the new counsel to transmit the accounting to the client precluded clear and convincing proof of a violation. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[5]**

An attorney's belated accounting of client funds was deficient in that it did not explain why it had not been made at the time the attorney originally forwarded the client's file to the client's new attorney. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[6]**

Under the Standards for Attorney Sanctions for Professional Misconduct, greater discipline may be imposed for a violation of an attorney's duty to render appropriate accounts than might otherwise be appropriate if the attorney's misconduct was surrounded by bad faith, dishonesty, concealment, or overreaching, as well as for other violations of the State Bar Act or Rules of Professional Conduct or refusal or inability to account for improper conduct toward trust funds. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[21]**

Respondent's admission to a State Bar investigator that he misused advanced costs given to him by his clients and failed to place them in a trust account, and his clients' testimony that he did no work on the matter for which the costs were advanced and failed to refund or account for the advanced costs, established respondent's wilful violation of his duties to hold the funds in a trust account, to render an accounting for the funds, and to refund them on request. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[7]**

When an attorney agrees to hold client funds in trust for the benefit of a non-client, the nature of that agreement creates a fiduciary duty to the non-client, as well as the client. As a fiduciary, the attorney's obligation to account for the funds extends to both parties claiming an interest in the funds. Accordingly, the rules governing handling and payment of client trust funds apply to a non-client's funds as well. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[8]**

280.41 Found

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

Invoices provided to the State Bar rather than respondent's former client do not satisfy the requirements of rule 4-100(B)(3). Invoices which account for only a portion of respondent's fees and which fail to indicate withdrawal of entrusted funds to pay a third party invoice violate rule 4-100(B)(3). *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[7]**

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

280.45 Not Found

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

280.50 Pay client funds on request (RPC 4-100(B)(4); 1975 RPC 8-101(B)(4))

Rule 4-100(B)(4) of the Rules of Professional Conduct requires that an attorney promptly pay or deliver client money in possession of the member. By its terms, the important date for purposes of this rule is when respondent received the settlement money, not the date that clients signed releases or the date cases settled. Where no evidence was presented showing when respondent received settlement money, the review department, resolving all reasonable doubts in respondent's favor, concluded that the rule 4-100(B)(4) charges were not sustained by

convincing proof to a reasonable certainty. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627. **[5 a-e]**

An attorney has a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. These duties are nondelegable. This does not mean that an attorney is culpable of a moral turpitude violation by not personally managing his or her trust account, provided that attorney reasonably relies on a partner, associate, or other responsible employee to care for that account. However, even that reasonable reliance on another to care for the trust account does not relieve the attorney from the professional responsibility to properly maintain funds in that account. That is, in the handling of client funds, an attorney has a direct professional responsibility to his or her client, and the attorney does not avoid that direct professional responsibility by, even reasonable, reliance on a partner, associate or responsible employee. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[5]**

In a prosecution for intentionally, recklessly, or repeatedly failing to perform legal services competently, failing to refund an unearned fee after employment was terminated, and failing to deliver clients' funds promptly upon request, there was sufficient evidence that respondent represented the clients involved where one of the clients was referred to respondent and went to his office intending to hire him, saw his name on the door and some of his business cards in the reception area, made several appointments with him, received one of two receipts for payment on respondent's letterhead, and filled out forms for respondent at the request of a member of the office staff who was an employee or agent for respondent. Moreover, respondent had a key to the office, worked out of the office for at least a few hours each week, and, by failing to deny the fact upon accusation by the State Bar, admitted that the clients were his. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[7]**

Where a client asks an attorney to distribute funds claimed by the client and where the attorney claims an interest in the funds, the attorney violates rule 4-100(B)(4) if he or she does not promptly taken appropriate, substantive steps to resolve the dispute in order to disburse the funds. As respondent effectively took prompt, substantive action to resolve the dispute with his client by participating in the fee arbitration proceeding and by promptly abiding by the arbitrators' award, he did not violate the rule. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[5]**

Rule of Professional Conduct 4-100(B)(4), requiring a lawyer to promptly deliver to a client on the client's request funds in possession of the lawyer which the client is entitled to receive, did not apply where respondent had no client funds in his possession. *In the Matter of Feldsott* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754. **[2]**

Respondent wilfully violated the rule requiring that an attorney promptly pay funds which the client has requested and is entitled to receive where a client asked respondent for her share of a settlement, where respondent disbursed his share of the settlement to himself, and where respondent waited without compelling reason for six weeks to disburse the client's share of the settlement to the client. *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. **[4]**

Respondent violated the rule requiring prompt payment of client funds on request where a client asked respondent to distribute certain trust funds to the client, where another person to whom respondent owed a fiduciary duty claimed a lien on these funds, and where respondent did not promptly take appropriate steps to resolve the dispute in order to disburse the funds. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[3]**

Respondent wilfully violated the rule of professional conduct which requires an attorney, upon the request of a client, to deliver promptly funds which the client is entitled to receive and which are in the attorney's possession (rule 4-100(B)(4)), where some of respondent's office staff must have possessed the client's funds. Regardless of whether respondent personally possessed these funds, as the client's attorney, respondent was ethically responsible for reasonable oversight of office staff which did possess them. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[7]**

Once violation of ethical duties is found, hearing judge should not disregard culpability finding, but must examine surrounding circumstances and may consider either good or bad faith of respondent in mitigation or aggravation. Where respondent was found culpable of wilful failure to return illegal fees on demand, such culpability should have been considered in making discipline recommendation despite respondent's good faith

belief in entitlement to funds, which was properly considered as mitigating factor. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[13]**

Where attorney is found culpable of intentional or dishonest withholding of funds due to client, issue on degree of discipline is whether mitigating circumstances outweigh general rule of disbarment for such offenses. Cases of misconduct involving funds improperly withheld for reasons other than dishonesty have typically resulted in varying degrees of actual suspension even when attorney had no prior discipline record. Where respondent, through gross neglect, withheld sizable amount of funds due to disabled client, had prior record of discipline for similar misconduct, and persisted in defending his collection of fees in excess of statutory limits despite adverse appellate decisions in suits against him by clients, concern for respondent's lack of insight into his misconduct and possible continued disregard for duty to clients of utmost good faith and fair dealing warranted six months actual suspension. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[23]**

Even though client had agreed to lend respondent all but a small amount of client's net settlement proceeds, character of such settlement proceeds remained mixed. Respondent's failure to place entire settlement proceeds into client trust account and to properly disburse small amount owed to client violated trust account rules. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[14]**

Rule requiring prompt payment of client funds on request also applies to obligation to pay third parties, including holders of medical liens, out of funds held in trust. Failure to pay a medical lien can violate such rule even if attorney acts in good faith. Even where respondent believed he had permission from medical lienholder to use settlement funds, such belief was not a defense to violation of rule. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[3]**

Where medical lienholder demanded payment of liens; respondent disputed amount owed; negotiations ensued; lienholder did not object to respondent's waiting to make payment until dispute was resolved; and respondent promptly paid agreed amount upon resolution of dispute, respondent did not violate rule requiring prompt payment of client funds on request. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[5]**

Rule requiring prompt payment of client funds on demand requires attorney to pay client's medical provider only if attorney has fiduciary obligation to provider. Where respondent had no such fiduciary obligation due to lack of enforceable lien or judgment, and record did not show that provider requested payment or that respondent did not promptly comply with such request, violation of rule was not established. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[7]**

Where respondent's mishandling of trust funds was not intentional, but respondent abdicated responsibility to supervise personal injury cases and recklessly disregarded trust account obligations, thereby committing acts of moral turpitude; where respondent also repeatedly failed to provide legal services competently and did not notify a client of receipt of a settlement; and where record did not show that problems resulting from respondent's disregard of his trust account obligations had ended or that respondent had established sound office management plan, appropriate discipline included three years probation with trust account audit and law office management requirements, three years stayed suspension, and actual suspension for eighteen months and until restitution was completed. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[15]**

Rule requiring prompt payment of entrusted funds on demand requires no special state of mind to establish violation; mere fact that payment was not made is sufficient to constitute wilfulness for purpose of finding wilful violation of rule. Without justification, failure to pay third party lien on demand violates such rule. Where attorney negotiates with lienholder to reduce lien amount, and it becomes clear negotiations will not be productive, attorney violates rule if attorney neither promptly pays lien in full nor takes appropriate steps to resolve dispute promptly. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[24]**

Where there was no evidence that medical provider had enforceable lien, and one-month delay from provider's demand to payment of medical bill was not unreasonable under circumstances, attorney's delay in paying client's medical bill from settlement proceeds did not violate rule requiring prompt payment of entrusted funds on demand. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[25]**

Fact that attorney's failure to pay medical lien resulted from client's deception of attorney did not justify attorney's four-year delay in making payment after lienholder filed suit to enforce lien. Such delay was sufficient

to establish violation of rule requiring prompt payment of entrusted funds on demand. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[26]**

Where respondent was culpable of one instance each of collection of an illegal fee and intentional failure to perform competently, and of multiple instances each of violating his duty to uphold the law; reckless failure to perform competently; withdrawing from employment without protecting clients from foreseeable prejudice; and failure to pay trust funds on demand, and where most severe applicable standard proposed three-month minimum actual suspension for non-misappropriation trust fund offenses, and where respondent's mitigating evidence was not sufficient to justify deviating from applicable standard given respondent's record of numerous violations over extended time period, review department increased hearing judge's recommended actual suspension to 90 days, as condition of three-year probation, with one-year stayed suspension as justified by case law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[29]**

Rule requiring prompt payment of entrusted funds upon demand requires attorneys to make such payment not only to the client, but also to a third party with a legitimate claim to those particular funds. Where respondent improperly collected funds belonging to client's estranged husband, respondent held funds in trust as fiduciary for husband, and failure to turn them over to husband's counsel on demand violated rule. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[6]**

By applying funds improperly collected from client's estranged husband to payment of client's debt for attorney's fees, respondent committed a trust account violation. Respondent's honest but mistaken belief in his own right to such funds did not absolve him of such violation. However, such violation did not constitute misappropriation, where respondent's essential ethical shortcoming involved misattributing ownership of funds to client rather than failing to handle them properly as entrusted funds. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[7]**

Where an attorney disobeys a court order based on an unreasonable interpretation of the order or an untested belief that the order is not valid, or takes money that is not the attorney's based on an unreasonable view of the facts, public discipline is necessary to make clear to the bar, the courts and the public that attorneys face serious consequences for such misconduct. However, where respondent did not pose a threat to the public, and review department concluded that actual suspension was not required to reinforce respondent's understanding of his ethical obligations, no actual suspension was necessary. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[13]**

Where hearing judge declined to order restitution but offered to reconsider if State Bar could show that misconduct victim had not already been compensated for funds taken by respondent, this ruling misallocated the burden of proof. Once State Bar met its burden to prove initial trust account violation, it was respondent's burden to prove that restitution had in effect already been made by a third party. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[15]**

Where there was no evidence that respondent's trust account practices were generally deficient, and respondent's essential ethical shortcoming involved misattributing ownership of funds, not failing to handle them properly as entrusted funds, it was not necessary to require respondent to attend special trust accounting class portion of Ethics School. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[16]**

Where respondent delayed in transferring client trust funds to a client's new counsel due to the new counsel's failure to provide adequate authority for respondent to relinquish the funds, respondent did not violate the rule requiring prompt payment of client trust funds on demand. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[7]**

An attorney holding funds for a person who is not the attorney's client must comply with the same fiduciary duties in dealing with such funds as if an attorney-client relationship existed. Where an attorney represents a Medi-Cal beneficiary in a personal injury matter and has received notice of the Medi-Cal lien, the attorney has a fiduciary obligation toward the Department of Health Services as to its advancement of funds for the beneficiary and the Medi-Cal lien. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[8]**

The rule regarding prompt payment of entrusted funds upon demand applies not only to an attorney's obligation to clients, but also to the attorney's obligation to pay third parties out of funds held in trust, including

the obligation to pay holders of medical liens. Where respondent disbursed to a client the entire amount of the settlement of a personal injury claim without ensuring that the request by the Department of Health Services for payment of a Medi-Cal lien was honored, respondent wilfully violated such rule. It was no defense that respondent acted at the client's request, because the client was not entitled to receive all the settlement funds. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[9]**

Unlike the proof of a violation of the State Bar Act, the proof of a wilful violation of the Rules of Professional Conduct merely has to demonstrate that the person charged acted or omitted to act purposely, that is, that he knew what he was doing or not doing and that he intended either to commit the act or to abstain from committing it. Where respondent knew he was settling a personal injury claim without ensuring the payment of an applicable Medi-Cal lien and intended to do so, he acted wilfully; and a determination of culpability under the rule requiring proper payment of entrusted funds was appropriate even if he acted in good faith. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[10]**

Duplicative allegations of misconduct serve little, if any purpose. It should be apparent by the time of the pretrial conference which charges are most apt, which other charges might show additional misconduct, and which are simply duplicative and unnecessary. Amendment or dismissal of charges, particularly at the time of filing the pretrial statement (rule 1222(k), Provisional Rules of Practice), serves the interest of litigant and judicial economy. Thus, where respondent failed to ensure payment of a medical lien when settling a personal injury case, there was no benefit to charging respondent with failing to act competently, when the charge that respondent violated the rule requiring proper payment of entrusted funds addressed the alleged misconduct far more aptly and supported identical or greater discipline. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[13]**

Where respondent settled a personal injury claim on behalf of a Medi-Cal beneficiary without ensuring the payment of the applicable Medi-Cal lien, an issue to be addressed on remand was the effect, if any, on the appropriate degree of discipline of the policy adopted by the Office of the Chief Trial Counsel, with the approval of a committee of the Board of Governors, against prosecuting future health care provider "collection" cases, at least for private lienholders. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[15]**

Where, after receiving medical payments advanced by his personal injury client's first-party insurer, respondent misappropriated the funds; failed to apprise his client that the first-party insurer was subrogated to the client's recovery against the other driver; failed to ensure that the first-party insurer was reimbursed from the ultimate settlement; failed to deduct the subrogation amount from the settlement in calculating his fee, and failed to refund the resulting excess fee for three years after the client demanded the refund, respondent violated the statute prohibiting moral turpitude and dishonesty and the rule regarding prompt payment of client funds on demand. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[10]**

Where respondent's signature was needed to negotiate a settlement draft, and respondent's former client insisted that her current counsel's messenger retain possession of the draft and not leave it with respondent or his staff, and the draft was tendered to respondent at his office and elsewhere but he declined to make himself available to endorse it, respondent was obligated to act promptly to release the client's funds by endorsing the check, he had constructive possession of the funds, and his unreasonable refusal to complete the endorsement in a timely manner constituted an improper withholding of the settlement funds. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[4]**

Where a settlement draft was misplaced by respondent's temporary clerical employee for a little over a month, there was no indication that the client informed respondent of immediate need of the settlement funds, and there was no effort by successor counsel to alert respondent that the draft had not been returned, respondent's conduct did not rise to the level of negligent supervision of staff and the resulting delay in respondent's endorsement of the draft did not constitute improper withholding of requested client funds. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[8]**

A disciplinary proceeding is seldom the proper forum for attorney fee disputes. In a matter arising from a dispute between attorneys, where respondent did not mishandle any sum that could be considered trust funds and respondent's instruction to staff to endorse the other attorney's name to settlement drafts was not dishonest, corrupt, or reflective of bad moral character, the review department affirmed the dismissal of the proceeding. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[1]**

Supreme Court and review department look to elements of trust account rule, and their purposes, in determining whether a particular transaction violates the rule. Under this analysis, funds received by a member of the State Bar which are the subject of a medical lien held by the client's medical provider for services rendered in the matter for which the client hired the attorney are trust funds within the meaning of the trust account rule, for they are, in effect, funds held for the benefit of clients. Similarly, funds of certain third parties which come into a lawyer's hands are required to be treated as trust funds. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[5]**

State Bar Court can and should look to label and treatment of funds by attorney and client when considering whether they are trust or non-trust funds. However, it is the character and nature of the funds, not their label by either attorney or client, which must ultimately determine their status. Despite respondent's labelling of clients' prior attorney's claim for quantum meruit fees as a "lien," in the absence of adequate proof of creation of a lien, the funds claimed by the prior attorney for fees for services rendered were not trust funds within the meaning of the trust account rule. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[6]**

Attorney fees for legal services already performed are personal obligations of a client, and funds held to pay them are not trust funds within the meaning of the trust account rule. A claim for attorney fees for past services has been raised to trust status within the meaning of the trust account rule only where such fees were legally recognized as a lien on the client's recovery. *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234. **[7]**

Where hearing judge properly accepted client's testimony that advanced funds were for transcript costs and not for respondent's fees, and where applicable written fee agreement provided for respondent to advance costs, respondent's failure to pursue litigation because of client's failure to advance cost of transcripts constituted both a wrongful withdrawal from employment and a wilful violation of duty to perform legal services competently. Respondent was also culpable for failing to deposit the advanced funds in a trust account and for failing to return the client's file promptly upon demand. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[6]**

An attorney's unjustified delay of over two months in paying client funds to the client after demand violated the rule of professional conduct requiring client funds to be paid promptly upon demand. Conversely, where a delay in payment to another client was minimal and not intentional, no violation of the rule occurred. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[14]**

Misconduct committed by attorney who was grossly negligent, though not dishonest, in handling a significant sum of client trust funds in one matter, and who failed to communicate adequately with a client in another matter, warranted 90 days rather than 60 days of actual suspension as condition of 3-year probation accompanying 3-year stayed suspension. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[1]**

Where an attorney failed to refund entrusted funds to a client promptly when reasonable attention to the attorney's duties would have made it apparent that the client had overpaid the attorney for fees, the attorney violated the duty to pay clients their funds promptly upon demand. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[3]**

Where a client was not yet entitled to receive settlement proceeds because the client had not signed the necessary release, respondent's eight-month delay in sending a portion of the settlement funds to the client did not violate the obligation to pay client funds promptly upon demand. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[4]**

Where respondent's client made a belated demand for repayment of an improperly billed cost, by raising the issue during an arbitration proceeding concerning fees and costs owed by the client, and in response, respondent offered the client credit against other fees in the arbitration, respondent was not culpable of failing to pay or deliver the funds promptly. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[11]**

Failure to honor medical liens violates the rule of professional conduct requiring prompt payment of client funds upon demand. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[2]**

The duty to keep clients' funds safe is a personal, nondelegable obligation of an attorney. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[4]**

An attorney's failure to return unspent costs advanced by the client did not violate the rule requiring prompt payment of client funds upon request, where there was no evidence that the client had requested the return of the funds. Nor did the attorney's inaction alone, in failing to return the funds for several years, support a finding that the attorney had misappropriated the funds or committed acts of moral turpitude. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[18]**

Where an attorney representing a bankrupt client had possession of the proceeds of a court-ordered sale of estate assets, did not place the funds in a trust account, did not pay them as directed by the bankruptcy court, and did not otherwise account for the funds, the evidence supported a finding that the attorney misappropriated the funds, violated the rule requiring prompt payment of client funds on request, and committed an act of moral turpitude. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[21]**

Where respondent treated advanced costs as essentially part of a retainer package which could be used to satisfy fees if the retainer fee portion was used up, such treatment was contrary to the requirement that client funds, including advanced costs, be held in trust, and the failure to return the unused portion of such funds promptly when requested violated the rule requiring prompt payment of client funds on demand. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[5]**

Where there is a conflict in the evidence, the hearing judge is in a particularly appropriate position to resolve it, and the Rules of Procedure require the review department to afford great weight to the hearing judge's findings in such matters, absent a good reason for reaching a different result. Where the hearing judge accepted respondent's client's testimony regarding the timing of a request for a refund of advanced costs, and explained why the client's testimony was given greater weight than respondent's contrary testimony, the review department adopted the hearing judge's findings and conclusions on that issue. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[7]**

Where respondent repeatedly misused his trust account as a personal account, twice failed to return unearned advanced costs promptly on request, and failed to perform services competently in one matter, the gravest aspect of the misconduct was that relating to respondent's violation of the rule governing trust accounts and client funds, and this misconduct warranted at least a three-month actual suspension. Where such misconduct was aggravated by prior discipline for neglect of four client matters, and aggravating circumstances predominated over mitigating circumstances, it was appropriate to recommend a three-year stayed suspension, six months actual suspension, and five years of monitored probation for the protection of the public. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[10]**

Attorney cannot be found culpable of failing to pay funds to client promptly upon request where, due to attorney's failure to notify client of receipt of funds, client has not requested payment. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[9]**

Any objection that a client raised to attorney's fees and costs, upon client's receipt of accounting of settlement funds, would have to be resolved prior to attorney's withdrawal of funds from trust account to pay fees and reimburse advanced costs. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[7]**

Where a client was never entitled to receive certain funds which were the subject of two liens, and where, by the time demand for the funds was made, the client's attorney had clearly become entitled to receive the funds to satisfy his lien, there was no basis for finding a violation of the ethical rule requiring that funds to which a client is entitled must be paid to the client promptly as requested by the client. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[20]**

Possession of client funds in the form of a cashier's check is no defense to a charge of commingling. However, an attorney who held client funds outside his trust account in the form of cashier's checks, notified his client promptly of the receipt of the funds, forwarded them to the client promptly upon demand, and had adequate funds at all times to pay what he owed the client, did not commit misappropriation, violate obligation to deliver client funds promptly upon demand, or commit any act of moral turpitude or dishonesty. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[9]**

Respondent's conduct in placing trust funds in his personal account, using such funds, and delaying payment thereof to his clients' medical lienholder for a year and a half after demand for payment constituted commingling and misappropriation and involved moral turpitude. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[5]**

Where hearing department found unpersuasive client's testimony that he did not consent to respondent's application of client trust funds to respondent's outstanding legal fees, State Bar did not demonstrate trust account irregularities or misappropriation by clear and convincing evidence. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[9]**

Client who has consented to attorney's retention of illegal fees may properly demand return of such fees. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[8]**

A request by a client for payment of funds or property held by the attorney is an essential element of the charge of failing to pay client trust funds promptly upon request. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[5]**

In pleading a violation of the ethical rule requiring payment of client trust finds on demand, there must be an allegation that the respondent was in possession of identified funds, securities or other property of a client; that the client was entitled to receive the funds, securities or property, and that there was a request by the client that the respondent pay or deliver the funds, securities or other property. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[9]**

Reference in notice to show cause to undisclosed loans made from client trust funds would appear to charge violation of rule requiring disclosure of receipt of client funds, but not of rule requiring payment of funds to client on demand, since clients would not be in a position to demand funds which they were unaware were transferred out of trust. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[10]**

Attorney's failure to keep sums owed to clients' treating physician in a proper trust account and to promptly pay the sums to the doctor as requested constituted a wilful violation of rules requiring keeping client funds in trust account and paying them promptly upon demand. *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[2]**

Respondent's admission to a State Bar investigator that he misused advanced costs given to him by his clients and failed to place them in a trust account, and his clients' testimony that he did no work on the matter for which the costs were advanced and failed to refund or account for the advanced costs, established respondent's wilful violation of his duties to hold the funds in a trust account, to render an accounting for the funds, and to refund them on request. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[7]**

Even though the Rule of Professional Conduct requiring payment of client funds upon demand refers only to an attorney's obligation to pay clients, not to any obligation to pay third parties out of funds held in trust, the rule also applies in instances where the attorney is in possession of funds to be paid to a client's medical provider. Accordingly, where an attorney failed to honor a medical lien and failed to make agreed-upon payments to the doctor, the attorney could properly be found culpable of violating that rule. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[7]**

When an attorney agrees to hold client funds in trust for the benefit of a non-client, the nature of that agreement creates a fiduciary duty to the non-client, as well as the client. As a fiduciary, the attorney's obligation to account for the funds extends to both parties claiming an interest in the funds. Accordingly, the rules governing handling and payment of client trust funds apply to a non-client's funds as well. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[8]**

280.51 Found

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Elliott (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Respondent P (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

280.55 Not Found

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Feldsott (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

In the Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

290.00 Illegal or unconscionable fee (RPC 4-200; 1975 RPC 2-107)

A fee that seems, or in fact is, high is not the same as an unconscionable fee. A fee is unconscionable when it is so exorbitant and disproportionate to the services performed as to shock the conscience and often involves an element of fraud or overreaching that practically constitutes an appropriation of client funds under the guise of fees. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[6]**

Applying the non-exclusive factors in rule 4-200(B), fees attorney charged to provide a financial analysis to clients interested in mortgage loan modifications did not represent the type of truly shocking fees that the courts have found to be unconscionable. The level of client sophistication varied, with some clients familiar with the mortgage industry. Each client approved the financial analysis charge and provided payment information; most also signed a retainer agreement. Respondent had some expertise in mortgage law and was experienced in negotiating with banking institutions. Respondent spent many hours creating the proprietary financial analysis, which generated valuable information clients could use to pursue a mortgage loan modification without assistance. Most importantly, an unrebutted expert witness testified that the financial analysis was a valuable tool for a client deciding whether to pursue a loan modification, gathering information from distressed homeowners was time-consuming, and software respondent used to create the financial analysis was not readily available to the public. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[7]**

Respondent violated the unconscionable fee prohibitions in Rules of Professional Conduct, rule 4-200 in connection with his client's personal injury case when he failed to disclose to the client that he intended his 35 percent contingency fee to be in addition to the fee earned by the client's previously discharged attorney. Respondent failed to disclose the true facts so that the fee charged under the circumstances constituted a practical appropriation of the client's funds under the guise of retaining them as fees. Respondent's written contingent fee agreement with his client was materially ambiguous resulting in his client's understanding that she would pay a total of 35 percent of any settlement or judgment to both respondent and her previously discharged attorney. Since neither respondent nor the client knew that each of them had a different interpretation of the contract language, there was no meeting of the minds and thus no agreement as to fees. In the absence of a valid fee agreement, respondent's compensation is based on a theory of quantum meruit rather than the full contract price and the agreed upon contingent fee acts as an upper limit on the amount to be divided on a quantum meruit theory between the discharged and retained attorneys hired on a contingency basis in the same case. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. **[1 a–d]**

Where respondent charged a fee in a personal injury matter that was more than twice as much as his client agreed to and also double what he was entitled to under a quantum meruit theory, the charged fee was unconscionable. The fact that respondent's fee agreement in a personal injury matter contained two provisions that were void for public policy evidences respondent's overreaching which in turn supports a finding that he charged and collected an unconscionable fee. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. **[2 a–c]**

Where respondent collected a fee in a workers' compensation case in which the contingency for the fee did not occur and where the fee agreement contained provisions void for public policy evidencing respondent's overreaching, respondent collected an unauthorized fee in violation of the unconscionability provisions of Rules of Professional Conduct, rule 4–200. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. **[3]**

Where respondent was not obliged to arbitrate a fee dispute between his client and the client's prior attorney, there is no basis to conclude that the fees respondent charged in preparing the client for the fee arbitration involving the client's prior attorney were unconscionable. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. **[4 a, b]**

Since respondent was not entitled to charge or collect her fees for those services that constituted the unauthorized practice of law and since respondent was not allowed quantum meruit recovery for services rendered under a fee contract that was unenforceable as illegal or against public policy, the fees respondent charged constituted an illegal fee under rule 4–200(A). *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[3]**

Where respondent collected fees and costs almost three times the amount her client agreed to pay, the fees and costs respondent wrongfully collected were so wholly disproportionate to what the client agreed to as to shock the conscience and were thus unconscionable under rule 4–200(A). *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[4]**

Where respondent unilaterally collected over 43 percent of a client's gross recovery and where there was no evidence that the client agreed to such a fee, respondent's fees were unconscionable. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[5a, b]**

Where respondent entered into a contingent fee agreement in a medical malpractice case for the maximum fee allowed under Business and Professions Code section 6146, subsequently modified that fee agreement to require an additional non–refundable minimum $25,000 fee, which would constitute credit against the contingent fee, and collected the $25,000 portion of the fee, respondent entered into an agreement for, charged and collected an illegal fee. *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829. **[1a–c]**

Even assuming that it was not initially clear to respondent at the first meeting with his client that the case was a probate matter, respondent knew by the third meeting that the matter involved probate but nevertheless proffered to the client at that time a retainer agreement which applied the $500 fee quoted at the initial meeting to the $2,000 total fee to be paid in advance for a probate matter. Therefore, at the time of the third meeting, the $500 fee was charged for work to be performed in a probate case in violation of the Probate Code sections which require court approval prior to attorney compensation. Moreover, because respondent charged the $500 fee at the time of the third meeting for services to be performed subsequently in a probate matter, it is irrelevant whether the Probate Code fee limit sections apply to payment for preliminary services performed prior to filing the probate matter. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[1]**

Respondent failed to seek approval for his fees in a workers' compensation matter as required by the Labor Code and withheld it for a two-year period. Respondent was thus culpable of charging an illegal fee in violation of rule 4-200(A) of the Rules of Professional Conduct. Given the length of the rule 4-200(A) violation, the review department also found that such conduct was at least gross negligence and therefore involved moral turpitude. *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126. **[3]**

In civil rights litigation, an attorney may enter into an agreement for a contingent fee and a court-awarded fee if the agreement complies with the law governing attorney's fees in civil rights litigation to meet the requirement against entering into an illegal fee agreement. *In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788 **[2]**

A fee agreement in federal civil rights litigation is illegal to the extent that it seeks to avoid the requirement of submitting the attorney's right to collect a contingent fee over and above a court-ordered statutory fee to the district court to measure whether the fees are reasonable. *In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788 **[3]**

The former rule against charging or collecting an illegal or unconscionable fee was not unconstitutionally vague because the rule set forth standards which gave a person of ordinary intelligence a reasonable opportunity to know what was prohibited. *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. **[2]**

The former rule against charging or collecting an illegal or unconscionable fee applied to cases where a third party had assumed the client's obligation to pay the attorney's fees. *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. **[3]**

Statutory limit on attorneys' contingent fees for representation of plaintiffs in medical negligence actions applies whether person represented is responsible adult, infant or person of unsound mind and regardless of whether recovery is by settlement, arbitration or judgment. Where respondent failed to reveal potential applicability of such statute to incompetent client's representative and superior court ruling on respondent's fee application, such conduct frustrated court's function in passing upon fee request and client's interest in receiving all of recovery to which she was entitled, and violated attorney's duty to uphold law and rule against charging or collecting illegal fees. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[8]**

Statute requiring attorneys to uphold law is not always proper vehicle for charging violation of State Bar Act when statute is already covered as a disciplinable offense in another part of the Act. Because statutes requiring written attorney fee agreements containing certain information specify non-disciplinary remedies for attorneys' failure to comply with them, and because failure to comply with such statutes may be charged as violations of Rules of Professional Conduct regarding illegal fees, competence, and communication with clients, violation of such

statutes is not disciplinable under statute requiring attorneys to uphold law. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[11]**

Where statutory scheme requires tribunal to approve fees charged by counsel, it is professional misconduct for an attorney to secure or attempt to secure fees in excess of those allowed by tribunal. Respondent's collection of any fee from minor client without court approval, regardless of amount charged, violated prohibition against charging or collecting an illegal fee. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[21]**

Where respondent was culpable of one instance each of collection of an illegal fee and intentional failure to perform competently, and of multiple instances each of violating his duty to uphold the law; reckless failure to perform competently; withdrawing from employment without protecting clients from foreseeable prejudice; and failure to pay trust funds on demand, and where most severe applicable standard proposed three-month minimum actual suspension for non-misappropriation trust fund offenses, and where respondent's mitigating evidence was not sufficient to justify deviating from applicable standard given respondent's record of numerous violations over extended time period, review department increased hearing judge's recommended actual suspension to 90 days, as condition of three-year probation, with one-year stayed suspension as justified by case law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[29]**

Where respondents seriously disregarded their fiduciary duty to clients, including leaving it to non-lawyer contractors to explain complex retainer agreement without allowing clients to review it over time or discuss it with respondents, and where such retainer agreement, though purporting to be for contingent fees, contained unconscionable provision for minimum fee upon discharge, and where respondents' acts in seeking to enforce such provision damaged clients, respondents' conduct warranted greater actual suspension than 15 months recommended by hearing judge. Respondents' involvement in client solicitation alone warranted one-year actual suspension; their remaining offenses deserved an additional six months. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[14]**

Attorney who rendered services to client before committing misconduct was entitled to collect fee earned prior to commencement of misconduct. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[3]**

Client who has consented to attorney's retention of illegal fees may properly demand return of such fees. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[8]**

Discipline cannot be imposed for violations not charged; where attorney was charged only with retaining client funds as fees without client consent, and referee found client had consented, attorney could not be disciplined on ground that fee was illegal. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[9]**

290.01 Found

Where respondent conducted legal research despite the absence of any provision in the retainer agreement authorizing respondent to commence it and where respondent failed to obtain the client's approval to conduct the research, respondent's collection of fees for the legal research was unauthorized and violated the unconscionability provisions of rule 4-200. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[8]**

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

290.05 Not Found

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

291.00 Payment of client expenses (RPC 4-210; 1975 RPC 5-104)

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

Advancing expenses to clients is not a generally accepted practice because it may cause clients to choose attorneys on the basis of the loans they are willing to make rather than the services they offer and may also create an attorney-client conflict. The rule permitting attorneys to advance client expenses is limited to expenses related to litigation or legal services. Where, after respondent was retained by a client in a personal injury action, he made an interest-free, unsecured loan to the client to cover funeral costs and other expenses, such advance was not permitted by the rule even though the expenses might be recoverable as damages in the litigation. The loan was also improper because respondent did not obtain the client's informed written consent. However, where there was no evidence of client harm, the violation was not serious. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[9]**

291.01 Found

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

291.05 Not Found

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

292.00 Purchase at foreclosure/probate sale (RPC 4-300(A); 1975 RPC 5-103)

292.01 Found

292.05 Not Found

292.10 Representing seller where purchaser is relative, etc. (RPC 4-300(B))

292.11 Found

292.15 Not Found

293.00 Inducing gift/bequest from client (RPC 4-400)

293.01 Found

293.05 Not Found

300.00 Improper threat to bring charges (RPC 5-100; 1975 RPC 7-104)

In response to a debt collector's collection efforts, respondent wrote him a letter stating that the collector's clients were under criminal investigation and that if collector attempted to damage respondent's credit or garnish her wages, she would make the collector's conduct part of the investigation by the District Attorney and the Federal Bureau of Investigation. Respondent also stated that if the collector did not cease further action, she would turn over the collector's name and company information to the Federal Bureau of Investigation. The letter indicated that a copy of the letter was sent to various state and federal agencies. The review department concluded that viewed from the perspective of the collection agent and in context, respondent's letter, with the notations that copies were being sent to the various agencies, was quite reasonably construed as a threat to present criminal, administrative, or disciplinary charges against the collection agent in order to gain an advantage in a civil dispute in violation of rule 5-100(A) of the Rules of Professional Conduct. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627. **[6 a, b]**

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

300.01 Found

Respondent violated rule 5-100(A) when he threatened to report individuals to the FBI, State Attorney General and others if they did not comply with his various demands regarding administration of his father's estate and his litigation with a mortgage company. *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 **[3]**

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

300.05 Not Found

310.00 Improper criminal prosecution (RPC 5-110; 1975 RPC 7-102)

310.01 Found

310.05 Not Found

315.00 Prejudicial statement re adjudication (RPC 5-120)

315.01 Found

315.05 Not Found

320.00 Misleading conduct during trial (RPC 5-200; 1975 RPC 7-105(1))

Disciplinary rules governing legal profession cannot punish activity protected by First Amendment, but neither false statements made knowingly nor false statements made with reckless disregard for truth are protected by First Amendment. Thus, because respondent's statements in pleadings, which she filed in superior court action and this disciplinary action, that her opposing counsel in superior court action was "well-known racist," "champion of the Emeryville pedophile ring," "operated by organized crime," "intent upon avoiding his own criminal indictment," and "motivated by racial hatred," and described young children as "niggers, hood and scums" were proved false at trial; because those statements were not mere rhetorical hyperbole, incapable of being proved true or false; and because respondent either knew statements were false or made them with reckless disregard of truth as there was no objective evidence that statements were true, hearing judge properly found respondent culpable of violating professional rules requiring attorneys to employ only such means as are consistent with truth and not to seek to mislead courts and judicial officers as well as statute proscribing acts involving moral turpitude. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[2 a-i]**

The review department's duty to independently review the record is settled. At the same time, the review department must give great weight to the hearing judge's determination that turns on credibility to be assigned to witness testimony. The department was reluctant, therefore, to ascribe to respondent a specific intent to deceive when the hearing judge who considered respondent's testimony and that of other witnesses found none. This does not exonerate respondent from moral turpitude charges as to his false statement in his motion to disqualify a superior court judge. The hearing judge's conclusion that respondent violated statute and rule of professional conduct requiring attorneys to use only means consistent with truth must be read to find culpability by respondent's gross negligence, as simple neglect would not be sufficient for a statutory violation. Gross negligence is a well-established basis for finding an act of moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[1]**

Even though hearing judge expressly found that respondent's violation of statute and rule of professional conduct was based on respondent's gross negligence, she inexplicably declined to apply that gross negligence to find that respondent's conduct involved moral turpitude in violation of statute prescribing attorneys from engaging in acts of moral turpitude. Gross negligence is a well-established basis for finding moral turpitude. Accordingly, review department independently found respondent culpable of act involving moral turpitude. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9. **[2]**

The terms judges and judicial officers as used in Business and Professions Code section 6068(d) and rule 5-200(B) of the Rules of Professional Conduct are limited to those individuals who are officers of a state or federal system and who perform judicial functions. Thus, the review department reversed the hearing judge's determination that respondent attempted to mislead judicial officers, in violation of section 6068(d) and rule 5-200(B), when he told an arbitration panel that he had represented his clients previously. The local bar association's arbitration panel was not composed of judges or judicial officers as required under both section 6068(d) and rule 5-200 and the local bar association's arbitration panel was not court-appointed. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[6]**

Hearing judge's credibility findings based on respondent's demeanor while testifying are entitled to great weight. Where hearing judge found that respondent did not mislead court about applicability of statutory fee limitation because respondent had honest but unreasonable belief that statute did not apply, but review department concluded that respondent's failure to disclose fee limitation was unreasonable under circumstances, review department found that respondent violated duty not to mislead courts and committed act of dishonesty, but that such misconduct occurred through gross negligence rather than intentional dishonesty. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[14]**

An attorney's concealment of material facts is just as misleading as explicit false statements and constitutes misconduct warranting discipline. Where respondent had superior expertise regarding statutory fee limits in medical negligence cases, respondent had duty both to court and client to disclose material fact that such statutory limit might apply in particular case, even if respondent thought he had reasonable grounds to distinguish case from ambit of statute. Respondent's grossly negligent failure to disclose such material fact violated his duties to respect courts, not to commit acts of dishonesty or moral turpitude, and not to mislead judges by artifice or false statements. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[15]**

Respondent had duty of candor to superior court approving his fee. Respondent was entitled to urge any creative theory in good faith that statutory fee limitation might not apply to his case, but he could not simply conceal material fact that fee limitation statute might apply and profit sizably thereby at expense of his client. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[22]**

Statute and ethics rule prohibiting attorneys from misleading judges do not provide that only attorneys of record are subject to their requirements. Attorneys are required to refrain from deceptive acts without qualification. Thus, fact that respondent was not attorney of record and appeared voluntarily at mandatory settlement conference was not relevant to whether respondent was culpable of violating such statute and rule by intentionally misleading settlement conference judge. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[1]**

Attorneys can be disciplined for making material misrepresentations to a court even when the facts are a matter of public record. Accordingly, where respondent's client's death was a matter of public record, but settlement judge in client's pending case was not aware of death, and death was material fact in settlement negotiations, respondent

was culpable of misconduct for misleading settlement judge about client's death. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[2]**

Concealment of material facts is just as misleading as explicit false statements, and accordingly, is misconduct calling for discipline. Thus, respondent could be found culpable of intentionally misleading judge where he failed to reveal that his client had died, even though respondent was not directly asked if client was dead and even though respondent's answers to judge's questions may have been facially truthful, where respondent's statements to court and parties and his answers to judge's questions conveyed impression that client was alive and was exerting influence on respondent's ability to settle case. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[3]**

Dishonest acts by an attorney are grounds for suspension or disbarment even if no harm results. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[4]**

Statute prohibiting attorneys from engaging in acts of moral turpitude applies to misrepresentation and concealment of material facts. An attorney has a duty under statute and ethics rule never to seek to mislead a judge and acting otherwise constitutes moral turpitude and warrants discipline. Thus, respondent's intentional, material misrepresentation to a settlement conference judge was an act of moral turpitude. Nevertheless, where same misconduct underlay both finding of moral turpitude and findings of violation of statute and rule prohibiting misleading courts, misconduct was treated as single violation. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[5]**

Failing to appear as ordered at settlement conference, and intentionally misleading settlement judge regarding client's death, was serious misconduct which threatened public and undermined its confidence in legal profession. However, considering comparable case law, and in view of respondent's many years of practice prior to misconduct, and lack of proven aggravating factors, appropriate discipline was one-year stayed suspension and two years probation with no actual suspension, rather than two-year stayed suspension with two years probation and thirty days actual suspension. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[15]**

Even if State Bar prosecutor had duty to disclose exculpatory evidence, unpublished, non-precedential trial court decision did not constitute such evidence, nor was it controlling precedent which prosecutor had duty to disclose to court. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[14]**

An attorney's wilful failure to cite controlling authority squarely contradicting the attorney's position could be held to violate statute and rule prohibiting attorneys from misleading judges. However, attorneys as advocates are under no duty to reveal decisions which do not constitute controlling precedent. In State Bar Court, only decisions of review department, subject to relevant Supreme Court case law, are considered controlling precedent. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[15]**

Where respondent's description of his car problems in explaining his failure to appear for a court hearing differed only in degree from the actual events, the difference did not constitute deception or an attempt to mislead the court. The steps respondent took once he experienced the car problems might not have been adequate to excuse his failure to appear, but this aspect of his conduct was not charged as a disciplinary violation and thus could not form the basis of a culpability finding. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[1]**

Where respondent represented to a judge that he had failed to attend an earlier hearing because he had been in another city appearing before another judge in a family law matter, when in fact he had had no court appearance but had been in the other courthouse on other errands, his statement was materially dishonest, because the proffered excuse was intended to carry more weight than the truth would have. Respondent's deception therefore constituted an act of dishonesty in violation of the moral turpitude statute, as well as a violation of the statute and rule of professional conduct prohibiting attorneys from misleading judicial officers. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[2]**

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations,

and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

The mere fact that an attorney has been held in contempt of court is not grounds for discipline. The State Bar must establish that the contempt resulted from bad faith noncompliance with a court order, or that the underlying facts present other independent grounds for discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[4]**

In order to violate the statute prohibiting seeking to mislead a judge, or its parallel Rule of Professional Conduct, an attorney must knowingly make a false, material statement of fact or law to a court, with the intent to mislead. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[5]**

Where respondent falsely stated to the judge, during a trial, that one of his witnesses who had not yet arrived at court was under subpoena, such false statement was material, because it affected the court's scheduling of its daily calendar to accommodate the late witness and because it wrongfully caused the court to treat the witness initially as being in disobedience of a subpoena when he did arrive. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[6]**

Depending upon the circumstances, a finding of contempt against an attorney may result in no discipline at all or substantial discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[18]**

Where respondent had asked a witness a question, knowing that the witness would testify falsely, in order to mislead the court, respondent was culpable of deceiving the court and of moral turpitude, but in the absence of evidence of an agreement between respondent and the witness, there was no proof that respondent suborned perjury. A determination of subornation of perjury requires clear and convincing proof of a corrupt agreement between the witness and the respondent for the witness to testify falsely. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[7]**

Attorneys are expected to be forceful advocates for clients' legitimate causes, but role played by attorneys in honest administration of justice is critical. Attorneys, by adherence to their high fiduciary duties and the truth, can sharply reduce or eliminate clashes and ease the way to dispute settlement. Where parties to marital dissolution matter agreed to allow husband's counsel to hold community funds in trust pending resolution of dispute regarding property settlement, relying on counsel's duty as an attorney to honor the trust nature of the money, attorney's misconduct in improperly disbursing funds and then misrepresenting to wife's counsel and courts that funds were still held in trust account was especially regrettable. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[19]**

First offense deceit has not resulted in disbarment in Supreme Court cases. No act of concealment or dishonesty is more reprehensible than attempts to mislead a court; nonetheless, disbarment for such misconduct may be too drastic and unnecessary to achieve the goals of attorney discipline. Where respondent presented evidence of general good character, discipline of five years stayed suspension, five years probation, and two years actual suspension, with standard 1.4(c)(ii) requirement, was adequate. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[20]**

Where hearing referee concluded that respondent did not act dishonestly, but failed to exercise due diligence in learning the true facts before filing a declaration in a civil court, this conclusion was inconsistent with the conclusion that respondent's declaration violated the rule against seeking to mislead a judge by a false statement of fact. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[9]**

If respondent's only breach, in relation to a charge of filing a false declaration, was a lack of care in ascertaining the truth of the facts presented in the declaration, then it was incumbent on the hearing referee to determine whether that lack of care or diligence was culpable within the charges and fell below the level of conduct required of members of the State Bar. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[10]**

In order to find a violation of the rule against misleading courts and judicial officers, the State Bar must show clearly and convincingly that the attorney knowingly presented a false statement intending to mislead the court, and such deceit would, in almost every case, be an act of dishonesty in violation of the statute authorizing discipline for acts

of moral turpitude, corruption and dishonesty. When an attorney makes a false or misleading statement to a court, that act involves moral turpitude. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[11]**

When an attorney presents statements to a judicial tribunal while appearing in pro per as a party to litigation, the rule against misleading courts and judicial officers applies to him as an attorney. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[12]**

Culpability of violating the rule against misleading courts and judicial officers may be established even where there is no direct evidence of malice, intent to deceive, or hope of personal gain. Actual deception is not necessary to sustain a violation; wilful deception is established where the attorney knowingly presents a false statement which may tend to mislead the court. Even where the fabrications are the work of another, and the attorney is unaware of the truth, the attorney remains culpable if the attorney learns of their bogus nature and continues to assert their authenticity. *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321. **[13]**

Appearing in court while suspended or enrolled inactive does not inherently involve moral turpitude; nor does it necessarily involve deception of the court, if the attorney is unaware of his or her inactive status. Evidence that an attorney made a single court appearance while ignorant of his or her inactive status is insufficient to establish clearly and convincingly that the attorney acted with moral turpitude or intent to deceive the court. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[22]**

320.01 Found

In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

320.05 Not Found

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

323.00 Advocate as witness (RPC 5-210; 1975 RPC 2-111(A)(4), (5))

323.01 Found

323.05 Not Found

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

325.00 Suppression of evidence (RPC 5-220; 1975 7-107(A))

325.01 Found

325.05 Not Found

330.00 Gifts to adjudicators (RPC 5-300(A); 1975 RPC 7-108(A))

330.01 Found

330.05 Not Found

333.00 Ex parte contact with adjudicators (RPC 5-300(B); 1975 RPC 7-108(B))

A letter sent by counsel for one party in a disciplinary proceeding to the opposing counsel, with copies to the settlement judge and assigned trial judge, did not constitute a prohibited ex parte communication with the court. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[8]**

333.01 Found

333.05 Not Found

335.00 Causing witness unavailability (RPC 5-310(A); 1975 RPC 7-107(B))

335.01 Found

335.05 Not Found

336.00 Contingent fee for testimony (RPC 5-310(B); 1975 RPC 7-107(C))

336.01 Found

336.05 Not Found

340.00 Contact with venire member (RPC 5-320(A); 1975 RPC 7-106(A))

340.01 Found

340.05 Not Found

341.00 Contact with juror by counsel in case (RPC 5-320(B); 1975 RPC 7-106(B)(1))

341.01 Found

341.05 Not Found

342.00 Contact with juror by any lawyer (RPC 5-320(C); 1975 RPC 7-106(B)(2))

342.01 Found

342.05 Not Found

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

343.00 Post-trial juror harassment (RPC 5-320(D); 1975 RPC 7-106(D))

In order to find a violation under rule 5–320(D), the State Bar must prove by clear and convincing evidence that respondent subjectively had the specific intent to harass or embarrass a juror, or influence a juror's actions in future jury service. Where respondent threatened to send a letter to a juror's employer only after the juror refused to sign an affidavit for respondent, and where respondent waited approximately one year before sending a letter to the juror's employer and then only after the State Bar filed a Notice of Disciplinary Charges, the facts convincingly establish respondent's subjective intent to harass the juror. *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 **[3]**

The difference in wording between the rules governing pretrial and mid-trial contact with jurors, and the rule governing post-trial contact, reflects a difference in the intent of the drafters as to the elements of each rule. In order to establish a violation of the rule governing post-trial contact, the State Bar must prove by clear and convincing evidence that the respondent subjectively had the specific intent to harass or embarrass the jurors or to influence the jurors' actions in future jury service. Where no such subjective intent was established, based on referee's findings as to witnesses' credibility, review department found no violation and dismissed proceeding without addressing question of rule's constitutional validity. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[5]**

Wording of California rule governing post-trial contact with jurors differs significantly from parallel rules in ABA Model Code and Model Rules. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[10]**

An attorney who loses a jury trial has the right to contact jurors after the trial and develop facts by way of juror affidavits to impeach their own verdict. Jurors are the obvious, and usually the only, source of available sworn testimony by affidavit which the law requires as a basis for new trial on the ground of juror misconduct. Likewise, attorneys who win jury trials and wish to protect the verdict should not be barred from writing jurors after trial to request notice of any contact by the adverse side. Attorneys have a right to communicate with jurors after the trial, but should strive to avoid unnecessarily causing the jurors to develop ill feelings regarding their jury service. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[11]**

343.01 Found

343.05 Not Found

In the Matter of Respondent A (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255.

344.00 Improper investigation of venire (RPC 5-320(E); 1975 RPC 7-106(E))

344.01 Found

344.05 Not Found

345.00 Contact with jurors' families (RPC 5-320(F); 1975 RPC 7-106(F))

345.01 Found

345.05 Not Found

346.00 Duty to reveal improper contact (RPC 5-320(G); 1975 RPC 7-106(G))

346.01 Found

346.05 Not Found

400 Common Law/Other Statutory Violations

401 Common Law/Other Statutory Violations in General

Because insurance settlement check that respondent deposited into his client trust account was made payable to his corporate client, he became a fiduciary of all members of corporation's board of directors who asserted a claim to those funds on corporation's behalf, and he owed those directors the same high duty of honestly and obedience to fiduciary duty as if he were their attorney. Respondent breached that duty when he distributed $50,000 of settlement funds to corporation's president, who was one of corporation's four directors, in the president's individual capacity without knowledge or consent of remaining three directors because he knew that president and other three directors were in intractable dispute over control of corporation and that corporation's board had suspended president and denied him access to corporation's funds. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[1]**

Attorneys cannot recover for services rendered if services are rendered in contradiction of attorney professional responsibility. And where attorney improperly withdraws fees from a trust account, restitution to client or client's estate is appropriate. Thus, where respondent withdrew $29,875 from his client trust account as his attorney's fees without his corporate client's authorization, respondent should make restitution of $29,875 plus interest to either corporate client, its successor, appropriate recipient of its assets after its dissolution, or if such successor or recipient of assets after dissolution cannot be identified, the Client Security Fund.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.**[10 a,b]**

Standards governing an attorney's ethical duties do not vary according to the many areas of practice, even in specialized areas such as immigration law. Nor do those standards vary according to whether the attorney practices alone or in a partnership, small law firm, large law firm, or corporate law department.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[2]**

In attorney discipline, ethical standards for attorneys are primarily established by State Bar Rules of Professional Conduct and State Bar Act. But, when an attorney practices in a specific area or jurisdiction, those standards may be measured by reference to other relevant state and federal statutes, rules of court, regulations, and administrative rules.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[3]**

Under controlling federal regulation and Board of Immigration Appeals precedent, respondent could not properly limit the scope of his representation of clients referred to him by nonattorney immigration services providers to that of an "appearance attorney," which respondent asserts is an attorney who appears in his clients' immigration cases only for the limited purpose of making court appearances, and when respondent did so, he effectively provided those clients with no legal representation or services.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[5 a-h]**

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

Facts clients referred to respondent by nonattorney immigration services providers might have had a cultural bias in favor the referring nonattorney immigration services providers or that those clients might have viewed immigration attorneys, like respondent, as less important to their immigration cases than the referring nonattorney immigration services providers did not reduce or limit nature and scope of respondent's professional duties to his immigration clients.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[7]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

Keeping proper non-financial client files and records is necessary for attorneys to be able to prove their honesty and fair dealings when their actions are called into question such that justice will not permit an attorneys to escape responsibility for his misconduct by simple act of not keeping adequate non-financial client files and records from which his conduct may be reviewed and any misconduct proved. Thus, an attorney's failure to keep such adequate files and records is itself a suspicious circumstance.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[12]**

Attorney's fiduciary duties to his clients require that he keep adequate non-financial client files and records. At a minimum, attorney must keep, for each client, an individual file that contains the client's name, address, and telephone number and all other items reasonably necessary to competently represent the client, such as written fee agreement, correspondence, pleadings, deposition transcripts, exhibits, physical evidence, and expert reports.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[13]**

Attorney's fiduciary duties to his clients require that he develop and maintain adequate management and accounting procedures for the proper operation of his law office. At a minimum, attorney must develop and maintain procedures for proper maintenance and protection of client files; calendaring court hearings and filing deadlines; tracking court hearing dates and filing deadlines; tracking correspondence and client communications; proper handling and accurate accounting of client trust funds and other property. Attorney must also train his staff on those procedures and supervise staff to ensure that procedures are followed.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[14]**

Attorney's fiduciary duty to develop and maintain adequate management and accounting procedures for proper operation of his law office is fundamental to fulfillment of multiple duties, including duties to competently perform legal services, adequately communicate with clients, protect client confidential information, and properly handle and account for client funds and other property.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[15]**

An attorney may be disciplined for making a false statement that attacks the honesty, motivation, integrity, or competence of a judicial officer without violating the attorney's First Amendment guarantee of free speech so long as the attorney knew the statement was false when he made it or made it with a reckless disregard for its truth or falsity. Truth is an absolute defense. The State Bar has the burden of proving the falsity of the statement. The issue of whether a false statement was made with reckless disregard for its truth or falsity is governed by an objective standard under which the court must determine what a reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[2]**

An attorney's statement impugning the honesty or integrity of a court or judicial officer is not disciplinable if it constitutes rhetorical hyperbole, or uses language only in a loose, figurative sense, or if it is not capable of being proved true or false. The statement is not disciplinable unless it implies or is based upon a false assertion of fact. In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[4]**

Section 6068(a) is a conduit by which attorneys may be charged and disciplined for violations of other specific laws which are not otherwise made disciplinable under the State Bar Act, including a violation of: (1) a statute not specifically relating to the duties of attorneys; (2) a section of the State Act which is not, by its terms, a disciplinable offense, and (3) an established common law doctrine which is not governed by any other statute. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[15]**

410.00 Failure to Communicate With Client (pre- or non-6068(m))

Conduct which falls below the standard of the statute requiring attorneys to communicate with their clients, but which occurred prior to the effective date of the statute, does not violate its ban. However, where the attorney's failure to communicate began prior to that effective date, but extended beyond it, discipline has been imposed under the statute. Accordingly, where respondent's principal failures to communicate with client occurred prior to effective date of statute, when he withdrew from representing her, but respondent thereafter continued to encourage client to contact him as a conduit for her new counsel after his withdrawal, and did not respond to her efforts to contact him after effective date of statute, respondent was properly found culpable of violating his statutory duty to communicate with the client. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[2]**

An attorney has a fiduciary obligation toward a medical provider which holds a medical lien arising from advancement of funds to the attorney's client, and the attorney therefore has a duty to communicate with the provider as to the subject of the fiduciary obligation. However, where respondent was not charged in the notice to show cause with failing to communicate with the medical provider, respondent could not be found culpable on that basis. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[2]**

Where respondent did not respond to client's reasonable inquiries and missed appointments with client both before and after effective date of statute regarding duty to communicate with clients, respondent was culpable of violating attorney's oath and duties, as to conduct before such effective date, and of violating statutory duty to communicate, after such effective date. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[5]**

It is not inherently inconsistent to conclude that an attorney who withdrew from employment and failed to perform legal services competently is also culpable of failing to communicate with the client thereafter. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[7]**

An attorney's failure to communicate with and reckless or repeated inattention to the needs of a client have long been grounds for discipline. Such misconduct need not involve deliberate wrongdoing or a purposeful failure to attend to the duties due to a client, and the attorney's acts need not be shown to be wilful where there is a repeated failure of the attorney to attend to the needs of the client. Where respondent received several notices regarding the inheritance taxes owed by his client in a probate matter, and did not notify his client of any of them, and the client was reasonably relying on respondent to provide her with such notice, respondent failed to perform legal services competently in wilful violation of the applicable Rule of Professional Conduct. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175. **[1]**

An attorney's failure to communicate with and inattention to the needs of a client are proper grounds for discipline. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[7]**

Where a client had difficulty communicating with respondent for a short period of time, but respondent did reply in some limited fashion to the client's status inquiries, and where it was not clear from the record whether any significant developments occurred with regard to the client's litigation during that period of time, there was not clear and convincing evidence of a failure to communicate. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[8]**

Respondent violated duty to communicate with client where, after receiving notice that client disputed respondent's use of client's settlement proceeds to pay respondent's bill for services to client's family, respondent failed to communicate with client to ensure that client's father had been authorized to discharge family's indebtedness for fees out of client's personal injury recovery. Such failure to communicate violated the duty to perform legal services competently. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[18]**

For a failure to communicate with a client which occurred prior to the enactment of the statute requiring such communication, grounds for discipline remain under the common law doctrine underlying this duty. However, where the information the attorney most significantly failed to convey was notice of the attorney's withdrawal from representation, the attorney's conduct violated former the rule against prejudicial withdrawal, and finding culpability of a common law failure to communicate would be unnecessarily duplicative. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[10]**

An attorney who failed to communicate adequately with a client prior to 1987 cannot be charged with a violation of section 6068(m), but can be charged with a violation of section 6068(a). *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[17]**

Prior to enactment of statute establishing attorney's duty to communicate with clients, Supreme Court had long held that failure to communicate was a proper ground for discipline. This common law duty to communicate falls within the parameters of an attorney's oath and duties, under attorney's general duty to uphold the law. Where attorney failed to inform client of attorney's decision not to pursue fruitless damages claim, finding of violation of duty to uphold the law by failing to communicate with client was appropriate basis for culpability. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[10]**

Where respondent was found culpable of violating statutory duty to uphold the law by failing to adhere to common law duty to communicate with client, additional charge that respondent violated attorney's "oath and duties" under separate statute was duplicative, and resolution of case would not be affected by finding such violation. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[11]**

Where respondent successfully performed services for which he was retained, and his sole culpability was for single act of failing to inform client of respondent's entirely proper exercise of judgment not to pursue damages, and both harm to client and extent of misconduct were minimal, appropriate discipline would have been private reproval. However, in light of attorney's many years of practice without prior disciplinary record, and other extenuating circumstances, discipline would be punitive and would not further purposes of attorney discipline. Since finding of culpability precluded dismissal, admonition was an appropriate disposition. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[20]**

Where respondent's failure to respond to letters sent by another attorney whom clients had contacted occurred before enactment of specific statute requiring response to clients' reasonable status inquires, respondent could not be found culpable of violating that statute. Nevertheless, a longstanding common-law duty to communicate with clients was recognized by the Supreme Court prior to the adoption of the specific statute. Thus, for failures to communicate with clients occurring prior to the addition of the new statute, it is not duplicative nor otherwise inappropriate to charge an attorney with violating his general duties as an attorney. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[14]**

Attorney's failure periodically to communicate with clients, standing alone, warrants discipline. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[5]**

410.01 Found

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

410.05 Not Found

420.00 Misappropriation

Once respondent deposited insurance settlement check that was made payable to his corporate client into his client trust account, he had a fiduciary duty to protect the settlement funds on behalf of all the members of the corporation's board of directors regardless of whether he considered them authorized to act on corporation's behalf. Respondent willfully misappropriated $50,000 of those funds when he disbursed $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors as he knew of intractable dispute between president and other three directors over control of the corporation and corporation's board had suspended president and denied him access to corporation's funds. Respondent's misappropriation involved moral turpitude. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[3 a-c]**

When respondent, without the knowledge or consent of all of the directors, withdrew $29,875.89 of corporate settlement funds as his attorney's fees for representing the corporation in bankruptcy proceeding, he knowingly

and intentionally misappropriated the $29,875.89 for his own purpose without an honest belief in his right to those funds because (1) he knew a majority of directors vigorously disputed his right to represent corporation and to incur legal fees; (2) he knew president could authorize payment of only $100 of respondent's fees; (3) he acknowledged, under penalty of perjury in a bankruptcy court declaration, he did not have right to withdraw fees from trust account without court's approval; yet, there is no evidence respondent ever obtained such court approval before paying himself; (4) he deceived and misled corporation's chairman and his legal counsel about existence and location of insurance settlement funds; (5) he refused to provide records of settlement check and funds to State Bar. Respondent's knowing and intentional misappropriation of $29,875.89 involved moral turpitude in violation of statute prohibiting acts of moral turpitude and dishonesty. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[4 a-d]**

Where respondent misappropriated $50,000 of $79,875.89 insurance settlement funds he held in his trust account for his corporate client by disbursing $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors; where respondent violated his fiduciary duty to remaining three directors by disbursing the $50,000 to president without their knowledge or consent; where respondent knowingly and intentionally misappropriated remaining $29,875.89 of settlement funds for his own use and benefit by withdrawing them from his trust account as attorney's fees without the knowledge and consent of remaining three directors; where respondent violated rule of professional conduct requiring disputed funds to be held in trust by withdrawing $29,875.89 in fees from his trust account when his right to collect fees was disputed; where respondent repeatedly refused to account for proceeds of insurance settlement check in accordance with requests of chairman of corporations board of directors; where there was extensive aggravation, including concealment, overreaching, and failure to make restitution, with mitigation for strong good character testimony, extensive community service, no prior record of discipline, and lack of additional misconduct in more than five years; and where misconduct involved only a single client matter; and even though standard for attorney sanctions for professional misconduct for willful misappropriation called for and Supreme Court has repeatedly held that usual discipline for willfully misappropriation of client funds is disbarment, appropriate discipline recommendation was not disbarment, but four years' stayed suspension, four years' probation on conditions, which included two years' actual suspension continuing until respondent pays restitution of $29,875.89 with interest. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[9 a-d]**

Because an attorney who is a general partner of a California limited partnership owes the limited partners fiduciary obligations, including the duty of good faith and fair dealing and the duty to safeguard funds to which the limited partners are entitled, the attorney is held to the high standards of the legal profession whether or not he or she acts in the capacity of an attorney. Moreover, the attorney is subject to discipline if he or she assumes a fiduciary relationship and violates a fiduciary duty in a way that would justify disciplinary action if the relationship were that of attorney and client. Thus, respondent was subject to discipline where the evidence established that respondent, as general partner, (1) breached his fiduciary duty to a limited partner by taking his share of profits in two different distributions without having first distributed to the limited partner his capital contribution and share of profits, contrary to both the applicable statute and the partnership agreement, and (2) misappropriated funds which the limited partner was entitled to receive. *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[1a-f]**

Respondent was culpable of committing an act involving moral turpitude where respondent, acting as a general partner of a California limited partnership, misappropriated a limited partner's share of distribution funds, which act was also a breach of respondent's fiduciary duties to the limited partner. *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[2]**

Considering that respondent treated a significant amount of his client's money as a ready pool to further his and his wife's forays into championship horse breeding and realty acquisition, there was little difference for moral turpitude purposes between this case and the traditional trust funds wilful misappropriation cases. 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. This case meets that definition without doubt. *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824. **[3]**

Misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, and generally warrants disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. Where respondent did not meet that burden, disbarment was recommended. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[1]**

Where client gave written authorization to respondent to apply portion of client's net settlement proceeds to outstanding legal fees client owed respondent on prior case, respondent was not required to prove existence of prior case to establish entitlement to funds applied to fees. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[3]**

Fact that attorney obtained loan from client improperly, in violation of rule governing business transactions with clients, did not automatically convert attorney's acquisition of loan funds into misappropriation, and did not invalidate underlying loan transaction. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[11]**

Attorney's failure to repay loan from client did not constitute theft, but did aggravate harm already suffered by client. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[12]**

Where hearing judge found that respondent discussed borrowing client's entrusted funds with client, but intentionally did so in vague terms, and that client's consent to respondent's use of funds was not knowing or intelligent, and review department concluded that at most, client had consented to some use of funds to be agreed upon in future, respondent had neither reasonable nor honest belief in right to use client's funds, and respondent's misappropriation of such funds involved moral turpitude. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[1]**

Attorney disciplinary proceedings are not decided on principles of contract law, but where, due to vagueness of terms of purported agreement allowing attorney to use client's funds, contract law principles would not permit court to find any binding contract, such purported agreement could not provide defense to charges of professional misconduct. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[2]**

Where respondent's wilful misappropriation of client trust funds was accompanied by aggravating factors which clearly predominated over mitigation, and where hearing judge recommended disbarment based on consideration of respondent's demeanor and related issues, review department concurred that disbarment was appropriate. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[8]**

Where respondent had good faith but unreasonable belief that he had permission from clients' medical provider to use medical lien funds indefinitely, record did not establish that respondent misappropriated such funds, but due to respondent's abdication of his duty to supervise personal injury cases and reckless disregard of trust account obligations, respondent's mishandling of trust funds amounted to violation of statute providing that acts of moral turpitude are grounds for discipline. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[1]**

Where respondent had not paid a medical lien, but there was no evidence that respondent had failed to retain the appropriate sum to pay the lien in his trust account, respondent was not culpable of misappropriating the lien funds. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[5]**

By applying funds improperly collected from client's estranged husband to payment of client's debt for attorney's fees, respondent committed a trust account violation. Respondent's honest but mistaken belief in his own right to such funds did not absolve him of such violation. However, such violation did not constitute misappropriation, where respondent's essential ethical shortcoming involved misattributing ownership of funds to client rather than failing to handle them properly as entrusted funds. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[7]**

Once a trust account balance has fallen below the appropriate amount, an inference of misappropriation may be drawn, and the burden shifts to the attorney to show that misappropriation did not occur. Where there were numerous instances over several years in which funds were depleted or nearly depleted from respondent's trust account; respondent delayed in making repayment until the client complained to the State Bar or was sued, and

respondent's explanations lacked credibility, the evidence supported the conclusion that respondent's repeated acts of misappropriation were due to dishonesty rather than negligence. The distinction between negligent and dishonest misappropriation can be very significant in determining appropriate discipline. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[11]**

Where an attorney has previously been disciplined for misappropriation, the attorney is eligible for disbarment if found culpable of misappropriation in a second matter. Where respondent's total misconduct in two separate disciplinary cases involved ten client matters, spanned all but three years of his practice, and harmed or jeopardized numerous clients, and respondent had an ongoing substance abuse problem and had not complied with his probation in the first matter, his aggregate misconduct clearly required imposition of the harshest discipline, and there was no basis for a recommendation of suspension rather than disbarment. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[13]**

Where respondent honestly believed that he was entitled to retain portions of his clients' cost advances, even though this belief was unreasonable and unsubstantiated, respondent's retention of the funds did not necessarily warrant a conclusion that his conduct was dishonest, especially where respondent's gross negligence in handling the same funds had already been held to violate the moral turpitude statute. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[5]**

Where hearing judge concluded that respondent misappropriated a portion of client's cost advance under trust account rule, and violated moral turpitude statute by gross negligence in supervising client trust funds, it was unnecessary for review department to amend hearing judge's conclusions to establish that those sections were violated, and review department declined to adopt additional conclusion that respondent acted dishonestly in misappropriating client's funds. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[6]**

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

The trust fund and trust account rules are designed to safeguard client funds from the serious risk of loss or misappropriation, whether through carelessness or design. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[6]**

Evidence that respondent paid court-ordered sanctions with a trust account check, and that the client had not provided the funds, established respondent's improper use of the trust account, either by commingling trust and personal funds or by misappropriating funds belonging to other clients. Weighing all reasonable doubts in respondent's favor, a finding of commingling, the less serious offense, was appropriate. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[13]**

A conclusion that an attorney engaged in acts of moral turpitude does not necessarily follow from a finding that the attorney misappropriated client funds. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[9]**

An attorney's appropriation of client funds based on an unreasonable but honest belief of entitlement to the funds constitutes only a violation of the rule of professional conduct regarding client trust funds, and not an act of moral turpitude or dishonesty. However, where respondent could not have held an honest belief that he was entitled to some of the money he withdrew from a client trust account, his misappropriation of those funds not only violated the rule governing client trust funds, but also involved moral turpitude. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[10]**

Even though notice to show cause did not expressly charge violation of rule requiring client funds to be held in trust, respondent could be found culpable of violating such rule by misappropriating client funds, where such charge was clearly encompassed within allegations in support of moral turpitude charge. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[15]**

Where, as justification for taking client trust funds, respondent asserted that his written fee agreements had been modified to provide for a large contingent fee in one matter and a large flat fee in another matter, but did not produce any documents to support this contention, and offered varying characterizations of the alleged change in the fee arrangements, and, in contrast, the client testified credibly that he had never consented to a change in the fee agreements and had never been billed for additional fees, respondent failed to establish entitlement to the claimed fees. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[2]**

Restitution of client funds taken by an attorney is no defense to disciplinary charges of misappropriation. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[3]**

Disbarment was the appropriate sanction for an attorney's misappropriation of a very large sum of client funds over many years, which was surrounded by utter disregard of the attorney's fiduciary and trust account duties, and aggravated by incompetent representation of the client and prosecution of a lawsuit without the client's consent, demonstrating a lack of basic understanding of the fundamental responsibilities of an attorney. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[10]**

Where the evidence concerning an attorney's authority to apply client trust funds to attorney's fees consisted largely of conflicting testimony, the hearing judge's finding that the attorney did not have the authority to use the funds, coupled with the documentary evidence supporting culpability, constituted clear and convincing evidence supporting the judge's conclusion that the attorney improperly used and misappropriated client trust funds. Because the attorney's trust account balance repeatedly dropped below the necessary amount over a period of many months, and the attorney did not have an adequate explanation for the inadequate trust account balance, the attorney's misconduct, though not involving intentional dishonesty, constituted gross negligence amounting to moral turpitude. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[2]**

Although an attorney cannot be held responsible for every detail of office operations, the attorney violates the trust account rules if the attorney does not manage funds as required by the rules, regardless of the attorney's intent or the absence of injury to anyone. Violations resulting from serious and inexcusable lapses in office procedure may be deemed wilful despite the absence of deliberate wrongdoing. If an attorney's trust account balance drops below the necessary amount, an inference of misappropriation may be drawn. The burden then shifts to the attorney to show that office procedures were adequate. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[7]**

Not every trust account violation rises to the level of misappropriation. Because of the serious opprobrium attaching to the term "misappropriation," the term is appropriate only when the level of misconduct rises at least to gross negligence. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[8]**

The duty to keep clients' funds safe is a personal, nondelegable obligation of an attorney. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[4]**

Where hearing judge's decision was issued prior to relevant Supreme Court and review department opinions, and did not discuss whether gross negligence resulting in misappropriation should be subjected to same suggested minimum sanction of one year actual suspension as is applied for intentional misappropriation, but hearing judge's recommendation of one-year minimum was justified by facts in record making suspension appropriate for public protection, review department concluded that hearing judge's discipline recommendation was based on an analysis of the record in light of the objectives of discipline rather than on a rigid application of the Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[8]**

In requiring an invariable minimum of one year's actual suspension, standard 2.2(a) is not faithful to the teachings of the Supreme Court's decisions. Negligent misappropriation quickly and voluntarily remedied may require no actual suspension or only a short suspension. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[9]**

Misappropriation resulting from serious, inexcusable violation of a lawyer's duty to oversee trust funds is deemed wilful even in the absence of deliberate wrongdoing. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[10]**

Where respondent's gross negligence resulted in several incidents of misappropriation over a number of years, and where the record established both compelling mitigating factors and substantial aggravating factors, including prolonged delay in making restitution, discipline including one year's actual suspension was appropriate. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[11]**

An attorney's failure to return unspent costs advanced by the client did not violate the rule requiring prompt payment of client funds upon request, where there was no evidence that the client had requested the return of the funds. Nor did the attorney's inaction alone, in failing to return the funds for several years, support a finding that the attorney had misappropriated the funds or committed acts of moral turpitude. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[18]**

Where an attorney representing a bankrupt client had possession of the proceeds of a court-ordered sale of estate assets, did not place the funds in a trust account, did not pay them as directed by the bankruptcy court, and did not otherwise account for the funds, the evidence supported a finding that the attorney misappropriated the funds, violated the rule requiring prompt payment of client funds on request, and committed an act of moral turpitude. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[21]**

While failure to keep a promise of future action alone is not ordinarily proof of dishonesty, where respondent promised to deliver client funds into court custody and soon thereafter misappropriated the funds, the review department upheld the hearing department's finding that respondent's actions were intended to mislead the client and therefore constituted deceitful conduct. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[22]**

A finding that the amount respondent withdrew from a client trust account was not an earned fee, even though the client did not dispute respondent's testimony that it was an earned fee, was consistent with the evidence that respondent had not performed any legal services during the period of time for which he withdrew the funds; that what work was done by the attorney occurred after the trust funds had been withdrawn; that no value had been placed on the attorney's services during that time, and that the attorney had otherwise been inattentive to the client's case. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[3]**

An attorney's withdrawal of client trust funds based on a reasonable or unreasonable but honest belief of entitlement to fees may constitute only a violation of the rule of professional conduct regarding client trust funds, and not an act of moral turpitude or dishonesty. However, where an attorney could not have held an honest belief that he was entitled to most of the money he withdrew from a client trust account, his misappropriation of the funds not only violated the rule governing client trust funds, but also involved moral turpitude and dishonesty. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[4]**

Misappropriation of client funds is a particularly serious ethical violation, which breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the legal profession. Misappropriation generally warrants disbarment of the attorney involved unless clearly extenuating circumstances are present. In assessing the appropriate discipline to recommend for a respondent who had misappropriated a large amount of client funds and also abandoned the client, the review department focused on the misappropriation, the most serious aspect of the misconduct. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[6]**

Misappropriation can be committed in different degrees of culpability, deserving of different discipline. Even where the most compelling mitigating circumstances do not clearly predominate, extenuating circumstances relating to the facts of the misappropriation may render disbarment inappropriate. An attorney who acts deliberately and with deceit should receive more severe discipline than an attorney who acts negligently and without deception. Disbarment would rarely, if ever, be appropriate for an attorney whose only misconduct was a single act of misappropriation unaccompanied by deceit or other aggravating factors. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[12]**

General charges in a notice to show cause of disbursing trust funds without permission or knowledge of the beneficiary did not give adequate notice of a charge of misappropriation of such funds, without further specification as to the facts giving rise to the accompanying charge of committing acts of moral turpitude. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[8]**

Violations of trust account rules which do not involve a misappropriation found to constitute an act of moral turpitude are not treated, for the purpose of determining appropriate discipline, as misappropriations within the contemplation of standard 2.2(a), Standards for Attorney Sanctions for Professional Misconduct, for which disbarment is the presumed sanction. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[16]**

Where attorney failed to reveal to clients the real reason for the delay in their receipt of settlement funds, and was grossly negligent in failing to supervise his staff in the handling of client funds and settling of personal injury cases, this misconduct, coupled with misappropriation from the attorney's client trust account due to his failure to maintain a sufficient balance, was an appropriate basis for a finding of moral turpitude. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[2]**

Misconduct which is technically wilful may be less culpable if committed through negligence than if committed deliberately; term "wilful misappropriation" as used in attorney discipline cases covers broad range of conduct varying significantly in degree of culpability. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[6]**

Where attorney held settlement draft uncashed pending review of adequacy of settlement amount, attorney's misconduct consisted of failure to follow through, and improper handling of client funds, rather than misappropriation. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[13]**

Deficiency in respondent's trust account balance, coupled with respondent's grossly negligent handling of trust funds and delegation of responsibility, in and of itself established misappropriation, even where there was no evidence as to the cause of the shortfall or that it resulted from a deliberate conversion of funds by respondent. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[15]**

Any objection that a client raised to attorney's fees and costs, upon client's receipt of accounting of settlement funds, would have to be resolved prior to attorney's withdrawal of funds from trust account to pay fees and reimburse advanced costs. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[7]**

Where a notice to show cause alleged that the respondent attorney had misappropriated funds to his own use and purposes, and charged the attorney with acts of moral turpitude in violation of section 6106, but did not charge the attorney with a breach of the ethical rule concerning the proper handling of client trust funds, and the notice to show cause did not clearly put the attorney on notice of a charge that he had violated the trust funds rule, the attorney therefore could not be found culpable of violating that rule in light of the mandate that the attorney be given adequate notice of all charges and a reasonable opportunity to respond thereto. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[18]**

Possession of client funds in the form of a cashier's check is no defense to a charge of commingling. However, an attorney who held client funds outside his trust account in the form of cashier's checks, notified his client promptly of the receipt of the funds, forwarded them to the client promptly upon demand, and had adequate funds at all times to pay what he owed the client, did not commit misappropriation, violate obligation to deliver client funds promptly upon demand, or commit any act of moral turpitude or dishonesty. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[9]**

An attorney who repeatedly withdraws small amounts of cash for personal use from his or her trust account strongly indicates by such conduct that the attorney is improperly treating the trust account as a personal or general office account, and either allowing the attorney's own funds to remain in the trust account longer than they should (thus violating the rule against commingling), or misappropriating funds that properly belong to his or her clients. This is true regardless of the means by which the withdrawals are accomplished. Use of an ATM card for this purpose may slightly increase the risk of inadequate recordkeeping, but is not itself improper. Use of ATM cards to transfer funds from client trust accounts is not precluded by the Rules of Professional Conduct provided that the transfer is proper and adequate records are kept. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[13]**

In finding respondent culpable of misappropriating trust funds and of knowingly issuing a check drawn on insufficient funds, the referee's statement that respondent's acts constituted crimes involving moral turpitude was improper since the criminal statutes were not charged in the notice to show cause. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[16]**

Respondent's conduct in placing trust funds in his personal account, using such funds, and delaying payment thereof to his clients' medical lienholder for a year and a half after demand for payment constituted commingling and misappropriation and involved moral turpitude. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[5]**

Where hearing department found unpersuasive client's testimony that he did not consent to respondent's application of client trust funds to respondent's outstanding legal fees, State Bar did not demonstrate trust account irregularities or misappropriation by clear and convincing evidence. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[9]**

Absent additional evidence, attorney could not be found culpable of committing act of moral turpitude by misappropriating client trust funds, where evidence showed that attorney had transferred funds to successor counsel, and State Bar had stipulated that successor counsel had actually misappropriated funds. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[4]**

Review department will not consider misappropriation implied by evidence but not charged in notice to show cause, and not mentioned at trial, in hearing department decision, or in briefs on review. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[1]**

Attorney's responsibility for maintaining entrusted funds on deposit in trust account does not end when checks purporting to distribute entrusted funds are issued; responsibility continues until the checks have cleared the account. Where attorney's trust account balance fell below amount of entrusted funds after checks were written but before they cleared, attorney thereby misappropriated funds and violated trust account rules. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[2]**

Respondent's failure to substantiate with documentary evidence his claim that he had earned funds which he claimed were advanced legal fees was properly considered by hearing panel in determining that respondent was not credible on this issue, even though burden of proof was not respondent's. Giving great weight to hearing panel's credibility determination and resolution of conflicting facts against respondent, review department found no basis to reject panel's finding that funds were advanced costs which respondent misappropriated. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[5]**

The mere fact that the balance in an attorney's trust account falls below the amounts deposited and purportedly held in trust therein supports a conclusion of misappropriation. The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[6]**

Although respondent's misappropriation of client funds was not intentional, and resulted from poor management and misuse of trust account, respondent's gross carelessness, at best, in management of client's entrusted funds constituted moral turpitude, as such conduct breached his fiduciary duty to his client. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[8]**

Records of respondent's trust account, showing that balance dropped to a negative sum without payment having been made to clients' treating physician, warranted the conclusion that respondent misappropriated trust funds. *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[3]**

An attorney's conversion of advanced attorney's fees and costs without performing any services is regarded most seriously by the Supreme Court. Taking money for services not performed or not to be performed is close to the crime of obtaining money by false pretenses. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[9]**

Where the balance in a client trust account falls below the total of those client funds deposited and held in trust, that fact alone can support a finding of misappropriation. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[6]**

Where an attorney issued checks for personal debts which were drawn on a client trust account that was closed and empty, the attorney could not be found culpable of misappropriating client funds. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[8]**

An attorney's misappropriations of funds from his client trust account and other client funds constituted acts of dishonesty or moral turpitude. Misappropriation of funds is a serious offense involving moral turpitude. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[6]**

420.10 Found

420.11 Deliberate theft/dishonesty

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

420.12 Gross negligence

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

420.13 Funds wrongly taken under claim of right

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364.

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

420.14 Negligence/technical violation

420.19 Other fact patterns

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

420.50 Not Found

420.51 Lack of intent

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

420.52 Excusable negligence/technical violation

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

In the Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716.

420.53 Lack of wilfulness

420.54 Overall failure of proof

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

420.55 Valid claim of right to funds

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

420.59 Other reason

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

430.00 Breach of Fiduciary Duty

Respondent ignored his role as a fiduciary to one client when, while negotiating the transfer of her real property to his other client, he failed to advise her that she would no longer have any right, title, or interest in the property, that she remained on the deed of trust placing her at risk of having to pay the mortgage upon default in the mortgage payments or recordation of the grant deed, or that she would continue to receive the tax bills. At best, respondent was grossly negligent in failing to disclose the terms of the sale and the pros and cons of the transactions to his client, and at worst, respondent intentionally concealed the information to the advantage of his other client and his son. Respondent exploited his superior knowledge and position of trust to the detriment of his vulnerable client, which constituted an act or moral turpitude. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117 **[2 a–b]**

In addition to the fiduciary duty to fully inform his client about the sale of her condominium, respondent breached correlative fiduciary duties to adequately document the terms of the sale in a manner reasonably calculated for the client to understand, to advise his client that she should consult another attorney, or to disclose the serious conflicts in representing both parties to the transfer transaction. Respondent's conduct constituted overreaching, and as a result of his multiple conflicts, he gravely compromised his duty of loyalty to his client. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117 **[3 a–c]**

Where the record contains clear and convincing evidence that respondent led a witness to believe they had a special relationship of trust and confidence and that his interests would be protected by respondent, respondent assumed a fiduciary duty towards the witness, who was a vulnerable criminal defendant, when he used his superior knowledge and position as an attorney to create a confidential relationship of trust and dependency. In so doing,

respondent caused the witness to reject his attorney's advice and accede to respondent's wishes thereby breaching his common law fiduciary duty to the witness in wilful violation of section 6068, subdivision (a). *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[7 a–c]**

Respondent owed an incarcerated witness the same high duty of honesty and obedience to fiduciary duty as if he were acting as his attorney. An attorney's violation of the duty arising in a fiduciary or confidential relationship warrants discipline even in the absence of an attorney–client relationship. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[8 a, b]**

Because insurance settlement check that respondent deposited into his client trust account was made payable to his corporate client, he became a fiduciary of all members of corporation's board of directors who asserted a claim to those funds on corporation's behalf, and he owed those directors the same high duty of honestly and obedience to fiduciary duty as if he were their attorney. Respondent breached that duty when he distributed $50,000 of settlement funds to corporation's president, who was one of corporation's four directors, in the president's individual capacity without knowledge or consent of remaining three directors because he knew that president and other three directors were in intractable dispute over control of corporation and that corporation's board had suspended president and denied him access to corporation's funds. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[1]**

Where respondent misappropriated $50,000 of $79,875.89 insurance settlement funds he held in his trust account for his corporate client by disbursing $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors; where respondent violated his fiduciary duty to remaining three directors by disbursing the $50,000 to president without their knowledge or consent; where respondent knowingly and intentionally misappropriated remaining $29,875.89 of settlement funds for his own use and benefit by withdrawing them from his trust account as attorney's fees without the knowledge and consent of remaining three directors; where respondent violated rule of professional conduct requiring disputed funds to be held in trust by withdrawing $29,875.89 in fees from his trust account when his right to collect fees was disputed; where respondent repeatedly refused to account for proceeds of insurance settlement check in accordance with requests of chairman of corporations board of directors; where there was extensive aggravation, including concealment, overreaching, and failure to make restitution, with mitigation for strong good character testimony, extensive community service, no prior record of discipline, and lack of additional misconduct in more than five years; and where misconduct involved only a single client matter; and even though standard for attorney sanctions for professional misconduct for willful misappropriation called for and Supreme Court has repeatedly held that usual discipline for willfully misappropriation of client funds is disbarment, appropriate discipline recommendation was not disbarment, but four years' stayed suspension, four years' probation on conditions, which included two years' actual suspension continuing until respondent pays restitution of $29,875.89 with interest. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[9 a-d]**

Under controlling federal regulation and Board of Immigration Appeals precedent, respondent could not properly limit the scope of his representation of clients referred to him by nonattorney immigration services providers to that of an "appearance attorney," which respondent asserts is an attorney who appears in his clients' immigration cases only for the limited purpose of making court appearances, and when respondent did so, he effectively provided those clients with no legal representation or services. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[5 a-h]**

Keeping proper non-financial client files and records is necessary for attorneys to be able to prove their honesty and fair dealings when their actions are called into question such that justice will not permit an attorneys to escape responsibility for his misconduct by simple act of not keeping adequate non-financial client files and records from which his conduct may be reviewed and any misconduct proved. Thus, an attorney's failure to keep such adequate files and records is itself a suspicious circumstance. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[12]**

Attorney's fiduciary duties to his clients require that he keep adequate non-financial client files and records. At a minimum, attorney must keep, for each client, an individual file that contains the client's name, address, and telephone number and all other items reasonably necessary to competently represent the client, such as written

fee agreement, correspondence, pleadings, deposition transcripts, exhibits, physical evidence, and expert reports. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[13]**

Attorney's fiduciary duties to his clients require that he develop and maintain adequate management and accounting procedures for the proper operation of his law office. At a minimum, attorney must develop and maintain procedures for proper maintenance and protection of client files; calendaring court hearings and filing deadlines; tracking court hearing dates and filing deadlines; tracking correspondence and client communications; proper handling and accurate accounting of client trust funds and other property. Attorney must also train his staff on those procedures and supervise staff to ensure that procedures are followed. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[14]**

Attorney's fiduciary duty to develop and maintain adequate management and accounting procedures for proper operation of his law office is fundamental to fulfillment of multiple duties, including duties to competently perform legal services, adequately communicate with clients, protect client confidential information, and properly handle and account for client funds and other property. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[15]**

While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, the law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[3]**

Respondent violated statute proscribing acts of moral turpitude through her gross negligence in fulfilling her trust account duties. Even though respondent had an agreement with her husband and law partner that he would manage their client trust account, there was no evidence of established or agreed on procedures for the operation of trust account. And respondent overextended herself in the handling landmark litigation cases and in advocating for legislation dealing in that specialized area of law, allowed herself to be disconnected from management of law office over extended period of time during a period when her husband (whom respondent knew was abusive and controlling) was grossly mismanaging their trust account, and made no inquiry as to operation of the trust account even after she heard of specific complaint regarding the underpayment of trust funds to clients. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[4]**

An attorney has a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. These duties are nondelegable. This does not mean that an attorney is culpable of a moral turpitude violation by not personally managing his or her trust account, provided that attorney reasonably relies on a partner, associate, or other responsible employee to care for that account. However, even that reasonable reliance on another to care for the trust account does not relieve the attorney from the professional responsibility to properly maintain funds in that account. That is, in the handling of client funds, an attorney has a direct professional responsibility to his or her client, and the attorney does not avoid that direct professional responsibility by, even reasonable, reliance on a partner, associate or responsible employee. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[5]**

Where respondent sold his residential real property to his client, the fact that the sale price was at or about the fair market value does not constitute compliance with the basic requirement that the transaction be both fair and reasonable to the client. The question is not merely whether the sale price is fair and reasonable, but rather whether the entire transaction is fair and reasonable. All of the client's circumstances must be considered to determine whether the transaction is a prudent investment for a person in the client's circumstances. Moreover, all terms of the transaction must be fully disclosed and transmitted in writing to the client in a manner that the client should reasonably understand. Where respondent failed to disclose to the client many potential problems and risks involved with the manner of the sale of the property, and it was clear that the client was not otherwise aware of these risks, respondent was overreaching and acting at least in part for his own benefit. Under these circumstances, the transaction constituted a breach of a fiduciary obligation and violated Rules of Professional Conduct, rule 3-300. *In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[1a-d]**

Where there was ample evidence demonstrating respondent's violation of his fiduciary duty to his client, arising from the unfairness of the manner in which his residential real property was sold to his client, and that the transaction was, at least in part, for his own benefit, respondent was culpable of committing an act involving moral

turpitude in violation of Business and Professions Code section 6106. *In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[2]**

Because an attorney who is a general partner of a California limited partnership owes the limited partners fiduciary obligations, including the duty of good faith and fair dealing and the duty to safeguard funds to which the limited partners are entitled, the attorney is held to the high standards of the legal profession whether or not he or she acts in the capacity of an attorney. Moreover, the attorney is subject to discipline if he or she assumes a fiduciary relationship and violates a fiduciary duty in a way that would justify disciplinary action if the relationship were that of attorney and client. Thus, respondent was subject to discipline where the evidence established that respondent, as general partner, (1) breached his fiduciary duty to a limited partner by taking his share of profits in two different distributions without having first distributed to the limited partner his capital contribution and share of profits, contrary to both the applicable statute and the partnership agreement, and (2) misappropriated funds which the limited partner was entitled to receive. *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[1a-f]**

Respondent was culpable of committing an act involving moral turpitude where respondent, acting as a general partner of a California limited partnership, misappropriated a limited partner's share of distribution funds, which act was also a breach of respondent's fiduciary duties to the limited partner. *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364 **[2]**

The State Bar proved that respondent used over $500,000 of his client's assets for speculative ventures in which he had a financial or ownership interest without any disclosures of the investments or his interests to the client and without providing any periodic accountings to her. In view of the evidence presented, to defend the charges, it was incumbent on respondent to present adequate, contemporaneous records showing that he had complied with the ethical and fiduciary duties of an attorney. He failed to do so. The lack of minimal formality and recordkeeping by respondent supports the hearing judge's findings and conclusions and erodes respondent's defense. *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824. **[1]**

The relationship between an attorney and client is of the highest order of fiduciary relation. Even where the attorney no longer represents the client, the attorney continues to owe the client a fiduciary duty of utmost good faith and fair dealing with respect to, at least, the subject matter of the attorney's prior representation of the client, including any express lien for attorney's fees. Respondent did not violate this duty by refusing to sign a settlement check which was in the possession of the former client's new attorney, and which was made payable to the former client, the former client's new attorney, and respondent. Respondent's fee agreement provided for a lien on any recovery, he perfected his lien as to part of the former client's recovery, he suggested, among other alternatives, that the disputed portion of the recovery be placed in his trust account or, alternatively, in a separate blocked account requiring both his and his former client's signatures, and he took prompt action to judicially resolve the competing claims to the settlement proceeds. Respondent's duty of good faith and fair dealing did not require that he abandon his lawfully perfected lien by endorsing the settlement draft when it was under the client's control, as doing so would have immediately extinguished the lien as to the client's creditors and thereafter subjected the lien to extinguishment if the client spent the money. *In the Matter of Feldsott* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754. **[1]**

Even though respondent withdrew from employment because his client accepted a settlement agreement with a confidentiality order, he still had a fiduciary duty to his former client. The client, not respondent, had the right to decide to settle her lawsuit on the chosen terms. Thus, respondent had a good faith duty to act consistently with the client's settlement agreement to, at least, not reveal the settlement amount or the evidence obtained in the case except as allowed by the settlement judge. Respondent's failure to do so violated his statutory duty to obey court orders issued in connection with his profession. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[3]**

Where the notice to show cause did not charge respondent with committing acts of moral turpitude on account of a violation of fiduciary duty, but did charge respondent with making a misrepresentation to a court, and the hearing judge and the parties understood that the charged moral turpitude violation was based on the misrepresentation, the review department declined the State Bar's request, made for the first time on review, that it find moral

turpitude based on respondent's breach of fiduciary duty. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[2]**

Non-clients may be treated as an attorney's clients for purposes of discipline where the attorney assumes a fiduciary relationship with the non-clients. Thus, where respondent was the trustee of a testamentary trust, and thus assumed a fiduciary relationship with the beneficiaries of that trust, the rule regulating attorneys' business transactions with their clients applied to respondent's dealings with the trust, as if the trust beneficiaries were respondent's clients. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[4]**

Respondent's duty to medical negligence client was not confined solely to obtaining successful recovery on client's claim. Respondent also had duty of utmost good faith and fidelity to client, which required him to advise client candidly of application of statutory limit on fee he could charge client. Where respondent overreached client by concealing such statute through recklessness or gross neglect, and collected excessive fee thereby, such conduct was patent breach of respondent's duty of good faith and fair dealing to client, and was very serious aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[21]**

Client's written consent to loan transaction with respondent was not knowing consent, where respondent knew that client lacked capacity to give informed consent because of her poor health, frequent use of alcohol, lack of business experience, and limited education. Respondent was obligated to insure that terms and conditions of loan were fully known and understood by client, and was required not merely to inform client of her right to consult another attorney, but to advise client to do so. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[10]**

Where respondent, as attorney and close family member of client, exploited superior knowledge and position of trust to detriment of vulnerable client in obtaining loan from client with grossly unfair provisions, attorney's overreaching constituted act of moral turpitude. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[13]**

Even if attorney has no fiduciary obligation to client's medical provider due to absence of enforceable lien or judgment, attorney still has duty to client to keep all client funds in trust. Where respondent withdrew client funds from trust account which he later used to pay client's medical provider, respondent violated rule requiring client funds to be held in trust even though provider had no lien. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[6]**

Rule requiring prompt payment of client funds on demand requires attorney to pay client's medical provider only if attorney has fiduciary obligation to provider. Where respondent had no such fiduciary obligation due to lack of enforceable lien or judgment, and record did not show that provider requested payment or that respondent did not promptly comply with such request, violation of rule was not established. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[7]**

Where respondent disbursed settlement funds to client without withholding funds to pay medical lien, in reliance on client's unverified representation that client had paid lien, and respondent had no reason to believe that lienholder had any alternative possible source of payment, respondent's error in fulfilling his fiduciary duties both to lienholder and to client, who was later sued by lienholder, was of sufficient magnitude to constitute reckless failure to perform competently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[7]**

Attorney who holds funds subject to legally enforceable lien has duty to lienholder to perform competently in handling those funds; such duty is inherent in attorney's role as fiduciary with respect to entrusted funds. Moreover, because failure to pay liens exposes clients to collection efforts by lienholders, it is for protection of client, not just lienholder, that attorney has duty to ensure that liens are properly paid. Where respondent recklessly disregarded his duty to pay statutory medical liens in personal injury matters, he was culpable of reckless failure to perform legal services competently. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[19]**

Rule requiring prompt payment of entrusted funds upon demand requires attorneys to make such payment not only to the client, but also to a third party with a legitimate claim to those particular funds. Where respondent improperly collected funds belonging to client's estranged husband, respondent held funds in trust as fiduciary

for husband, and failure to turn them over to husband's counsel on demand violated rule. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[6]**

The relationship between an attorney and client is a fiduciary relationship of the very highest character. In light of such fiduciary obligations, respondent's conduct in arranging real property transactions between respondent's client and respondent's father involved overreaching, where respondent was closely involved with his father and did not safeguard the client's interests in the transactions. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[10]**

Business transactions between clients and their attorneys are closely scrutinized. The burden is on the attorney to demonstrate that the dealings are fair and reasonable. Where respondent loaned a large sum to one client so that the client could repay a debt to another client, respondent owed a fiduciary duty to both clients and was obligated to explain his role in the transaction and the impact it could have on his continued representation of their interests. Where one client, notwithstanding his written consent, did not understand the full implications of the transaction, and the other client did not consent in writing, respondent violated the rule governing business transactions with clients. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[2]**

An attorney's obligation to his or her client is limited by the attorney's and the client's obligation to third parties. Where respondent's client, a Medi-Cal beneficiary, had a statutory obligation (Welfare and Institutions Code section 14124.76) to notify the Department of Health Services (DHS) of the impending settlement of a personal injury matter in which DHS claimed a lien, respondent had a fiduciary obligation under decisional law to provide the required notice on his client's behalf. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[3]**

Where a statute (Welfare and Institutions Code section 14124.76) required Medi-Cal beneficiaries to notify the Department of Health Services (DHS) regarding the impending settlement of matters in which no suit had been filed and DHS claimed a lien, the review department construed the statute to require that attorneys representing such beneficiaries must also give the required notice, because to construe the statute otherwise would frustrate the Medi-Cal third party liability recovery system and be in derogation of an attorney's general fiduciary responsibility to lienholders. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[4]**

An attorney holding funds for a person who is not the attorney's client must comply with the same fiduciary duties in dealing with such funds as if an attorney-client relationship existed. Where an attorney represents a Medi-Cal beneficiary in a personal injury matter and has received notice of the Medi-Cal lien, the attorney has a fiduciary obligation toward the Department of Health Services as to its advancement of funds for the beneficiary and the Medi-Cal lien. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[8]**

An attorney owes the same fiduciary obligations to all clients, paying or nonpaying. Impecunious clients are ill-served by well-meaning attorneys who fail to deliver the services for which they were engaged. Nor are the courts or public served by litigation brought without likelihood it can be realistically be prosecuted to completion. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[4]**

An attorney has a fiduciary obligation toward a medical provider which holds a medical lien arising from advancement of funds to the attorney's client, and the attorney therefore has a duty to communicate with the provider as to the subject of the fiduciary obligation. However, where respondent was not charged in the notice to show cause with failing to communicate with the medical provider, respondent could not be found culpable on that basis. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[2]**

An attorney holding funds for a person who is not a client is held to the same fiduciary duties in dealing with those funds as if there were an attorney-client relationship. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[4]**

An attorney's gross carelessness and negligence constitute violations of the attorney's oath to faithfully discharge duties to clients to the best of the attorney's knowledge and ability, and involve moral turpitude in that they breach the fiduciary relationship attorneys owe to clients. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[12]**

When an attorney withdraws from employment or the client terminates the attorney's employment, the attorney must promptly refund any unearned part of an advance fee. However, where respondent faced competing demands regarding the funds used to pay an advance fee, from a client and from a third party to whom respondent owed a fiduciary duty, respondent had a duty to retain the funds in trust until the client's entitlement to the funds was established, and therefore did not commit misconduct by declining to refund the advance fee. Respondent's motives for retaining the funds in trust were irrelevant because the issue turned on a question of law, not motivation. The State Bar had the burden of proving that the client was entitled to receive the funds. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[9]**

An attorney who receives money on behalf of a party who is not the attorney's client becomes a fiduciary to the party. Where an attorney assumes the responsibility to disburse funds as agreed by the parties in an action, the attorney owes an obligation to the party who is not the attorney's client to ensure compliance with the terms of the agreement. If there is a dispute between the client and the third party, the attorney must retain the funds in trust until the resolution of the dispute. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[11]**

Although attorneys cannot be held responsible for every detail of office operations, fiduciary violations resulting from serious and inexcusable lapses in office procedure may be deemed wilful for disciplinary purposes even in the absence of deliberate wrongdoing. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[7]**

The duty to keep clients' funds safe is a personal, nondelegable obligation of an attorney. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[4]**

Improper withdrawal of entrusted funds in violation of duty to maintain funds in trust, and of fiduciary duty to opposing party, does not necessarily rise to the level of an act of moral turpitude. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[9]**

Attorneys are expected to be forceful advocates for clients' legitimate causes, but role played by attorneys in honest administration of justice is critical. Attorneys, by adherence to their high fiduciary duties and the truth, can sharply reduce or eliminate clashes and ease the way to dispute settlement. Where parties to marital dissolution matter agreed to allow husband's counsel to hold community funds in trust pending resolution of dispute regarding property settlement, relying on counsel's duty as an attorney to honor the trust nature of the money, attorney's misconduct in improperly disbursing funds and then misrepresenting to wife's counsel and courts that funds were still held in trust account was especially regrettable. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[19]**

An attorney may not endorse a client's name to a check without express authority to perform that particular act. However, under Commercial Code section 3403, no specific form of authorization is required from a principal to an agent in order for the agent to sign the principal's name to a negotiable instrument, such as a settlement check. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[3]**

An attorney's practice of paying personal injury clients' doctor out of the attorney's own general account, including in some instances making such payments even before the clients' cases had closed, did not entitle the attorney to treat the doctor as the attorney's own creditor. The debt to the doctor was owed by the clients, and the attorney had a duty to honor the clients' agreement. Even with the doctor's consent, the attorney could not transform settlement funds earmarked for payment of medical liens into general funds. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[2]**

Attorney's fiduciary duty to personal injury clients did not end with payment to them of their share of the recovery in their cases; the attorney had an ongoing fiduciary duty to hold in trust the remaining settlement funds, subject to clients' directions regarding disbursement. This duty did not end until the clients' debt to their treating physician was paid. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[3]**

Assuming that an attorney was entitled to delay payment to a medical lienholder until resolution of a dispute with the clients' insurance company regarding settlement funds, the attorney was required nonetheless to place the amount earmarked for satisfaction of the medical lien in the attorney's trust account until payment to the lienholder in accordance with the terms of the lien. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[4]**

Attorney violated ethical rule governing business transactions with clients where he acquired (through his wholly-owned company) a licensing agreement for a product of his client-employer, without disclosing his ownership interest in the licensee; the licensee's incapacity to fulfill the terms of the license; or his negotiations for sublicenses on more profitable terms. The true identity of the licensee was a material fact which the attorney had a fiduciary duty to disclose, even though the terms of the license were revealed and may not have been unfair. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[6]**

Although respondent's misappropriation of client funds was not intentional, and resulted from poor management and misuse of trust account, respondent's gross carelessness, at best, in management of client's entrusted funds constituted moral turpitude, as such conduct breached his fiduciary duty to his client. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[8]**

When an attorney agrees to hold client funds in trust for the benefit of a non-client, the nature of that agreement creates a fiduciary duty to the non-client, as well as the client. As a fiduciary, the attorney's obligation to account for the funds extends to both parties claiming an interest in the funds. Accordingly, the rules governing handling and payment of client trust funds apply to a non-client's funds as well. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[8]**

430.01 Found

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

Where the record contains clear and convincing evidence that respondent led a witness to believe they had a special relationship of trust and confidence and that his interests would be protected by respondent, respondent assumed a fiduciary duty towards the witness, who was a vulnerable criminal defendant, when he used his superior knowledge and position as an attorney to create a confidential relationship of trust and dependency. In so doing, respondent caused the witness to reject his attorney's advice and accede to respondent's wishes thereby breaching his common law fiduciary duty to the witness in wilful violation of section 6068, subdivision (a). *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[7 a–c]**

Respondent owed an incarcerated witness the same high duty of honesty and obedience to fiduciary duty as if he were acting as his attorney. An attorney's violation of the duty arising in a fiduciary or confidential relationship warrants discipline even in the absence of an attorney–client relationship. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[8 a, b]**

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

430.05 Not Found

In the Matter of Feldsott (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

490.00 Miscellaneous

Because insurance settlement check that respondent deposited into his client trust account was made payable to his corporate client, he became a fiduciary of all members of corporation's board of directors who asserted a claim to those funds on corporation's behalf, and he owed those directors the same high duty of honestly and obedience to fiduciary duty as if he were their attorney. Respondent breached that duty when he distributed $50,000

of settlement funds to corporation's president, who was one of corporation's four directors, in the president's individual capacity without knowledge or consent of remaining three directors because he knew that president and other three directors were in intractable dispute over control of corporation and that corporation's board had suspended president and denied him access to corporation's funds.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.**[1]**

Where respondent had certain knowledge of dispute over his fees and where respondent ignored explicit directive of board majority to immediately cease representing corporation, respondent violated rule of professional conduct requiring disputed funds to be held in trust when he withdrew $29,875.89 of corporate client's funds from his trust account as his attorney's fees.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.**[2]**

Once respondent deposited insurance settlement check that was made payable to his corporate client into his client trust account, he had a fiduciary duty to protect the settlement funds on behalf of all the members of the corporation's board of directors regardless of whether he considered them authorized to act on corporation's behalf. Respondent willfully misappropriated $50,000 of those funds when he disbursed $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors as he knew of intractable dispute between president and other three directors over control of the corporation and corporation's board had suspended president and denied him access to corporation's funds. Respondent's misappropriation involved moral turpitude.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.**[3 a-c]**

Even though attorneys have duty to zealously represent their clients and assert unpopular position in advancing clients' legitimate objectives, attorneys, as officers of the court, have duty to judicial system to assert only legal claims or defenses warranted by law or supported by good faith belief in correctness.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.**[5]**

Where respondent misappropriated $50,000 of $79,875.89 insurance settlement funds he held in his trust account for his corporate client by disbursing $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors; where respondent violated his fiduciary duty to remaining three directors by disbursing the $50,000 to president without their knowledge or consent; where respondent knowingly and intentionally misappropriated remaining $29,875.89 of settlement funds for his own use and benefit by withdrawing them from his trust account as attorney's fees without the knowledge and consent of remaining three directors; where respondent violated rule of professional conduct requiring disputed funds to be held in trust by withdrawing $29,875.89 in fees from his trust account when his right to collect fees was disputed; where respondent repeatedly refused to account for proceeds of insurance settlement check in accordance with requests of chairman of corporations board of directors; where there was extensive aggravation, including concealment, overreaching, and failure to make restitution, with mitigation for strong good character testimony, extensive community service, no prior record of discipline, and lack of additional misconduct in more than five years; and where misconduct involved only a single client matter; and even though standard for attorney sanctions for professional misconduct for willful misappropriation called for and Supreme Court has repeatedly held that usual discipline for willfully misappropriation of client funds is disbarment, appropriate discipline recommendation was not disbarment, but four years' stayed suspension, four years' probation on conditions, which included two years' actual suspension continuing until respondent pays restitution of $29,875.89 with interest.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.**[9 a-d]**

Attorneys cannot recover for services rendered if services are rendered in contradiction of attorney professional responsibility. And where attorney improperly withdraws fees from a trust account, restitution to client or client's estate is appropriate. Thus, where respondent withdrew $29,875 from his client trust account as his attorney's fees without his corporate client's authorization, respondent should make restitution of $29,875 plus interest to either corporate client, its successor, appropriate recipient of its assets after its dissolution, or if such successor or recipient of assets after dissolution cannot be identified, the Client Security Fund.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.**[10 a,b]**

Standards governing an attorney's ethical duties do not vary according to the many areas of practice, even in specialized areas such as immigration law. Nor do those standards vary according to whether the attorney

practices alone or in a partnership, small law firm, large law firm, or corporate law department.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[2]**

In attorney discipline, ethical standards for attorneys are primarily established by State Bar Rules of Professional Conduct and State Bar Act. But, when an attorney practices in a specific area or jurisdiction, those standards may be measured by reference to other relevant state and federal statutes, rules of court, regulations, and administrative rules.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[3]**

Under controlling federal regulation and Board of Immigration Appeals precedent, respondent could not properly limit the scope of his representation of clients referred to him by nonattorney immigration services providers to that of an "appearance attorney," which respondent asserts is an attorney who appears in his clients' immigration cases only for the limited purpose of making court appearances, and when respondent did so, he effectively provided those clients with no legal representation or services.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[5 a-h]**

Facts clients referred to respondent by nonattorney immigration services providers might have had a cultural bias in favor the referring nonattorney immigration services providers or that those clients might have viewed immigration attorneys, like respondent, as less important to their immigration cases than the referring nonattorney immigration services providers did not reduce or limit nature and scope of respondent's professional duties to his immigration clients.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[7]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

Keeping proper non-financial client files and records is necessary for attorneys to be able to prove their honesty and fair dealings when their actions are called into question such that justice will not permit an attorneys to escape responsibility for his misconduct by simple act of not keeping adequate non-financial client files and records from which his conduct may be reviewed and any misconduct proved. Thus, an attorney's failure to keep such adequate files and records is itself a suspicious circumstance.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[12]**

Attorney's fiduciary duties to his clients require that he keep adequate non-financial client files and records. At a minimum, attorney must keep, for each client, an individual file that contains the client's name, address, and telephone number and all other items reasonably necessary to competently represent the client, such as written fee agreement, correspondence, pleadings, deposition transcripts, exhibits, physical evidence, and expert reports.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[13]**

Attorney's fiduciary duties to his clients require that he develop and maintain adequate management and accounting procedures for the proper operation of his law office. At a minimum, attorney must develop and maintain procedures for proper maintenance and protection of client files; calendaring court hearings and filing deadlines; tracking court hearing dates and filing deadlines; tracking correspondence and client communications; proper

handling and accurate accounting of client trust funds and other property. Attorney must also train his staff on those procedures and supervise staff to ensure that procedures are followed.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[14]**

Attorney's fiduciary duty to develop and maintain adequate management and accounting procedures for proper operation of his law office is fundamental to fulfillment of multiple duties, including duties to competently perform legal services, adequately communicate with clients, protect client confidential information, and properly handle and account for client funds and other property.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[15]**

Even if an attorney of record did not have actual knowledge of a trial setting, if a notice of trial setting was properly served on him, his failure to appear at trial will not be excused for State Bar disciplinary purposes unless he establishes that he had office procedures in place that, at a minimum, required his staff (1) to promptly inform him each time a notice of court or administrative trial or hearing is delivered to office, (2) to promptly record date of the trial or hearing in attorney's court calendaring system and in client's file, and (3) to promptly give client actual notice of date, time, and location of the trial or hearing. Respondent did not have any such proper office procedures in place. Thus, where record established that a notice of a hearing was properly served on him in an immigration court case in which he was attorney of record for the alien, respondent's failures to inform client of hearing, to prepare himself for the hearing, and to counsel and prepare client for the hearing could not be excused even if respondent did not learn of the hearing until the day of the hearing.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[23 a-d]**

Principle that, in the normal course of operation of a law office, an attorney should not be at risk of discipline for failure to have knowledge of every item of information that comes in his office is based on presumptions that the attorney has adequate office procedures in place for the proper operation of his office, trains his staff on those procedures; employs safeguards to insure that procedures are followed, and supervises staff to insure they perform their jobs.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[24]**

An attorney may be disciplined for making a false statement that attacks the honesty, motivation, integrity, or competence of a judicial officer without violating the attorney's First Amendment guarantee of free speech so long as the attorney knew the statement was false when he made it or made it with a reckless disregard for its truth or falsity. Truth is an absolute defense. The State Bar has the burden of proving the falsity of the statement. The issue of whether a false statement was made with reckless disregard for its truth or falsity is governed by an objective standard under which the court must determine what a reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances. *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[2]**

An attorney's statement impugning the honesty or integrity of a court or judicial officer is not disciplinable if it constitutes rhetorical hyperbole, or uses language only in a loose, figurative sense, or if it is not capable of being proved true or false. The statement is not disciplinable unless it implies or is based upon a false assertion of fact. In the Matter of Anderson (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 **[4]**

Respondent violated his duty to maintain only just causes and abused the bankruptcy process by filing and maintaining a Chapter 11 bankruptcy proceeding for an insolvent client when he knew that the client's only assets were nine residential lots in which there was no equity and that the client had neither the ability nor the intention of making adequate protection payments to the lienholders on the nine lots in accordance with the law. Even if respondent was unaware of these facts, he would still be culpable. Under applicable federal rules of procedure, respondent's signature on the Chapter 11 petition as attorney of record for debtor was a certification that to the best of his knowledge and belief, formed after a reasonable inquiry, the petition was well founded in fact and warranted by either existing law or a good faith argument for the modification of existing law. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[3]**

Where respondent settled a personal injury claim, without filing suit, on behalf of a client who was a Medi-Cal beneficiary, respondent's failure to notify the Department of Health Services of the settlement did not violate a statute which only required such notice if an action had been filed (Welfare and Institutions Code section 14124.79). *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[2]**

The statute providing that attorneys have a duty to support the constitution and laws of California and the United States constitutes a conduit whereby attorneys may be disciplined for violating laws which are not otherwise disciplinable under the State Bar Act. However, a negligent mistake made in good faith does not constitute a violation of this statute. Thus, where respondent believed he had satisfied his obligation to a statutory

medical lienholder by informing it of a source of insurance coverage, and thus believed that his client was entitled to all of the settlement funds obtained from a different source of coverage, respondent's failure to notify the lienholder of the impending settlement, as required by statute, did not violate his statutory duty to obey California law, because it constituted a negligent mistake, based on the good faith, erroneous belief that he was entitled to distribute all the settlement funds to the client and let the client deal with the statutory lien. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[5]**

Statute which requires that if a party is represented by counsel, papers must be served on counsel rather than on the party, does not apply to the service of a summons or a writ. Therefore, respondent did not have to serve alternative writ and petition for writ on opposing party's counsel, but could serve opposing party personally. *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517. **[1]**

Where respondent had asked a witness a question, knowing that the witness would testify falsely, in order to mislead the court, respondent was culpable of deceiving the court and of moral turpitude, but in the absence of evidence of an agreement between respondent and the witness, there was no proof that respondent suborned perjury. A determination of subornation of perjury requires clear and convincing proof of a corrupt agreement between the witness and the respondent for the witness to testify falsely. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[7]**

Sections 2450, et seq., of the Civil Code did not mandate a different format for special powers of attorney than the one which the respondent used, where those statutes were not enacted until two years after the power of attorney was executed by the client and one year after it was acted upon by the respondent, and where section 2456 of the Civil Code, enacted simultaneously with section 2450, expressly provides that any form that complies with the requirements of any other law may be used in lieu of the form set forth in section 2450. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[13]**

An attorney's simulation of a client's endorsement on a check, pursuant to an express power of attorney, without expressly indicating the representational capacity of the signature, does not constitute an attempt to deceive the bank and is not an act of moral turpitude. An attorney may not endorse a client's name to a check without express authority to do so, but the representative capacity of the signature need not be indicated on the check. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[15]**

Although hearing referee did not specifically find that client had expressly authorized attorney to endorse settlement check on client's behalf, review department interpreted decision to have resolved this issue on the basis of express rather than implied authorization. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[8]**

Under applicable provisions of Commercial Code, handwritten notation on attorney's check stating that it was issued "subject to verbal confirmation" destroys its negotiability and prevented attorney from being criminally liable for issuance of check drawn on insufficient funds. Dishonor of such check due to insufficient funds was not an aggravating factor, because check was issued in non-negotiable form and there was no clear evidence that payee was misled regarding nature of check. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[1]**

False statements made with reckless disregard of the truth do not enjoy constitutional protection under the First Amendment. Attorneys may be disciplined for making defamatory or disrespectful statements in pleadings or court papers which have no basis in fact and which are made with conscious disregard of their falsity or with intent to be maliciously contemptuous. *In the Matter of Respondent A* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 255. **[8]**

Honesty is one of the most fundamental rules of ethics for attorneys. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[22]**

Writing checks when one knows or should know that there are not sufficient funds to cover them manifests a disregard for ethics and fundamental honesty, at least if such conduct occurs repeatedly. Writing bad checks may, by itself under some circumstances, constitute moral turpitude. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[11]**

490.01 Found

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

490.05 Not Found

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

500 Aggravation (references in parentheses are to the Standards)

510 Prior record of discipline (1.5(a); 1986 Standard 1.2(b))

Note: See topic number 802.21 for definition of prior record.

511 Found

In theMatter of Wittenberg (Review Dept 2015) *5* Cal. StateBar Ct.Rptr. 418

In theMatter of Carver (Review Dept 2014) *5* Cal. StateBar Ct.Rptr. 348

In the Matter of Tishgart (Review Dept. 20 14)*5* Cal. State Bar Ct. Rptr. 338

In the Matter ofLenard (Review Dept. 20 13)*5* Cal.State Bar Ct. Rptr. 250

In theMatterofSu/livan (ReYiewDept. 2010) *5* Cal. State Bar Ct. Rptr. 189

Where respondent's prior misconduct extended over several years and was very serious innature,the record of prior discipline constituted a significant aggravating circumstance. *In the Matter of Downey* (Review Dept. 2009)5Cal.StateBarCt.Rptr.l51 [4a,b)

Review Department applied standard 1.7(a) where respondent 's prior misconduct rested on the serious offense of willful misappropriation ,the prior misconduct occurred fouryears before the current misconduct, both matters involved deceit, respondent v as defending the charges in the prior at the time he was committing misconduct as a juror, and respondent continued to serve his actual suspension for the prior. *In the Matter of Fahy* (Review Dept 2009) *5* Cal.StateBar Ct.Rptr. 141 **[6a,b]**

In theMatter ofl lzomson (Review Dept 2006) 4 Cal. State Bar Ct Rptr. 966.

In theMatterofBrockway (Review Dept 2006) 4 Cal.StateBar Ct. Rptr. 944.

In theMatter ofWells (Review Dept. 2006) 4 Cal. State Bar Ct.Rptr.896.

In theMatter ofShalant (Review Dept. 2005) 4 Cal. StateBar Ct. Rptr. 829.

Contrary to the hearingjudge' sconclusion,the weight to be accorded to respondent's prior discipline should not be di.m.in.ished. Although the prior discipline was remote intime itwas serious innature, and respondent's prior discipline was properly be considered in circumstances where an attorney has been disbarred, reinstated, and committed further misconductln *the Matter ofTenner* (Review Dept. 2004) 4 Cal. StateBar Ct. Rptr. 688.**[1]**

The hearing judge gave little weight to respondent 's prior discipline because he found that the nature of the violations in this matter did not raise a serious concern about public protection or demonstrate that respondent had failed to undertake steps towards rehabilitation. The review department disagreed. This was the third matter that bad been brought by the State Bar as the result ofrespondent's failure to make timely restitution to his client At this point, respondent should have had a heightened awareness of his need for strict compliance with his reporting and payment obligations. The fact that his present probation violations were closely related to his past disciplinary infractions raised concerns about respondent's rehabilitation. Ordinarily, when there is a close nexus between previous misconduct and the present probation violation, a substantially greater degree of discipline is needed than would otherwise be necessary. The review department assigned significant weight in aggravation because ofrespondent 'sprior disciplinary record. *In theMatter ofLaden* (Review Dept. 2004) 4 Cal StateBar Ct. Rptr.678.**[1]**

In theMatter of Gorman (Review Dept. 2003) 4 Cal. State BarCt. Rptr. 567.

Where respondent's prior misconduct occurred between late 1980 and 1984 and his pre ent misconduct spanned the period between 1994 and 1999,the review department concluded that the prior misconduct was not too remote tobe considered asan aggravating circumstance. Inthis case,particularly because the prior misconduct was very similar to that found in the present case, respondent 's prior record of discipline was considered to be

a serious aggravating circumstance, made even more serious as the prior discipline did not serve to rehabilitate respondent and prevent the present misconductJn *theMatter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr.416.**[5]**

In theMatter ofFreydl (Review Dept. 2001)4 Cal. State Bar Ct. Rptr. 349.

Even though respondent's misconduct in present proceeding did not resemble the serious misconduct to which respondent stipulated in his prior record of discipline and even though respondent's present misconduct began well before State Bar initiated the prior disciplinary proceeding against him, review department gave respondent's prior record of discipline some greater weight in aggravation than did the hearing judge because respondent's present misconduct continued and accelerated during pendency of the prior proceeding, with the more egregious portion of the present misconduct occurring after respondent had stipulated to culpability on the charges of seriousmisconduct brought against inthe prior proceeding. *In the Matter ofDahlz* (Review Dept. 200 1) 4 Cal. State Bar Ct. Rptr. 269. **[9]**

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Stansbwy (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

This case presents serious acts of dishonesty which served to defraud two sellers of valuable real estate. Respondent 'smany ethical violations featured hann to victims and the bon est administration ofjustice. Offenses concerning the administration ofjustice have been considered as very seriousby the Supreme Court. Disbarment isnot reservedjust for attorneys with prior disciplinary records. A most significant factor isrespondent 'scomplete lackofinsight, recognition, orremorse for any ofhiswrongdoing .This factor makes disbarment appropriatedespite the fact that respondent presented some mitigating evidence. *In theMatter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70.**[5]**

In theMatter ofBouyer (Review Dept. 1998) 3Cal. State Bar Ct. Rptr. 888.

Respondent was found culpable of ten disciplinable acts ofmoral turpitude (seven acts ofmisrepresentation, one act of improperly retaining for his own benefit funds out of a medical provider's lien reduction, and one act of attempting to obtain a greater fee than that to which he was entitled by failing to disclose to his client costs he recovered), eight instances of improper solicitation of clients, and two instances of failing to properly account to his client. There were substantial aggravating factors, including a prior record of discipline, but no mitigating circumstances. The review department recommended that respondent be suspended from the practice of law for a period of five years, that execution be stayed, and that respondent be placed on probation for a period of five years on conditions including three years actual suspension and until respondent pays restitution and until he provides proof ofhis rehabilitation, fitness to practice, and learning and ability in the general law. *In theMatter of Kroff (Review* Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.**[9]**

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

In the Matter of Berg (ReviewDept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter ofMeyer (Review Dept. 1997) 3 Cal.State Bar Ct. Rptr. 697.

Respondent's extensive record of prior discipline demonstrated that probation and suspension have proven inadequate in the past to protect against future misconduct, and the record in the current proceeding did not give assurance that such a sanction would ensure that future misconduct would not occur. Accordingly, the review department concluded that disbarment was appropriate to protect the public, courts, and legal profession. *In the Matter ofRose* (Review Dept. 1997)3 Cal. State Bar Ct. Rptr. 646. **[7]**

A prior record of discipline is an aggravating factor regardless of when the discipline was imposed. Where misconduct addressed by a current disciplinary proceeding resembles misconduct addressed by a prior disciplinary proceeding and occurred after the filing of a notice to show cause inthe prior proceeding, the filing alerted the attorney to the ethically questionable nature of the misconduct. Thus, the prior disciplinary proceeding warranted significant weight in aggravation to the extent that the misconduct addressed by the current proceeding happened after the filing of a notice to show cause in the prior proceeding. *In theMatter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct.Rptr 547. [5)

In theMatter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

Aggravating circumstance of prior misconduct was magnified by fact that respondent committed the current misconduct while on probation in prior disciplinary proceeding. *In theMatter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. **[6]**

Prior record of discipline is always aggravating factor, regardless of when discipline was imposed, but aggravating force may be diminished if present misconduct occurred during same period as prior misconduct. Where respondent's present misconduct, which was similar to misconduct found in his prior discipline proceeding, was committed after notice to show cause had been filed in prior proceeding, but before State Bar Court's decision was filed, filing of formal charges in prior proceeding gave respondent notice that State Bar considered his conduct ethically questionable. Therefore, respondent's prior record was aggravating evidence. *In theMatter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[17]**

Where attorney is found culpable of intentional or dishonest withholding of funds due to client, issue on degree of discipline is whether mitigating circumstances outweigh general rule of disbarment for such offenses. Cases of misconduct involving funds improperly withheld for reasons other than dishonesty have typically resulted in varying degrees of actual suspension even when attorney had no prior discipline record. Where respondent, through gross neglect, withheld sizable amount of funds due to disabled client, had prior record of discipline for similar misconduct, and persisted in defending his collection of fees in excess of statutory limits despite adverse appellate decisions in suits against him by clients, concern for respondent's lack of insight into his misconduct and possible continued disregard for duty to clients of utmost good faith and fair dealing warranted six months actual suspension. *In theMatter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[23]**

Where respondent attempted to file required affidavit of compliance with rule *955,* California Rules of Court, within two weeks after it was due and before he was aware of initiation of rule *955* violation proceeding, and no clients were harmed, but respondent had also violated probation and had substantial prior discipline record, nine months actual suspension was appropriate discipline for respondent's wilful failure to comply with rule 955(c). *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[15]**

Only if attomey's prior and present misconduct occurred during same time period and within narrow timeframe can many years of discipline-free practice before prior misconduct be deemed mitigating circumstance. Where respondent's prior and present misconduct occurred neither during same period nor within narrow time frame, and where misconduct in subsequent matter continued while prior matter was pending before State Bar court, respondent's discipline-free practice before prior misconduct was not mitigating in subsequent proceeding. *In the Matter of Broderick (Review* Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[22]**

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

The aggravating effectofprior discipline maybe diminished if misconduct underlying prior discipline occurred contemporaneously with misconduct currently under consideration. However, where at time respondent committed current misconduct, he was either involved in disciplinary process or was actually on disciplinary probation, this indicated that respondent's prior discipline had very little impact on his behavior, and demonstrated respondent's inability to conform his conduct to ethical norms. In such circwnstances, greater showing required in reinstatement would better protect public than showing required to return to practice after suspension under standard 1.4(c)(ii). Accordingly, application of standard calling for disbarment for third imposition of discipline was appropriate. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[15]**

In theMatter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

The fact that misconduct arose from aberrant facts and circumstances has been accorded mitigating weight in appropriate cases. However, where respondent's prior misconduct had involved multiple acts overhis relatively few years of practice, and his prior and current misconduct together spanned six of his ten years inpractice, it was not appropriate to consider respondent's misconduct as aberrational. *In theMatter of Snyder* (ReviewDept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[5]**

Where respondent challenged the use of a prior disciplinary matter as evidence in aggravation because he contended the matter had been time-barred, but respondent had defaulted in the earlier proceeding and the prior discipline had been ordered by the Supreme Court over three years earlier, only the Supreme Court could grant the requested relief. *In theMatter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[19]**

In theMatter of Howard (Review Dept. 1993)2 Cal. State Bar Ct. Rptr. 445.

In the Matter of Grueneich (ReviewDept.1993) 2 Cal. State Bar Ct. Rptr. 439.

A short delay in compliance with rule 955, by itself, would not necessitate disbarment. However, where respondent also had failed to appear in the rule 955 violation proceeding, had failed to appear in two prior disciplinary proceedings, and had continued to ignore her obligations thereafter, showing a clear pattern of failure to participate in the disciplinary process and to comply with requirements of Supreme Court, disbarment was clearly appropriate. *In theMatter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[2]**

Prior discipline includes discipline imposed for violation of probation. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. StateBar Ct.Rptr. 382. **[9]**

An attorney's failure to comply with successive orders of the Supreme Court is of concern to the State Bar Courtbecause itrepeatedly burdens the resources ofthe StateBar Court and the disciplinary system. *In theMatter ofPierce* (Review Dept. 1993)2 Cal. State Bar *Ct.*Rptr. 382. [11]

In the Matter of Layton (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366.

In the Matter of Babero (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.

Maximum available discipline in probation revocation matter was appropriate where respondent's priors, which included a prior probation violation, combined with misconduct in current case, showed both a persistent problem with drugs and alcohol and a persistent problem with conforming conduct to requirements of law and court orders. Policy underlying disciplinary standard calling for disbarment after two priors, and standard calling for increasing severity of discipline in successive matters, also militated toward imposing severe discipline given respondent's extensive prior record. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[20]**

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct.Rptr. 219.

Where respondent's drunk driving convictions involved more serious misconduct than in prior reported disciplinary cases involving drunk driving, including repeated abusive conduct with law enforcement officers, and respondent had two prior disciplinary reprovals, but respondent presented favorable evidence of professional ability and character references as well as efforts toward overcoming his addiction to alcohol, a 60 day actual suspension was appropriate to serve the aims of attorney discipline and, coupled with three years of probation, to assist in convincing respondent to deal with his alcohol abuse problems seriously. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr.208. **[7]**

A literal application of standard 1.7(b) would call for disbarment of any attorney who is found culpable in a third disciplinary proceeding, unless compelling mitigating circumstances predominate. However, this standard must be applied in lightof the nature and extent of the prior record. Where respondent's prior record of two reprovals involved inattention to the needs of clients, misconduct of a different nature than the drunk driving convictions involved in respondent's third proceeding, respondent's prior disciplinary record did not warrant disbarment, but did constitute a proper aggravating factor. *In the Matter ofAnderson* (ReviewDept. 1992) 2 Cal. State Bar Ct.Rptr. 208. **[8]**

Where reproval would ordinarily have been appropriate for misconduct involving minor rule violations, but respondent had a prior public reproval and appeared to need to reorganize law practice, appropriate discipline was six months stayed suspension with probation conditions including trust accounting and completion of a law office management class.*In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[26]**

In the Matterof Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr.108.

The passage of time since respondent's misconduct and the failure of the State Bar to consolidate respondent's two disciplinary matters did not render the disbarment recommendation in the second matter unfair. Consolidation of disciplinary matters, while preferable when reasonably possible and not prejudicial, is not mandatory, and independent consideration of separate matters involving the same attorney is not uncommon. Where an investigation by state law enforcement and the State Bar of respondent's misconduct in the second matter was still ongoing after the initiation and disposition of respondent's earlier disciplinary matter, consolidation would not have been possible. Further, it could not be presumed that if the matters had been consolidated, the recommended discipline would have been suspension rather than disbarment, given the far greater seriousness of the misconduct in the second matter. Finally, respondent had shown no prejudice from the delay, and had benefited from being able to practice almost continually in the interim. *In the Matter of Shinn* (Review Dept 1992) 2 Cal. State Bar Ct. Rptr. 96. **[8]**

Attorneys placed on disciplinary suspension must be careful not to hold themselves out as being able to practice when they are not and must not mislead employers regarding their prior status. An attorney's statements in a resume or job interview should be as trustworthy as that professional's representation to a court or client. Where respondent did not seem to understand the seriousness of his ethical duties in this regard, and had a prior record of discipline, a period of actual suspension was necessary for the protection of the public. *In the Matter of Wyrick* (ReviewDept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[13]**

Where respondent repeatedly misused his trust account as a personal account, twice failed to return unearned advanced costs promptly on request, and failed to perform services competently in one matter, the gravest aspect of the misconduct was that relating to respondent's violation of the rule governing trust accounts and client funds, and this misconduct warranted at least a three-month actual suspension. Where such misconduct was aggravated by prior discipline for neglect offour clientmatters, and aggravating circumstances predominated over mitigating circumstances, it was appropriate to recommend a three year stayed suspension, six months actual suspension, and five years of monitored probation for the protection of the public. *In the Matter of Koehler (Review* Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[10]**

Where respondent had received a reproval for four separate instances of misconduct which had occurred seven years prior to the instant misconduct, the reproval was not too remote in time and was properly considered an aggravating circumstance. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[12]**

Even though criminal conduct underlying attorney's prior disciplinary suspension occurred partly at same time as professional misconduct involved in subsequent disciplinary matter, prior suspension was properly considered in aggravation in subsequent matter. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[25]**

In determining appropriate discipline for probation violations, respondent's original disciplinary matter, in which probation conditions were imposed, constituted a prior disciplinary record and was required to be treated as an aggravating circumstance. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[19]**

Although non-final prior discipline recommendation for probation violation, still pending before Supreme Court, is record of prior discipline under rule 571, Trans. Rules Proc. of State Bar, review department does not apply rigidly, or without regard to facts of prior matters, disciplinary standard indicating disbarment as appropriate sanction for third disciplinary proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[22]**

Where, at the time of the hearing, respondent's prior discipline record consisted only of another hearing department decision, and the examiner moved to augment the record on review with the review department minutes in the prior matter, the motion was construed by the review department as a motion to take judicial notice and was granted. Thereafter, the review department took judicial notice on its own motion of the Supreme Court's order in the prior matter. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[11]**

An attorney's prior private reproval which originated only four years before his current misconduct was not so remote in time to the current proceeding that the imposition of greater discipline in the present case based on the prior discipline would be manifestly unjust, even though the prior private reproval involved misconduct which did not bear any substantive relationship to the subsequent misconduct. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[17]**

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

The Supreme Court has long considered an attorney's prior record of discipline to be an aggravating circumstance. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[5]**

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

513 Found but discounted or not relied on

513.10 Contemporaneous with current misconduct

Aggravating weight of respondent's prior discipline greatly diminished since the misconduct in the current proceeding occurred before the Notice of Disciplinary Charges was filed and the suspension ordered in the prior matter. Respondent did not have an opportunity to appreciate or heed the import of the earlier discipline. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263 **[7]**

In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

The aggravating weight of prior discipline was diminished where the misconduct underlying the prior discipline occurred during the same time period as did the misconduct underlying the present matter. Under such circumstances, the totality of the charges brought in both cases was considered in order to determine the appropriate discipline. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[6]**

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.

Prior discipline is always a proper factor in aggravation. However, because part of the rationale for considering it is that it is indicative of a recidivist attorney's inability to conform to ethical norms, the aggravating force of prior discipline is diminished if the misconduct occurred during the same period as the misconduct in the prior matter. In this circumstance, it is appropriate to consider what the discipline would have been if all the charged misconduct during the time period had been brought as one case. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[12]**

Whenever discipline is imposed, consideration is properly given to the presence of a prior disciplinary record, even where the facts giving rise to the prior discipline occurred during the same time period as the present misconduct. However, the aggravating force of the prior discipline is diminished when it occurred during the same time period as the present misconduct and thus did not provide the attorney with an opportunity to heed the import of that discipline. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[19]**

Although respondent's prior misconduct was similar to the misconduct in a second matter, the aggravating force of respondent's prior disciplinary record was somewhat diluted where the misconduct in the second matter occurred before the notice to show cause in the prior matter was served, because it did not reflect a failure on respondent's part to learn from the prior misconduct. Nevertheless, the prior was a factor in aggravation, and it was appropriate for the discipline in the second matter to be greater than in the previous matter. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[24]**

Aggravating force of prior disciplinary record was diminished by fact that it involved misconduct occurring at same time as that in subsequent matter, and therefore did not constitute prior warning to respondent of the wrongful nature and possible disciplinary consequences of respondent's conduct. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[11]**

In order to properly fulfill the purposes of lawyer discipline, the review department must examine the nature and chronology of a respondent's record of discipline. Mere fact that attorney has three impositions of discipline, without further analysis, may not justify disbarment. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[7]**

Where misconduct in current proceeding occurred prior to imposition of discipline in prior proceeding, record of prior discipline does not carry with it as full a need for severity as if misconduct had occurred after respondent had been disciplined and had failed to heed the import of that discipline. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[8]**

513.20 Remote in time and/or minor in nature

Where last acts of misconduct in prior discipline matter occurred approximately 17 years before first acts of misconduct in second matter, and prior misconduct itself was minimal in nature and involved misconduct for which respondent was found not culpable in second matter, prior misconduct did not merit significant weight in aggravation, and it would be manifestly unjust to impose greater discipline in second matter than in prior proceeding solely because of prior discipline. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[12]**

A private reproval more than 20 years earlier, for improperly stopping payment on a $500 check to another law firm, was too remote in time to merit significant weight on the issue of degree of discipline. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[7]**

Where respondent was convicted of misdemeanor sex offense not involving moral turpitude and not related to practice of law, respondent's record of two prior private reprovals made it appropriate to impose public reproval rather than private reproval that would otherwise have been warranted, but due to lack of common thread among matters and their collective lack of severity, it would have been manifestly unjust to recommend suspension. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[5]**

513.90 Other reason

Attorney's two prior records of discipline from 2007 and 2011 assigned limited aggravating weight given the nature and extent of the prior misconduct, the minimal discipline imposed, the fact the attorney committed some of the misconduct in his second disciplinary case before his wrongdoing in the first disciplinary case, and because the misconduct in the second disciplinary case occurred before the attorney was disciplined in the first disciplinary case. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[5]**

Attorney discipline is an available sanction for violation of rule 11 of Federal Rules of Civil Procedure. Where respondent testified that he had been disciplined by federal court as result of rule 11 matter, and federal court had suspended respondent from practice before it as part of relief granted in ruling on rule 11 motion, federal court's action constituted discipline. However, State Bar must prove aggravating circumstances by clear and convincing evidence. Where record before review department did not reveal factual underpinnings of federal court discipline, and review department was therefore unable to examine nature and chronology of respondent's prior discipline to determine impact it should have on current discipline recommendation, review department gave no weight to respondent's federal discipline as factor in aggravation. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[11]**

Where respondent had been disciplined in another jurisdiction, his record of practice prior to his first California disciplinary proceeding was not "unblemished." However, his over 30 years of practice prior to such out-of-state discipline constituted an important mitigating circumstance. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[14]**

Where last acts of misconduct in prior discipline matter occurred approximately 17 years before first acts of misconduct in second matter, and prior misconduct itself was minimal in nature and involved misconduct for which respondent was found not culpable in second matter, prior misconduct did not merit significant weight in aggravation, and it would be manifestly unjust to impose greater discipline in second matter than in prior proceeding solely because of prior discipline. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[12]**

Respondent's record of prior discipline did not warrant great weight in involuntary inactive enrollment proceeding, where respondent's first prior disciplinary matter was unrelated to present conduct, and State Bar had stipulated in second prior matter that respondent's misconduct was only worthy of a short suspension not requiring client notification. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[6]**

Where respondent's two prior discipline cases occurred during the same four-month period when respondent's practice disintegrated, the two matters were considered as essentially a single matter in determining appropriate discipline. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[1]**

Where it was unclear whether or not the former review department had considered respondent's delayed restitution in its assessment of the appropriate discipline in a prior probation revocation matter still pending before the Supreme Court, no significant aggravating weight was accorded that prior probation matter as prior discipline. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[23]**

The Supreme Court has expressed concern with assuring that the record in disciplinary proceedings reflects the correct evidence and finding of prior discipline or lack thereof. Accordingly, where only one of respondent's two prior disciplinary proceedings was made a part of the record and weighed by the hearing judge, it was necessary for the review department to remand the matter to the hearing judge to take evidence on the other prior discipline and consider its effect on the recommended discipline. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[5]**

Disbarment based on presence of multiple prior disciplinary matters is appropriate upon demonstration of common thread among disciplinary matters, pattern of misconduct, or increasing severity, but was not appropriate in matter where those factors were not present and compelling mitigating circumstances clearly predominated. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[14]**

515 Declined to find

While a suspension for failure to pass the Professional Responsibility Examination may be considered in determining appropriate discipline, it is not prior discipline under the Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[2]**

Where two separate disciplinary proceedings were consolidated on review, the first proceeding did not constitute prior discipline for the purpose of enhanced discipline in the consolidated matter. Nonetheless, where the misconduct involved in the second proceeding had continued during the period that the first proceeding was pending in hearing department, the fact that respondent engaged in additional misconduct while he was aware that his conduct was being scrutinized in a pending disciplinary proceeding was significant. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[18]**

Suspension resulting from respondent's failure to pass professional responsibility examination as ordered by Supreme Court did not constitute prior discipline, but was relevant to determination of appropriate discipline for failure to comply with rule 955 as required by same Supreme Court order. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[12]**

An attorney's administrative suspension for failure to pay bar dues does not constitute prior discipline for purposes of weighing the appropriate discipline in a subsequent disciplinary case, in that the prior suspension is administrative in nature and does not result from a finding of misconduct. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[36]**

The payment of State Bar membership fees is only a prerequisite to practicing law. No statute or rule of professional conduct requires payment of the fees unless the attorney intends to practice law in this state. Failure to pay fees is not improper in and of itself. The impropriety occurs when the attorney continues to practice law after suspension. Accordingly, an attorney's previous suspension for failure to pay membership fees is not a prior disciplinary record and is not an aggravating circumstance. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[24]**

An attorney's suspension from the practice of law for nonpayment of State Bar fees is not a disciplinary suspension and is not considered a prior disciplinary record. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[12]**

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

Neither a respondent's section 6007(c) inactive enrollment itself nor the unproven charges underlying it should be relied upon as aggravation in a subsequent disciplinary proceeding. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[24]**

520 Multiple acts of misconduct (1.5(b); 1986 Standard 1.2(b)(ii))

Where respondent was culpable of 24 counts of misconduct in four client matters over four-year period, respondent committed multiple acts of misconduct, but was not culpable of pattern of misconduct, as his actions did not amount to serious misconduct over prolonged period of time. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 **[6]**

521 Found

In the Matter of Wittenberg (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418

In the Matter of Guillory (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402.

Filing of 82 fraudulent bankruptcy petitions within period of just over three years demonstrated both multiple acts of misconduct and a pattern of misconduct, which were a single aggravating factor under former standard 1.2(b)(ii), but are now two separate aggravating factors under standards 1.5(b) and 1.5(c). *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. . **[5 a,b]**

In the Matter of Wenzel (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380

In the Matter of Kinney (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360.

In the Matter of Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

Multiple acts of misconduct as aggravation are not limited to the counts pleaded. Respondent's 65 improper CTA withdrawals were multiple acts of misconduct that constitute significant aggravation. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273 **[2]**

In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160

In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

In the Matter of Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80

In the Matter of Wolff (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1.

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

Where respondents' misconduct was comprised of multiple acts committed in concert with each other over a three–month period and where respondents chose to expressly or impliedly create a false picture of the true state of affairs and ignore contrary facts and legal position and where respondents had numerous opportunities to correct their misleading statements but chose not to do so, respondents' repeated acts of misconduct demonstrated a pattern of disrespect for professional norms and was considered an aggravating factor. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[9]**

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

The review department agreed with the hearing judge that respondents multiple acts of wrongdoing were an aggravating circumstance. The review department also viewed respondent's continuous disregard of her trust account duties over the approximately one and one-half years as demonstrating a pattern of misconduct. However, for the purposes of determining aggravation the result is the same whether respondent's conduct is characterized as multiple acts of wrongdoing or as a pattern of misconduct. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627. **[7]**

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403.

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

Where respondent seriously abused the judicial system for a dozen years despite heavy sanctions, showed no remorse, and refused to mend his ways, no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession. Because of respondent's total lack of repentance, a lengthy suspension coupled with probation terms was inappropriate; there was a great danger that respondent would fail to comply with any probation terms imposed. Respondent's repeated acts of moral turpitude demonstrated that he was no longer worthy of membership in the bar. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[14]**

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

Where respondent was culpable of one instance each of collection of an illegal fee and intentional failure to perform competently, and of multiple instances each of violating his duty to uphold the law; reckless failure to perform competently; withdrawing from employment without protecting clients from foreseeable prejudice; and failure to pay trust funds on demand, and where most severe applicable standard proposed three-month minimum actual suspension for non-misappropriation trust fund offenses, and where respondent's mitigating evidence was

not sufficient to justify deviating from applicable standard given respondent's record of numerous violations over extended time period, review department increased hearing judge's recommended actual suspension to 90 days, as condition of three-year probation, with one-year stayed suspension as justified by case law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[29]**

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

Where an attorney has previously been disciplined for misappropriation, the attorney is eligible for disbarment if found culpable of misappropriation in a second matter. Where respondent's total misconduct in two separate disciplinary cases involved ten client matters, spanned all but three years of his practice, and harmed or jeopardized numerous clients, and respondent had an ongoing substance abuse problem and had not complied with his probation in the first matter, his aggregate misconduct clearly required imposition of the harshest discipline, and there was no basis for a recommendation of suspension rather than disbarment. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[13]**

The fact that misconduct arose from aberrant facts and circumstances has been accorded mitigating weight in appropriate cases. However, where respondent's prior misconduct had involved multiple acts over his relatively few years of practice, and his prior and current misconduct together spanned six of his ten years in practice, it was not appropriate to consider respondent's misconduct as aberrational. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[5]**

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

Where respondent's misconduct involved eight instances of abandonment or failure to provide services, three instances of failure to return unearned fees, lack of communication with three clients, failure to pay court-ordered sanctions in two cases, misappropriation of a small amount of advanced costs, improper securing of a large loan from a client, and failure to cooperate with the State Bar investigation, and respondent did not fully participate in the disciplinary proceedings, then despite respondent's lengthy unblemished record and public sector service, the appropriate discipline included a lengthy period of actual suspension and probation, and a requirement that respondent prove rehabilitation, fitness to practice, and learning and ability in the law prior to returning to active practice. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[19]**

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

Where an attorney's prior discipline involved culpability of moral turpitude for attempted receipt of stolen property, and the attorney's subsequent misconduct involved moral turpitude in misleading applications for employment, there was no pattern or common thread linking the former misconduct with the later case. However, the attorney's multiple breaches of ethical duties demonstrated that the attorney lacked a true understanding of professional responsibilities. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[11]**

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

While two matters of misconduct might not be considered multiple acts, the addition of a finding of culpability of another count of misconduct made a finding of multiple acts appropriate; however, the three instances of misconduct did not amount to a pattern or practice even when coupled with the additional misconduct involved in respondent's prior disciplinary matter. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[26]**

Attorney's deceit of client's agent on 11 separate occasions over a considerable period was an aggravating factor, and militated strongly against considering attorney's misconduct as one-time or aberrant. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[6]**

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

Attorney's abandonment of two clients comprised multiple acts of wrongdoing but did not constitute a pattern of misconduct. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[14]**

Where respondent filed three annual federal tax returns containing false information as to charitable contributions, respondent's misconduct involved multiple acts of misconduct separated by time sufficient to allow the member to consider his actions, and therefore constituted a factor in aggravation. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[3]**

Although an attorney committed multiple acts of misconduct, these acts did not rise to the level of a "pattern of misconduct," a characterization reserved only for the most serious instances of misconduct over a prolonged period of time. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[10]**

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

Abandonment of three clients did not constitute a pattern of abandonment, but did constitute multiple acts of severe disregard of clients' interests. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[3]**

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

523 Found but discounted or not relied on

In the Matter of Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348

In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

Fact that, in addition to unintentionally misappropriating client's funds, attorney had committed act of moral turpitude by concealing personal assets in trust account to avoid tax levy might, but would not necessarily, indicate greater discipline to be in order, based on Supreme Court precedent. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[19]**

Existence of multiple acts of theft added to overall gravity of respondent's misconduct, but did not preclude consideration of mitigation to reach a result short of disbarment. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[14]**

525 Declined to find

In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263

Where misconduct involved only two counts, and both counts arose from a single transaction of modifying a contingent fee agreement with a client, review department did not find aggravation on account of multiple acts of misconduct. *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829. **[3]**

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

Where respondent misappropriated client trust funds and failed to report court-ordered sanctions, aggravation on account of multiple acts of misconduct was not present, but respondent's misconduct was aggravated by failure to pay sanctions; by failure to make restitution; and, most grievously, by his abuse of his vulnerable client's trust and his misrepresentation of his actions to client and opposing counsel. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[7]**

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

530 Pattern of misconduct (1.5(c); 1986 Standard 1.2(b)(ii))

Filing of 82 fraudulent bankruptcy petitions within period of just over three years demonstrated both multiple acts of misconduct and a pattern of misconduct, which were a single aggravating factor under former standard 1.2(b)(ii), but are now two separate aggravating factors under standards 1.5(b) and 1.5(c). *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[5 a,b]**

Respondent demonstrated a pattern of misconduct by repeatedly engaging in vexatious litigation for more than six years in one set of related cases and committing an ethical violation in another set of litigations during the same period, because he committed serious instances of repeated misconduct over a prolonged period of time. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[6]**

Where respondent was culpable of 24 counts of misconduct in four client matters over four-year period, respondent committed multiple acts of misconduct, but was not culpable of pattern of misconduct, as his actions did not amount to serious misconduct over prolonged period of time. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 **[6]**

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

531 Found

Twelve acts of UPL across nine different states constitute a pattern of misconduct. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250 **[5]**

Attorney's misconduct evidenced a 10-year pattern of deception for personal gain or to cover up mismanagement of client cases. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[8]**

The review department agreed with the hearing judge that respondents multiple acts of wrongdoing were an aggravating circumstance. The review department also viewed respondent's continuous disregard of her trust account duties over the approximately one and one-half years as demonstrating a pattern of misconduct. However, for the purposes of determining aggravation the result is the same whether respondent's conduct is characterized as multiple acts of wrongdoing or as a pattern of misconduct. *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627. **[7]**

In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

Respondent's regular use of his client trust accounts to conduct his personal business affairs over a period approaching three years, combined with his lack of attention to the requirements of maintaining a trust account and his issuance of 28 NSF checks from that account, establishes a pattern of misconduct and is an aggravating circumstances under standard 1.2(b)(ii). *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[8]**

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

Respondent engaged in a pattern of misconduct where he sent a client multiple fraudulent billings, representing numerous monthly bills, covering a continuous period of in excess of 10 months.

A pattern of misconduct may be found even though the acts and omissions encompass a wide range of improper behavior. Respondent's numerous acts of neglect extended over a long period of time, 10 years, indicating a continuous course of professional misconduct. It continued even after respondent attempted to address his case management problems by hiring a management consultant and after the State Bar contacted him about client complaints. Even though none of this neglect entailed dishonesty or false statement, the review department concluded that respondent habitually disregarded his client's interests and failed to communicate with them and, therefore, committed acts of moral turpitude. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[10]**

Even though none of respondent's individual acts of misconduct involved dishonesty, concealment, or mishandling of client funds and even though respondent had no prior record of discipline over a lengthy practice, respondent's disbarment was warranted as consistent with past case law and the standards for attorney discipline for respondent's panoply of protracted failure to communicate with clients, incompetent practice, and failure to supervise subordinate staff affecting many different clients over a 10-year period. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[11]**

Respondent engaged in a pattern of misconduct where he recklessly provided incompetent legal services to clients in eight matters during a period of more than seven years, where one of these clients lost a $25,000 settlement, where a dispute over $70,000 in payments which he had received for another of the clients remained unresolved for at least six years, and where three more of the clients lost their causes of action. The period of time over which the misconduct accrued, combined with the frequency of the occurrences lead the review department to conclude that respondent's failure to competently perform had become habitual and thus involved moral turpitude. An attorney's habitual disregard of clients' interests constitutes moral turpitude, even if such disregard results only from gross negligence rather than dishonesty. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[6 a-d]**

In the Matter of Ike (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483.

Acts of moral turpitude are those done contrary to honesty and good morals and are a cause for discipline whether or not they are committed in the practice of law. Even if individual acts do not involve moral turpitude, a pattern of misconduct may amount to moral turpitude. Where respondent repeatedly misstated facts and failed to reveal prior adverse rulings to trial and appellate courts, failed to follow court rules, and flouted the authority of the courts, such serious, habitual abuse of the judicial system constituted moral turpitude. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[5]**

Recent Supreme Court decisions reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule 955. One of the primary reasons for the adoption of the Standards for Attorney Sanctions for Professional Misconduct was to achieve greater consistency in disciplinary sanctions for similar offenses. Any reason for deviating from the standards or established case law must be clearly stated. Accordingly, where respondent participated in the rule 955 proceeding, but did not present a convincing case of mitigation, diligence, and rectification of misconduct, and instead demonstrated a pattern of inattention to important duties, an inability to conform to professional norms, and a lack of concern for potential harm to his clients and the public, the public interest and the administration of justice would be served by respondent's disbarment. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[15]**

Even though an attorney's individual acts did not involve moral turpitude, the attorney's pattern of misconduct amounted to moral turpitude; habitual disregard of client interests, even where grossly negligent or careless rather than wilful or dishonest, constitutes moral turpitude and justifies disbarment. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[1]**

Where respondent had engaged in a pattern of misconduct involving 14 matters spanning six of his nine years of practice, and had misappropriated over $17,000 of client funds and caused the extinction of legal claims for eight clients, and where respondent had engaged in further misconduct after he had recognized his case management difficulties, and had barely begun his rehabilitation, the fact that the parties did not stipulate that respondent engaged in acts of moral turpitude in any individual matter did not necessarily mean that his misconduct warranted less discipline than in comparable cases where disbarment was ordered. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[7]**

Finding a pattern in aggravation is not limited to consideration of the counts pleaded. Where respondent stipulated to misconduct involving eight clients over six years, that number of cases only, in a high volume practice, might not have constituted a pattern. However, where respondent also testified to his prolonged, systematic failure to supervise his staff, his staff's inability to handle the caseload, and numerous other problems besides the ones listed in the notice to show cause, he had no grounds to challenge the finding in aggravation based thereon that a pattern of neglect existed. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[6]**

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

533 Found but discounted or not relied on

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

535 Declined to find

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

535.10 Insufficient number of acts

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

While two matters of misconduct might not be considered multiple acts, the addition of a finding of culpability of another count of misconduct made a finding of multiple acts appropriate; however, the three instances of misconduct did not amount to a pattern or practice even when coupled with the additional misconduct involved in respondent's prior disciplinary matter. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[26]**

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

Attorney's abandonment of two clients comprised multiple acts of wrongdoing but did not constitute a pattern of misconduct. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[14]**

Although an attorney committed multiple acts of misconduct, these acts did not rise to the level of a "pattern of misconduct," a characterization reserved only for the most serious instances of misconduct over a prolonged period of time. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[10]**

Abandonment of three clients did not constitute a pattern of abandonment, but did constitute multiple acts of severe disregard of clients' interests. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[3]**

535.20 Dissimilarity of acts

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

Where vast majority of respondent's prior misconduct involved inattention to needs of clients, and current misconduct involved inattention to disciplinary orders, there was no common thread demonstrating a pattern of misconduct. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[10]**

Where an attorney's prior discipline involved culpability of moral turpitude for attempted receipt of stolen property, and the attorney's subsequent misconduct involved moral turpitude in misleading applications for employment, there was no pattern or common thread linking the former misconduct with the later case. However, the attorney's multiple breaches of ethical duties demonstrated that the attorney lacked a true understanding of professional responsibilities. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[11]**

535.90 Other reason

Because respondent's misconduct affected over 300 clients, substantial weight was accorded to the fact that respondent's misconduct involved multiple acts of wrongdoing, but since respondent's misconduct was confined to one month, respondent's misconduct did not constitute a habitual pattern. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[11]**

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

In considering whether respondent's misconduct constituted a pattern, hearing judge should not have considered charges which had been dismissed or of which respondent was not culpable. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[9]**

Habitual disregard of client interests is ground for disbarment. However, only the most serious instances of repeated misconduct over a prolonged period of time can be characterized as demonstrating a pattern of wrongdoing. Thus, the number of clients involved is but one factor to be considered. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[13]**

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

540 Intentional misconduct, bad faith, dishonesty, misrepresentation, concealment (1.5 (d), (e), (f); interim Standard 1.5(d); 1986 Standard 1.2(b)(iii))

Where respondent made unsupported claims that his clients were mentally ill and senile, respondent's disparaging remarks were made in bad faith and were appropriately considered an aggravating factor. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[9]**

541 Found

Where respondent repeatedly misrepresented facts underlying his untimely response to notice of disciplinary charges and lack of notice of disciplinary proceeding, and asserted that misrepresentations were merely "technically inaccurate," respondent's inability to understand high degree of honesty expected of attorneys constituted significant factor in aggravation. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348 **[6]**

Where respondent made misleading statements in connection with efforts to set aside default in disciplinary proceeding, hearing judge's finding in aggravation that respondent acted with dishonesty was not improper finding of uncharged misconduct, but proper finding that dishonesty surrounded respondent's underlying misconduct. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348 **[11]**

Respondent's representations involved bad faith and dishonesty where he falsely implied he could provide legal representation in states where he was not licensed, advised clients to cease contact with their creditors because he was representing their interests but provided no services beyond sending cease and desist letters, terminated representation without helping clients find local counsel as promised, and included debt settlements in scope of services agreements when he had no specific knowledge of debt collection laws in states where the clients resided. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250 **[6]**

Where respondent failed to demonstrate recognition of his mistake in filing a false verification by promptly taking steps to rectify it and instead twice concealed it through legal semantics, respondent's misconduct was followed by dishonesty and concealment. *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151 **[5]**

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788.

In the Matter of Sullivan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

In the Matter of Ike (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483.

Where respondent misrepresented facts regarding her interim suspension to superior court; deliberately sought to mislead State Bar Court Review Department regarding facts supporting motion for modification of interim suspension order; and intentionally tried to deceive State Bar Court hearing judge regarding correctness of

transcript offered as evidence by State Bar, respondent's acts of dishonesty to courts constituted aggravating circumstances surrounding her failure to comply with rule 955 of the California Rules of Court in connection with interim suspension. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[7]**

Where respondent misappropriated client trust funds and failed to report court-ordered sanctions, aggravation on account of multiple acts of misconduct was not present, but respondent's misconduct was aggravated by failure to pay sanctions; by failure to make restitution; and, most grievously, by his abuse of his vulnerable client's trust and his misrepresentation of his actions to client and opposing counsel. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[7]**

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

Once a trust account balance has fallen below the appropriate amount, an inference of misappropriation may be drawn, and the burden shifts to the attorney to show that misappropriation did not occur. Where there were numerous instances over several years in which funds were depleted or nearly depleted from respondent's trust account; respondent delayed in making repayment until the client complained to the State Bar or was sued, and respondent's explanations lacked credibility, the evidence supported the conclusion that respondent's repeated acts of misappropriation were due to dishonesty rather than negligence. The distinction between negligent and dishonest misappropriation can be very significant in determining appropriate discipline. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[11]**

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

Where respondent made, and urged his clients to make, misleading statements to the opposing party in connection with a settlement, wrongfully demanded the return of a partial settlement payment from a client who was entitled to the funds, and delayed sending the same client other partial settlement payments to which the client was entitled, this conduct constituted bad faith and was an aggravating factor. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[14]**

Even if respondent's demand that client return settlement check demonstrated lack of candor or cooperation with client, review department would not consider it as separate aggravating circumstance where it had already been found to be a factor establishing bad faith, a different aggravating circumstance. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[15]**

Where respondent failed to make restitution efforts until after disciplinary actions had been instituted; asserted that it was the State Bar's duty to contact her clients when she abandoned her practice; and had committed misconduct involving acts of deceit and bad faith, respondent's conduct evidenced a lack of understanding of her duties and insight into her misconduct. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[39]**

Attorney's deceit of client's agent on 11 separate occasions over a considerable period was an aggravating factor, and militated strongly against considering attorney's misconduct as one-time or aberrant. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[6]**

Suspension rather than disbarment might be appropriate for isolated misappropriation that is unlikely to be repeated, but was not appropriate where misappropriation was accompanied by lengthy practice of deceit on client's agent and lack of forthrightness during State Bar investigation. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[11]**

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

In the Matter of Katz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

In a matter in which respondent prematurely disbursed entrusted funds to repay client for expenses later determined to have been properly reimbursable, and also withdrew funds for attorney's fees but later replaced those funds, the gravamen of the case, for the purpose of assessing the appropriate discipline, was the prolonged deceit perpetuated by respondent on opposing counsel and the courts regarding the unauthorized disbursements.

Respondent's extended practice of deceit on courts and counsel made respondent's case far more serious as to discipline than the trust violations. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[10]**

Attorneys are expected to be forceful advocates for clients' legitimate causes, but role played by attorneys in honest administration of justice is critical. Attorneys, by adherence to their high fiduciary duties and the truth, can sharply reduce or eliminate clashes and ease the way to dispute settlement. Where parties to marital dissolution matter agreed to allow husband's counsel to hold community funds in trust pending resolution of dispute regarding property settlement, relying on counsel's duty as an attorney to honor the trust nature of the money, attorney's misconduct in improperly disbursing funds and then misrepresenting to wife's counsel and courts that funds were still held in trust account was especially regrettable. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[19]**

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

Where respondent in criminal conviction matter had initially misrepresented his occupation in the course of his arrest, it was appropriate to impose requirement to take and pass professional responsibility examination as condition of public reproval. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[6]**

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

Attorney's repeated, protracted deceit of clients, which had effect of forestalling them from discovering true status of their matters, was perhaps even more serious than harm caused by attorney's inattention to client duties. An attorney's practice of deceit is inimical to the high ethical standards of honesty and integrity required of members of the legal profession and to the promotion of confidence in the trustworthiness of members of the profession. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[4]**

543 Found but discounted or not relied on

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

543.10 Duplicative of section 6106 charge

Where State Bar Court, in finding that respondent's misdemeanor crimes involved moral turpitude, had already considered respondent's bad faith in making false statements to arresting officers and making improper use of his position as a prosecutor, as well as his harm to the administration of justice in violating the law and his criminal probation, it would be improper to consider those facts in aggravation. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[4]**

In the Matter of Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80

It was not appropriate to use same conduct which constituted violation of statute regarding acts of moral turpitude as basis for finding of bad faith in aggravation of same charge. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[10]**

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

Respondent's having willfully misled a court during trial and failed to cooperate with the State Bar's investigation of his misconduct were not properly considered as aggravating factors because they were part of the basis for finding respondent culpable of substantive violations. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[10]**

Where hearing judge's finding of aggravation for conduct surrounded by bad faith, dishonesty and concealment reflected same conduct that review department relied on as basis for finding respondent culpable of

acts of moral turpitude, finding in aggravation was deleted as duplicative. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[12]**

Respondent's false representation to his client that he was a partner in a law firm was not appropriately considered as aggravating factor because it was already the basis for finding respondent culpable of dishonesty. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[14]**

Where an attorney was charged with, and found culpable of, embezzling client funds, and this conduct was found to constitute moral turpitude, it was not appropriate to consider such conduct also as an aggravating factor based on dishonesty. However, it was appropriate to consider the attorney's subsequent conduct in writing bad checks as reimbursement for the embezzled funds as an aggravating factor, where the evidence showed that the attorney knew or should have known that one of the checks was drawn on insufficient funds. The weight of such aggravation was not great, however, since the bad check was closely tied to the underlying misconduct and was repaid within a few months. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[10]**

543.90 Other reason

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166.

Where respondent's criminal conduct involved concealment, which was considered as a factor establishing respondent's culpability for acts of moral turpitude, it was duplicative to consider such concealment an aggravating factor. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[4]**

Where respondent was culpable of failing to set aside $942 of his legal fee in a trust account pending resolution of a dispute with his client; aggravating factor of bad faith arose from respondent's intent to serve his clients rather than from any venal purpose; aggravating factors were outweighed by mitigating factors including long period of unblemished practice since misconduct, indicating unlikelihood of further misconduct; and prior similar cases indicated that it would be appropriate to depart from the 90-day minimum actual suspension for trust account violations, appropriate discipline was private reproval conditioned on passage of professional responsibility examination. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[22]**

Severe emotional problems which can be related to the misconduct at issue can be considered to have a mitigating weight. Respondent's misrepresentations to his clients, made two days after the funeral of his murdered son, while not excusable, were tempered in their otherwise aggravating effect by respondent's emotional stress, and the hearing judge should have given such stress more weight in mitigation. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[13]**

Where an attorney was charged with, and found culpable of, embezzling client funds, and this conduct was found to constitute moral turpitude, it was not appropriate to consider such conduct also as an aggravating factor based on dishonesty. However, it was appropriate to consider the attorney's subsequent conduct in writing bad checks as reimbursement for the embezzled funds as an aggravating factor, where the evidence showed that the attorney knew or should have known that one of the checks was drawn on insufficient funds. The weight of such aggravation was not great, however, since the bad check was closely tied to the underlying misconduct and was repaid within a few months. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[10]**

545 Declined to find

Where State Bar's evidence that respondent lied to law enforcement included inconsistencies and hearsay statements, evidence did not clearly and convincingly establish aggravating factor of dishonesty. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283. **[6]**

Where respondent misappropriated entrusted funds and thereafter structured transactions to create the false appearance that he had maintained the funds in the form of cashier's checks from the time he misappropriated them until they were deposited into a second trust account, respondent's attempt to deceive the State Bar was more appropriately viewed as an uncharged violation of section 6106 rather than misconduct surrounded by bad faith, dishonesty, concealment and overreaching. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[10]**

In the Matter of Wolff (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1.

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

Once violation of ethical duties is found, hearing judge should not disregard culpability finding, but must examine surrounding circumstances and may consider either good or bad faith of respondent in mitigation or aggravation. Where respondent was found culpable of wilful failure to return illegal fees on demand, such culpability should have been considered in making discipline recommendation despite respondent's good faith belief in entitlement to funds, which was properly considered as mitigating factor. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[13]**

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Pierce (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382.

While respondent's motive in appealing superior court's reduction of his fees as attorney and executor of estate might have been suspect, where there was no clear and convincing evidence that such appeal was in bad faith or was otherwise improper, review department declined to consider respondent's appeal as an aggravating factor in light of the important policies favoring unfettered access to the courts. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[15]**

Where aggravating factor of bad faith found by hearing judge rested entirely on inadmissible hearsay evidence, review department declined to adopt such finding. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[10]**

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

The State Bar must prove aggravating factors as well as culpability by clear and convincing evidence to a reasonable certainty. Accordingly, finding in aggravation of bad faith could not be predicated on selected portions of complaining witness's unreliable correspondence and inconsistent testimony. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[20]**

Misappropriation can be committed in different degrees of culpability, deserving of different discipline. Even where the most compelling mitigating circumstances do not clearly predominate, extenuating circumstances relating to the facts of the misappropriation may render disbarment inappropriate. An attorney who acts deliberately and with deceit should receive more severe discipline than an attorney who acts negligently and without deception. Disbarment would rarely, if ever, be appropriate for an attorney whose only misconduct was a single act of misappropriation unaccompanied by deceit or other aggravating factors. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[12]**

Under the Standards for Attorney Sanctions for Professional Misconduct, greater discipline may be imposed for a violation of an attorney's duty to render appropriate accounts than might otherwise be appropriate if the attorney's misconduct was surrounded by bad faith, dishonesty, concealment, or overreaching, as well as for other violations of the State Bar Act or Rules of Professional Conduct or refusal or inability to account for improper conduct toward trust funds. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[21]**

An attorney's trust account violation, which consisted of unilaterally determining his fee and withdrawing trust funds to satisfy the fee, did not amount to an act of moral turpitude, because there was no evidence the attorney acted dishonestly in his payment to himself of a reduced fee taken in the good faith belief of a claim of right. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[24]**

Under applicable provisions of Commercial Code, handwritten notation on attorney's check stating that it was issued "subject to verbal confirmation" destroys its negotiability and prevented attorney from being criminally liable for issuance of check drawn on insufficient funds. Dishonor of such check due to insufficient funds was not

an aggravating factor, because check was issued in non-negotiable form and there was no clear evidence that payee was misled regarding nature of check. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[1]**

Where referee made no finding that respondent misled clients' doctor about status of clients' case, and evidence in record was unclear, review department declined to find such misrepresentation as an aggravating factor. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[9]**

Where notice to show cause did not charge that respondent misrepresented to his clients the status of their claims, and respondent defaulted and did not appear at hearing, the review department declined to find, based on client's testimony at hearing, that respondent had committed act of dishonesty by making such misrepresentation. The review department is most reluctant to consider, even for the purpose of aggravation, misconduct which could have been, but was not charged in notice to show cause, especially where respondent is in default and has no opportunity to learn of or rebut matters arising during hearing. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[3]**

Where evidence showed that attorney was candid about mishandling of trust funds, but failed to keep promises to repay the money, this did not constitute clear and convincing evidence that the attorney made misrepresentations, because failure to keep a promise of future action, without more, is not proof of fraudulent intent. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[13]**

550 Overreaching (1.5(g); interim Standard 1.5(d); 1986 Standard (1.2(b)(iii))

551 Found

Where respondent wrote letter to a bank asserting a rival tribal faction had unconditional authority to dispossess another tribe of its property when respondent knew that the results of a tribal election were only preliminary, respondent's action was evidence of overreaching and considered in aggravation. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[6]**

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

Aggravating circumstances were found where respondent conspired to steal and stole from a school while he was working for it. Respondent's participation in the conspiracy to steal and theft were not only criminal acts, but also brazen breaches of the fiduciary duties an employee owes his employer. Observance of such fiduciary responsibility is central to the practice of law. Moreover, that respondent committed these felonies while he was in law school was also a factor of grave concern. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[3]**

Respondent's duty to medical negligence client was not confined solely to obtaining successful recovery on client's claim. Respondent also had duty of utmost good faith and fidelity to client, which required him to advise client candidly of application of statutory limit on fee he could charge client. Where respondent overreached client by concealing such statute through recklessness or gross neglect, and collected excessive fee thereby, such conduct was patent breach of respondent's duty of good faith and fair dealing to client, and was very serious aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[21]**

Where respondent, as attorney and close family member of client, exploited superior knowledge and position of trust to detriment of vulnerable client in obtaining loan from client with grossly unfair provisions, attorney's overreaching constituted act of moral turpitude. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[13]**

Fact that respondent's misconduct involved client who was member of respondent's family was not mitigating but rather aggravating circumstance, since respondent's family ties to client made respondent more aware of

client's vulnerabilities and trust client placed in respondent. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[16]**

Where respondent misappropriated client trust funds and failed to report court-ordered sanctions, aggravation on account of multiple acts of misconduct was not present, but respondent's misconduct was aggravated by failure to pay sanctions; by failure to make restitution; and, most grievously, by his abuse of his vulnerable client's trust and his misrepresentation of his actions to client and opposing counsel. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[7]**

The relationship between an attorney and client is a fiduciary relationship of the very highest character. In light of such fiduciary obligations, respondent's conduct in arranging real property transactions between respondent's client and respondent's father involved overreaching, where respondent was closely involved with his father and did not safeguard the client's interests in the transactions. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[10]**

Respondent's simultaneous representation of a client and of respondent's father during the time that respondent arranged real property transactions between the client and the father was an aggravating circumstance in that the dual representation was rife with potential and actual conflicts of interest that could have been, if charged, the basis for additional culpability for violating the rule regarding representation of conflicting interests. The fact that respondent was not found culpable of any misconduct involving the real property transactions did not preclude treating respondent's conduct therein as an aggravating factor, because other related misconduct involving the same client was surrounded by and followed by the attorney's conduct in the real property transactions. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[11]**

In light of all relevant evidence and comparable case law, as well as heightened concern regarding enforcement of child support orders, respondent's very serious misconduct of advising and aiding a client in avoiding a child support order, which misconduct was substantially aggravated by respondent's overreaching in arranging real property transactions between the client and respondent's father, warranted increasing recommended discipline to one-year actual suspension coupled with three years of probation, even though review department found respondent culpable of less misconduct than did hearing judge. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[12]**

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

553 Found but discounted or not relied on

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

555 Declined to find

In the Matter of Wolff (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1.

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

Although respondent's misconduct was surrounded by concealment and overreaching, it was appropriate not to consider this as a factor in aggravation since it would be duplicative of the misconduct comprising acts of moral turpitude for which respondent was found culpable. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[9]**

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

Under the Standards for Attorney Sanctions for Professional Misconduct, greater discipline may be imposed for a violation of an attorney's duty to render appropriate accounts than might otherwise be appropriate if the attorney's misconduct was surrounded by bad faith, dishonesty, concealment, or overreaching, as well as for other violations of the State Bar Act or Rules of Professional Conduct or refusal or inability to account for improper conduct toward trust funds. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[21]**

560 Uncharged violations (1.5(h); interim Standard 1.5(d); 1986 Standard(1.2(b)(iii))

Where respondent's clients had English language limitations and where respondent used technical legalese in his engagement agreements in an effort to exempt himself from providing any service of consequence to his clients, respondent's exploitation of his superior knowledge and position of trust to the detriment of his vulnerable clients was evidence of overreaching that constituted moral turpitude forming the basis for additional uncharged misconduct in aggravation. *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. **[7]**

Because there was an actual conflict in intractable dispute between corporation's president, who was one of corporation's four directors, and corporation's remaining three directors over control of the corporation, respondent's proper course of conduct in representing corporation was to obtain informed written consent of each of board member or to withdraw from representation if he could not do so. But respondent did not do so; he chose to join the fray asserting only the president's interest while representing the corporation. Because of respondent's multiple conflicts, he lost any objectivity or neutrality and gravely compromised his duty of loyalty to corporate client, which is a serious aggravating circumstance as uncharged, but proved misconduct under aggravation standard for attorney sanctions for professional misconduct with respect to surrounding violations of State Bar Act or Rules of Professional Conduct.*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.**[8 a-c]**

Section 6068, subdivision(i), of the Business and Professions Code requires an attorney to cooperate in any disciplinary investigation or proceeding. By offering to pay a client for the withdrawal of the client's State Bar complaint against respondent, respondent was attempting to interfere with the State Bar's investigation and thus committed an uncharged violation of section 6068, subdivision (i). *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907. **[3]**

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

561 Found

In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263

Respondent was required to report to the State Bar his criminal charges and conviction both under section 6068(o)(4) and (5), and under disciplinary probation conditions specifically requiring him to comply with the State Bar Act. His failure to report these charges and conviction was considered in aggravation as serious uncharged misconduct. By failing to report, respondent impeded the disciplinary process. The State Bar was not informed of respondent's criminal conduct when it made recommendations to the Supreme Court in two of his previous disciplinary matters, and the Supreme Court was also unaware of his conviction when it imposed discipline in those cases. *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189 **[3 a,b]**

Where respondent misappropriated entrusted funds and thereafter structured transactions to create the false appearance that he had maintained the funds in the form of cashier's checks from the time he misappropriated them until they were deposited into a second trust account, respondent's attempt to deceive the State Bar was more appropriately viewed as an uncharged violation of section 6106 rather than misconduct surrounded by bad faith, dishonesty, concealment and overreaching. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[10]**

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

Where respondents chose to conceal the full and complete factual circumstances surrounding a disputed tribal election as well as the novelty of the legal theories and authorities upon which they were seeking to induce the Superior Court to dismiss a case and where the record is replete with additional pleadings and verbal statements which were rife with material omissions and express misstatements of fact and law not identified in the notice of

disciplinary charges, such uncharged but proven misconduct is properly considered for purposes of aggravation. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[5]**

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

Although not charged, record established that respondent repeatedly aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law by relying on or permitting nonattorney providers who referred clients to him to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Respondent's aiding and abetting nonattorneys' violation of federal law involved moral turpitude, while his aiding and abetting nonattorneys' unauthorized practice of law violated rule of professional conduct prohibiting such conduct and violation rose to a level involving moral turpitude. Since much of this misconduct was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of it as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[6 a-j]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

Although not charged, record established that respondent engaged in a course of practicing law that was reckless and involved gross carelessness and thereby engaged in acts of moral turpitude. Since much of respondent's recklessness and carelessness in his practice of law was established by respondent's testimony and evidence, he had no grounds to challenge review department's independent consideration of his recklessness and carelessness as uncharged misconduct aggravation warranting increased discipline.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[11 a-d]**

Absent an appropriate objection to the introduction of evidence of misconduct other than that charged in the notice of disciplinary charges, such evidence may, when appropriate, be used as an aggravating factor in disciplinary matters.*In the Matter of Peavey* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483. **[3 a-c]**

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

Respondent's agreement with former client to withdraw client's complaint with State Bar and not to testify against respondent in State Bar Court was aggravation as uncharged violations of professional rules proscribing suppression of evidence (rule 5-220) and prohibiting attorneys from causing persons to be unavailable as witnesses (rule 5-310(A)). *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23. **[13 a-c]**

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

Where respondent stated at oral argument that she did not object to judicial notice of her conviction for the unlicensed practice of law and admitted that she had improperly practiced law, the review department augmented the record on review to note the record of her conviction and considered the unlicensed practice as an aggravating circumstance. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (d)(1).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[4]**

Conclusion that violations of statutes requiring written fee agreements and specified disclosures are not disciplinable offenses does not preclude consideration of attorney's failure to comply with such statutes as aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[12]**

Substantial compliance with a disciplinary probation requirement is not a defense to violation of the requirement. Where respondent's probation conditions required that he obtain therapy from licensed practitioner, and where respondent made efforts to obtain therapy but did not seek to have probation conditions modified to include therapy provided by unlicensed practitioner, respondent's uncharged probation violation of failing to comply with therapy requirement was aggravating circumstance in probation revocation proceeding. However, respondent's efforts to comply constituted significant mitigating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[9]**

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

Respondent's simultaneous representation of a client and of respondent's father during the time that respondent arranged real property transactions between the client and the father was an aggravating circumstance in that the dual representation was rife with potential and actual conflicts of interest that could have been, if charged, the basis for additional culpability for violating the rule regarding representation of conflicting interests. The fact that respondent was not found culpable of any misconduct involving the real property transactions did not preclude treating respondent's conduct therein as an aggravating factor, because other related misconduct involving the same client was surrounded by and followed by the attorney's conduct in the real property transactions. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[11]**

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

Where respondent represented a client in the client's bankruptcy and at the same time represented the client's landlord, a company owned by respondent, in negotiating and drafting a new lease with the client, respondent was culpable, as charged, of representing conflicting interests. In addition, respondent's failure to comply with the requirements for business transactions with clients, including giving the client a reasonable opportunity to seek independent counsel, constituted an aggravating factor as uncharged misconduct. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[9]**

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

An attorney's admitted cocaine dependency is an appropriate factor to consider in determining the appropriate discipline for public protection. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[17]**

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

Uncharged misconduct relied upon to enhance discipline in one proceeding cannot later constitute grounds for additional discipline in an independent disciplinary proceeding. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[7]**

Fact that respondent's failure to take responsibility for substituting out of two cases properly had not been the subject of respondent's prior disciplinary matter did not preclude Office of Trials from raising such incidents

in subsequent proceeding against respondent for failure to comply with rule 955. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[6]**

In the Matter of Anderson (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

Although it was improper to find respondent culpable of misconduct on the basis of his freely given evidence that he concealed funds from the Franchise Tax Board, because such conduct fell outside the proper scope of the charges, such evidence could be used to form the basis of an aggravating circumstance. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[13]**

Where notice to show cause charged respondent with making misrepresentations to opposing counsel and at trial, and respondent testified at disciplinary hearing that similar misrepresentations were also made to court of appeal and to State Bar investigator, this later conduct was properly treated not as bearing on substantive culpability, but on the issue of discipline. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[1]**

An uncharged violation of the rule requiring prompt notification to clients when client funds are received could be considered as an aggravating circumstance, where the respondent was put on notice of the nature of the uncharged misconduct in the notice to show cause and did not object to a finding of culpability under a different rule for the same conduct. Evidence of uncharged misconduct may not be used as ground of discipline, but may be considered for other relevant purposes. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[10]**

Attorney could not be found culpable of misconduct where not given adequate notice of charges, but this did not preclude consideration of such misconduct for other purposes, including aggravation. Evidence of uncharged misconduct may not be used as an independent ground of discipline, but may be considered for other relevant purposes. Right to notice of charges is not violated by use of uncharged misconduct in aggravation where evidence of such misconduct was necessarily elicited in cause of proving other charges; evidence was used in aggravation only; and facts were based on respondent's own testimony. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[19]**

Under the Standards for Attorney Sanctions for Professional Misconduct, greater discipline may be imposed for a violation of an attorney's duty to render appropriate accounts than might otherwise be appropriate if the attorney's misconduct was surrounded by bad faith, dishonesty, concealment, or overreaching, as well as for other violations of the State Bar Act or Rules of Professional Conduct or refusal or inability to account for improper conduct toward trust funds. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[21]**

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

563 Found but discounted or not relied on

563.10 Procedural impropriety

Where a proceeding under rule 955 of the California Rules of Court was started by an order of referral rather than the issuance of formal charges, culpability could be based on all evidence introduced. Thus, where the evidence demonstrated that respondent failed to give timely notices of her suspension to her clients, opposing counsel, and courts in which her clients' cases were pending, she wilfully violated rule 955, subdivision (a), and the review department considered that violation as substantive and not just an aggravating circumstance as found by the hearing judge. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[5]**

In default proceeding for violation of probation, review department deleted findings in aggravation based on probation violations not charged in notice to show cause. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[6]**

Evidence of uncharged misconduct may not be used as an independent basis for discipline, but may be used in a contested proceeding for purposes such as impeaching the credibility of the respondent's testimony regarding rehabilitation, or establishing evidence of aggravating circumstances. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[6]**

In the Matter of Potack (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525.

Aggravating factors are not required to be separately charged. However, facts that could have formed the basis for an additional charge omitted from the notice to show cause cannot be relied on in aggravation in a default matter, because respondent is not fairly put on notice that such facts will be relied on. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[12]**

563.90 Other reason

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

Where respondent's entire course of conduct in handling his duties as the trustee of a testamentary trust amounted to a reckless failure to perform services competently, but the review department considered much of the same misconduct in reaching its conclusion that respondent committed moral turpitude through gross negligence in handling his duties as trustee, the failure to perform competently was given minimal weight as an aggravating circumstance in determining the appropriate discipline to recommend. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[6]**

Where respondent committed uncharged violations of trust fund rules, but conclusions as to respondent's culpability directly addressed respondent's mishandling of trust funds, uncharged violations did not count as separate aggravating circumstance. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[11]**

Respondent violated former rule of professional conduct prohibiting representation of clients with conflicting interests when he accepted more signatories to a settlement than were required, because interests of required signatories conflicted with interests of extra signatories, whose participation in settlement reduced amounts received by required signatories and by previous extra signatories. Where such violation of conflict of interest rule was not charged, it could not be basis of culpability, but could be relied on in aggravation. However, because of novelty of situation, which involved extremely unusual settlement, uncharged violation was given minimal aggravating weight. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[12]**

565 Declined to find

Where respondent made misleading statements in connection with efforts to set aside default in disciplinary proceeding, hearing judge's finding in aggravation that respondent acted with dishonesty was not improper finding of uncharged misconduct, but proper finding that dishonesty surrounded respondent's underlying misconduct. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348 **[11]**

Review Department declined to find uncharged misconduct where State Bar had ample opportunity but did not move to amend the notices of disciplinary charges to include new charges; therefore, respondent did not have sufficient notice or opportunity to defend against them. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250 **[7]**

Where State Bar had notice of respondent's additional alleged acts of misconduct and failed to charge them in initial pleading and to amend charges to conform to proof at trial, respondent was denied fair opportunity to defend against additional charges, and Review Department declined State Bar's late request on review to consider them in aggravation. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221. **[12]**

In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

Even though respondent's uncharged acts of misconduct (1) in permitting name of his law offices to be printed on a paralegal's business card that also had insignia of a nonattorney immigration services provider partnership printed on it and (2) in later posting name of his law offices and name of a nonattorney immigration services provider on the front door of small office space respondent shared with that nonattorney appear to have violated statute that prohibits attorneys from lending their names and titles for use by nonattorneys and might have violated Rule of Professional Conduct prohibiting attorney communications, including business cards, from containing any matter or presenting or arranging any matter in a manner or format that is false or deceptive or tends to confuse or mislead, review department did not consider these acts as uncharged misconduct aggravation warranting

increased discipline because acts supported review department's conclusion that respondent aided and abetted nonattorney immigration services providers to engage in the unauthorized practice of law. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[17 a-b]**

Absent a motion by the State Bar to amend the notice of disciplinary charges in a way that would have given respondent a sufficient opportunity to defend, the hearing judge should have sustained respondent's objection to evidence of uncharged misconduct on the ground that it was beyond the scope of the charge set forth in the notice of disciplinary charges. In view of respondent's timely and specific objection, the review department declined to adopt the finding of uncharged misconduct as an aggravating circumstance. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[16]**

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

Hearing judge erred in concluding that respondent's agreement with former client to withdraw client's complaint with State Bar and not to testify against respondent in State Bar Court was aggravation as uncharged violation of statute making an agreement to withdraw complaint to State Bar disciplinable because that statute was not in effect at time respondent made agreement with former client. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[12 a-b]**

Although respondent never entered into a written contingent fee agreement with his client as required by Business and Professions Code section 6147, the failure to enter into a written contingent fee agreement is not a disciplinable offense. Thus, the review department did not adopt the hearing judge's aggravation determination with respect to this issue. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[7]**

Review department is very reluctant to consider State Bar's request for a holding that respondent's failure to comply with the terms of a civil settlement agreement was an aggravating circumstance because the State Bar did not request such a holding from the hearing judge, but requested it for the first time on review. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[3]**

In default proceedings, uncharged facts cannot be relied on as evidence of aggravating circumstances because the respondents are not fairly apprised that additional uncharged facts will be used against them. The use of uncharged facts in a contested proceeding presents a different question. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[4]**

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

Respondent's alleged misconduct in federal civil appeal was not entitled to any weight in aggravation where State Bar did not introduce any evidence regarding respondent's conduct other than appellate court opinion establishing respondent's failure to comply with federal rule of appellate procedure regarding form of briefs, and where record did not provide basis to determine whether respondent's noncompliance with such rule was isolated act of negligence or disciplinable offense, or to assess respondent's conduct independently under clear and convincing standard of proof. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[12]**

Evidence of uncharged misconduct can be considered in aggravation or for purposes such as impeaching witness credibility. However, where hearing judge's findings on uncharged misconduct were too tentative to warrant consideration for enhanced discipline, review department did not adopt them as findings or conclusions, although it declined to strike them from the decision. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[1]**

An attorney's unauthorized practice of law while on suspension is an appropriate matter to be considered in aggravation. Where, during the trial in a disciplinary matter, the respondent made a court appearance in a client's case while suspended for nonpayment of dues, the deputy trial counsel was not obligated to wait to file another disciplinary action to address the issue. Where respondent's counsel agreed that the deputy trial counsel could introduce evidence regarding respondent's court appearance during a later phase of the hearing, respondent received proper notice of the charge in aggravation. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[15]**

In determining whether evidence of additional uncharged ethical misconduct should be admitted as aggravating evidence in the discipline phase of the hearing, the hearing judge must balance the desire for additional

relevant evidence against the due process requirement of fair notice of all discipline charges. Where there was sufficient evidence in the record to warrant a recommendation of disbarment, it was unnecessary for the review department to resolve a claim that the hearing judge erred in failing to admit aggravating evidence of uncharged misconduct. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[18]**

A respondent may be disciplined only for misconduct properly charged in the notice to show cause. In probation revocation matter, where notice to show cause charged that respondent failed to deliver financial records to an accountant, and hearing judge found that respondent failed to render an accounting, respondent was properly found culpable of failing to deliver the records, based on his admission by default of the allegations of the notice to show cause. Respondent's failure to file quarterly reports other than those listed in the notice to show cause could not be used as a basis for culpability or as aggravating circumstances in a default matter. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[1]**

Where hearing judge determined that proffered evidence of additional uncharged misconduct was of marginal relevance; that it could be fully examined and made the basis of separate discipline, if appropriate, in a separate proceeding, and that its admission would involve a delay to permit respondent time to address the issues it raised, the exclusion of the evidence was not an abuse of discretion. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[11]**

A respondent's criminal conduct might well be relevant as an aggravating factor in a different case, but where respondent's criminal conviction had been found not to constitute a basis for discipline and State Bar had not challenged that conclusion, it was not appropriate to consider such conviction as a factor in aggravation of other misconduct. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[14]**

Where no evidence was introduced establishing that respondent knew his out-of-state driver's license was not valid at the time he presented it to police, and where respondent's explanation of his failure to disclose all of his driving under the influence convictions on his application for such license was unrebutted and not inherently incredible, examiner failed to establish by clear and convincing evidence that respondent's use or obtaining of the license were aggravating factors. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[4]**

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

Uncharged facts cannot be relied upon for evidence of aggravation in a default matter because the respondent is not fairly apprised of the fact that additional uncharged facts will be used against him. The use of uncharged aggravating factors in contested proceedings presents a different question. *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602. **[8]**

Neither a respondent's section 6007(c) inactive enrollment itself nor the unproven charges underlying it should be relied upon as aggravation in a subsequent disciplinary proceeding. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[24]**

570 Refusal/inability to account for funds (1.5(i); interim Standard 1.5(e); 1986 Standard (1.2(b)(iii))

571 Found

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

Where respondent had engaged in a pattern of misconduct involving 14 matters spanning six of his nine years of practice, and had misappropriated over $17,000 of client funds and caused the extinction of legal claims for eight clients, and where respondent had engaged in further misconduct after he had recognized his case management difficulties, and had barely begun his rehabilitation, the fact that the parties did not stipulate that respondent engaged in acts of moral turpitude in any individual matter did not necessarily mean that his misconduct warranted less discipline than in comparable cases where disbarment was ordered. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[7]**

Where respondent took up to two years to pay outstanding medical liens after he discovered them, such delay was the most significant factor in justifying a sanction of one year's actual suspension. Respondent's preoccupation with remedying other unspecified problems in his caseload did not justify his delay in remedying these negligent misappropriations. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[7]**

Where respondent's gross negligence resulted in several incidents of misappropriation over a number of years, and where the record established both compelling mitigating factors and substantial aggravating factors, including prolonged delay in making restitution, discipline including one year's actual suspension was appropriate. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[11]**

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

Failure to make restitution is an aggravating factor; thus, incomplete restitution to clients' medical providers constitutes an aggravating factor. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[14]**

573 Found but discounted or not relied on

575 Declined to find

575.10 Belated restitution efforts

Timing of restitution is a factor which may affect the degree of discipline. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[2]**

575.90 Other reason

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

Under the Standards for Attorney Sanctions for Professional Misconduct, greater discipline may be imposed for a violation of an attorney's duty to render appropriate accounts than might otherwise be appropriate if the attorney's misconduct was surrounded by bad faith, dishonesty, concealment, or overreaching, as well as for other violations of the State Bar Act or Rules of Professional Conduct or refusal or inability to account for improper conduct toward trust funds. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[21]**

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

580 Harm (1.5(j); interim Standard 1.5(f); 1986 Standard (1.2(b)(iv))

582 To client

582.10 Found

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

Respondent took advantage of several clients' financial desperation and exploited his fiduciary position by repeatedly charging up-front fees for loan modification services that the new laws prohibited. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[10]**

Client was significantly harmed where, as a result of respondent's actions, she had to hire new counsel, incurred a significant amount of attorney's fees, and unsuccessfully attempted to reclaim her condominium for three years. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117 **[5]**

Respondent's failure to interplead the full amount of sales proceeds he misappropriated from client causing client to incur considerable legal expenses and impeding client's ability to negotiate a settlement constituted significant client harm. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[11]**

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

Respondent's misconduct harmed his clients. Respondent breached his clients' trust by misappropriating their identities for his own personal gain and by allowing his clients to be misled into signing phony checks or permitting their signatures to be forged. Such actions were a clear betrayal of his clients' best interests in favor of respondent's own selfish desires and exposed his clients to possible tax audits and their unwitting involvement in his conspiracy to defraud the Internal Revenue Service.*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[3]**

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403.

Even though short delays, even if resulting in client harm, standing alone are ordinarily not sufficient to warrant conclusion that a client suffered significant harmed within the context of standard providing that significant client harm is an aggravating circumstance, present case did not involve a short delay, but an inexcusable delay of more than five years during which respondent did not perform any substantive work on a client's workers' compensation case. Even though the delay did not cause the client to lose her cause of action, it had a substantial impact on her. After holding that a reasonable economic measure of harm to the client was the client's lost use of the value of her settlement proceeds for five years, the review department expressly declined to define the extent of the client's economic harm. Nonetheless, it held that the client's economic harm met the requirement of significant harm in standard providing that significant client harm is aggravating circumstance. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[12]**

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788.

In the Matter of Sullivan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

Respondent's failure to disclose potential applicability to client's case of statute limiting amount of attorney's fees caused significant harm to client and administration of justice. Failure to comply with statute requiring written fee agreement and disclosures also harmed client. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[18]**

Respondent's duty to medical negligence client was not confined solely to obtaining successful recovery on client's claim. Respondent also had duty of utmost good faith and fidelity to client, which required him to advise client candidly of application of statutory limit on fee he could charge client. Where respondent overreached client by concealing such statute through recklessness or gross neglect, and collected excessive fee thereby, such conduct was patent breach of respondent's duty of good faith and fair dealing to client, and was very serious aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[21]**

Respondent had duty of candor to superior court approving his fee. Respondent was entitled to urge any creative theory in good faith that statutory fee limitation might not apply to his case, but he could not simply conceal material fact that fee limitation statute might apply and profit sizably thereby at expense of his client. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[22]**

Attorney's failure to repay loan from client did not constitute theft, but did aggravate harm already suffered by client. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[12]**

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

Where failure to file complaint for client within statute of limitations was not mentioned in notice to show cause, such failure could not form basis for culpability, but where such failure, although not shown by clear and convincing evidence to be intentional or reckless, constituted part of series of repeated failures to perform competently which significantly harmed client, such failure constituted aggravating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[21]**

Fact that respondent's clients received funds which should have gone to pay clients' medical bills did not negate aggravating factor of harm to clients, where several clients were sued by medical creditors whom respondent should have paid. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[30]**

Where sole evidence of respondent's indifference toward rectification of or atonement for misconduct was failure to refund unearned advanced fee, and such misconduct also formed basis for finding in aggravation of har to client, finding of indifference to rectification or atonement was rejected as duplicative. *In the Matter of AHunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63 **[10]**

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

Where respondent with no prior record of discipline failed to communicate reasonably with two clients and failed to relinquish their files promptly, causing harm to clients, six-month stayed suspension, with no actual suspension, was well within appropriate range of discipline as indicated by comparable cases. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[5]**

Where respondents seriously disregarded their fiduciary duty to clients, including leaving it to non-lawyer contractors to explain complex retainer agreement without allowing clients to review it over time or discuss it with respondents, and where such retainer agreement, though purporting to be for contingent fees, contained unconscionable provision for minimum fee upon discharge, and where respondents' acts in seeking to enforce such provision damaged clients, respondents' conduct warranted greater actual suspension than 15 months recommended by hearing judge. Respondents' involvement in client solicitation alone warranted one-year actual suspension; their remaining offenses deserved an additional six months. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[14]**

Where an attorney has previously been disciplined for misappropriation, the attorney is eligible for disbarment if found culpable of misappropriation in a second matter. Where respondent's total misconduct in two separate disciplinary cases involved ten client matters, spanned all but three years of his practice, and harmed or jeopardized numerous clients, and respondent had an ongoing substance abuse problem and had not complied with his probation in the first matter, his aggregate misconduct clearly required imposition of the harshest discipline, and there was no basis for a recommendation of suspension rather than disbarment. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[13]**

Disbarment is generally the appropriate sanction for a wilful violation of rule 955, California Rules of Court. Where respondent not only failed to notify courts and file timely affidavit of compliance as required by rule 955, but also had wilfully failed to comply with other stipulated conditions of prior discipline; respondent had injured a number of clients, and posed substantial risk of continuing to do so; respondent's participation in rule 955 proceeding was sporadic; respondent provided evidence of personal problems but no evidence that he was likely to overcome them, organize his practice, and comply with prior disciplinary probation; and respondent provided no evidence of rehabilitation, but rather evidence that his problems had increased, then despite respondent's history of pro bono work, idealism, honesty, and altruism, disbarment recommendation was required for public protection. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[2]**

An attorney owes the same fiduciary obligations to all clients, paying or nonpaying. Impecunious clients are ill-served by well-meaning attorneys who fail to deliver the services for which they were engaged. Nor are the courts or public served by Wtion brought without likelihood it can be realistically be prosecuted to completion. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[4]**

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Layton (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366.

In rule 955 proceeding, respondent's claim that his failure to withdraw from one matter after suspension resulted from an oversight in transferring over 200 files to successor counsel was not a factor in mitigation. iN In In rule 955 proceeding, respondent's claim the his failure to withdraw from one matter after suspension resulted from an oversight in transferring over 200 files to successor counsel was not a factor in mitigation. Respondent's conduct in connection with such transfer constituted evidence in aggravation, because respondent irresponsibly executed in blank hundreds of substitution association or substitution of counsel forms and relinquished of the client files to successor counsel without obtaining the clients' consent, safeguarding their interests, or even keeping a list of the clients or case names transferred. This conduct posed a significant potential harm to the clients and to the public interest generally. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[7]**

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

Disbarment was the appropriate sanction for an attorney's misappropriation of a very large sum of client funds over many years, which was surrounded by utter disregard of the attorney's fiduciary and trust account duties, and aggravated by incompetent representation of the client and prosecution of a lawsuit without the client's consent, demonstrating a lack of basic understanding of the fundamental responsibilities of an attorney. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[10]**

Where an attorney was convicted of mail fraud based on fraudulently billing an insurance company for services rendered on behalf of its insureds, the insureds, as the attorney's clients, were victimized by the crime, and the crime therefore involved a client as a victim within the meaning of the summary disbarment statute (Bus. & Prof. Code § 6102 (c)). The attorney's subsequent restitution to the insurance company, ordered as part of the attorney's criminal sentence, did not negate the harm caused by the crime. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[6]**

Where respondent's disciplinable failure to communicate with his client may have prevented him from earlier discovering the non-disciplinable calendaring mistake that caused his client to lose his cause of action, the harm to the client was properly recognized as a factor in aggravation. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[8]**

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

Where respondent had engaged in a pattern of misconduct involving 14 matters spanning six of his nine years of practice, and had misappropriated over $17,000 of client funds and caused the extinction of legal claims for eight clients, and where respondent had engaged in further misconduct after he had recognized his case management difficulties, and had barely begun his rehabilitation, the fact that the parties did not stipulate that respondent engaged in acts of moral turpitude in any individual matter did not necessarily mean that his misconduct warranted less discipline than in comparable cases where disbarment was ordered. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[7]**

A lengthy suspension with a standard 1.4(c)(ii) showing was not adequate discipline, where respondent committed extensive misdeeds which became commonplace in respondent's practice, caused harm to a number of clients, and failed to rectify the harm. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[9]**

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

Even where respondent's client could not reasonably have expected to receive a substantial award of damages had the client's case settled or gone to trial, where respondent's conduct deprived the client of the ability to receive any damages at all, this harm was significant and was an aggravating factor. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[25]**

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

There is no reason to require suspended attorneys to comply with the rules requiring competent representation and prohibiting prejudicial withdrawal even while they are precluded from practicing because suspended. A full range of discipline is available to protect the public, courts and profession for unauthorized practice alone. Recklessness or incompetence in the unauthorized practice of law, or a precipitous withdrawal, would cause harm to the client and would constitute an aggravating factor which justifies greater discipline than would have been appropriate if no harm had occurred. In order to minimize harm to clients, suspended attorneys should take all steps to avoid foreseeable prejudice, short of practicing law. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[8]**

In the Matter of Potack (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525.

Attorney who represented the administrator of a decedent's estate owed a duty of care both to the client and to the estate's beneficiary; harm caused to these parties by the attorney's misconduct was an aggravating factor. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[18]**

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

Where attorney caused client corporation to enter into mutually inconsistent licenses without its knowledge, harm to client in being forced to hire counsel and pay money to resolve its conflicting obligations to licensees

outweighed any profit client may have obtained from royalties paid by licensees. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[11]**

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

582.30 Found but discounted or not relied on

582.31 Weak case and/or small damages

582.32 Harm otherwise slight

Where respondent's misconduct involved negligent law office management over an extended period of time, resulting in delay and disservice to a number of clients but no act of moral turpitude or serious misconduct in any individual matter, and respondent had since changed his office practices, a one-year actual suspension was excessive in the absence of serious aggravation. However, where no persuasive reason had been offered to go below the minimum three-month actual suspension called for by the standards, a one-year stayed suspension, two years probation, and a three-month actual suspension, with law office management requirements, constituted sufficient discipline. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[10]**

582.33 Problem resolved by other means

582.39 Other reason

Although attorney stipulated to causing significant client harm, minimal weight assigned to harm as aggravating factor where foreclosure of client's home and misrepresentations made by company representatives occurred before respondent accepted client's case. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320 **[2]**

While respondent's misconduct that arose in selling residential real property to a client was aggravated by foreseeable harm caused to the client, arising from the client's demonstrated inability to manage her funds or understand that she alone was responsible for making the payments to preserve the property, the client's failure to make any payments after four months or make any effort to either save or sell the property was not foreseeable, and the client must bear the primary responsibility for the resulting loss of the property.*In the Matter of Gillis* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387 **[7]**

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

Harm to public and to administration of justice, and risk of harm to client, is inherent in unauthorized practice of law. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[11]**

582.50 Declined to find

In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263

The State Bar's argument that respondent significantly harmed his client each time he failed to make timely restitution payments and caused harm to the administration of justice each time he violated his probation was rejected. Although respondent's failures to timely make restitution were numerous, they should not be considered as separate and independent bases of aggravation since, to a great extent, the harm was inherent in the probation violations and therefore would be duplicative. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678.**[2]**

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

Where respondent's client refused to cooperate in responding to interrogatories and would not have prevailed on merits of case, respondent's repeated failure to perform competently in handling client's case did not cause client significant harm. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[12]**

Review department declined to find in aggravation that respondent's misconduct resulted in prolonging client's pretrial custody unnecessarily, where there was no evidence of disposition of client's criminal case and client could have been given credit for pretrial custody if convicted. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[9]**

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

Attorneys who engage in an extended practice of inattention to official actions should not be allowed to create the risk that it will extend to clients resulting in inevitable and grievous harm to them. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[10]**

While respondent's motive in appealing superior court's reduction of his fees as attorney and executor of estate might have been suspect, where there was no clear and convincing evidence that such appeal was in bad faith or was otherwise improper, review department declined to consider respondent's appeal as an aggravating factor in light of the important policies favoring unfettered access to the courts. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[15]**

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

Findings in aggravation of harm to client and indifference to rectification of misconduct, based on delay in restitution of funds, could not be supported where there was no clear and convincing evidence that respondent had originally acted improperly in applying such funds to respondent's fees based on good faith belief that client had authorized such payment. Client's small claims court judgment against respondent did not operate as res judicata on issue of obligation to make restitution. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[21]**

In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83.

Where, as soon as respondent's client discovered a billing error and brought it to respondent's attention, respondent recognized the error and offered to take care of it, and where respondent offered the client credit for the erroneous billing as part of a fee arbitration, the review depart rejected the hearing judge's finding that the client was significantly harmed by respondent's negligence with respect to the error. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[21]**

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

Where attorney delayed in pursuing client's appeal, but client ultimately dropped appeal after discharging attorney, there was no basis for determining that client was harmed by attorney's conduct, and in any event, a delay of a few months in prosecuting an appeal does not, standing alone, warrant a finding of significant harm to the client. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[5]**

584 To public

Respondent caused significant harm to the public and to the administration of justice where his relentless litigation campaigns inflicted serious financial and emotional harm on the opposing parties, causing them to spend considerable time and money defending against baseless claims, and clogging the court system for manifestly improper purposes. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[7]**

584.10 Found

In the Matter of Wenzel (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380

In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469.

Respondent's failure to have gained insight into his misconduct was troubling. The discipline imposed for his misconduct of filing and pursuing frivolous actions in bad faith and for a corrupt motive must reflect this lack of insight as well as the harm to the victims and assurance to the public and bar that such conduct will not be tolerated. The discipline recommended, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years on conditions, including 60 days' actual suspension, appropriately balances these values and the record as a whole.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[6]**

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Brazil (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679.

Where respondent engaged in serious improper communications with a represented party, exposing the party to serious risks of harm, some of which occurred, and committed other stipulated wrongdoing, recommended discipline of four years probation conditioned on thirty days actual suspension was inconsistent with decisional law and insufficient. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[10]**

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In rule 955 proceeding, respondent's claim that his failure to withdraw from one matter after suspension resulted from an oversight in transferring over 200 files to successor counsel was not a factor in mitigation. Respondent's conduct in connection with such transfer constituted evidence in aggravation, because respondent irresponsibly executed in blank hundreds of substitution association or substitution of counsel forms and relinquished of the client files to successor counsel without obtaining the clients' consent, safeguarding their interests, or even keeping a list of the clients or case names transferred. This conduct posed a significant potential harm to the clients and to the public interest generally. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[7]**

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

584.30 Found but discounted or not relied on

584.50 Declined to find

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Jensen (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

The Standards for Attorney Sanctions for Professional Misconduct provide that the appropriate discipline for culpability for professional misconduct where the member has a record of two prior impositions of discipline is disbarment unless the most compelling circumstances clearly predominate. Application of this standard was not appropriate where the attorney's criminal convictions and prior discipline, which were caused by an extensive history of drug and alcohol abuse, did not directly involve clients or the practice of law, and did not cause specific harm to the public or courts, and where the attorney had taken steps to address the underlying substance abuse problem, and had already been under suspension for five years as a result of previous discipline. Continued probation monitoring with substance abuse conditions, and a requirement that the attorney demonstrate rehabilitation and fitness to practice, would ensure that the substance abuse was controlled prior to the attorney's resuming the practice of law. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[9]**

586 To administration of justice

Respondent caused significant harm to the public and to the administration of justice where his relentless litigation campaigns inflicted serious financial and emotional harm on the opposing parties, causing them to spend considerable time and money defending against baseless claims, and clogging the court system for manifestly improper purposes. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[7]**

Attorney's repeated failure to disclose exculpatory evidence harmed the administration of justice by depriving criminal defendants valuable evidence to which they were entitled, causing court delays, creating unnecessary litigation, compromising serious criminal cases and negatively impacting the reputation of the District Attorney's Office and the public's trust in the criminal justice system. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[10]**

586.10 Found

In the Matter of Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160

Even though respondent was not acting as an attorney in the case but as a citizen, his change of vote for the defense to break a jury deadlock so he could return his attention to his law practice caused significant harm to the administration of justice. *In the Matter of Fahy* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141 **[5]**

In the Matter of Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80

In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41

Where respondent's absence from court hearings resulted in substantial disruption of juvenile court proceedings and where respondent's actions impacted the underpinnings of the indigent dependency hearings, respondent's harm to the administration of justice was assigned significant weight in aggravation. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[12]**

Where respondent's conduct undermined a witness's relationship with his attorneys and compromised the witness's Fifth and Sixth Amendment rights, such conduct significantly harmed the administration of justice and is properly considered as a factor in aggravation. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[10]**

Where respondents' conduct required an opposing party to perform substantial additional work and incur additional expense and resulted in a court order for additional monetary sanctions against respondents because of the burden respondents imposed on the court, such actions threatened the efficient administration of justice and improperly burdened the court system constituting an aggravating circumstance. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[8]**

This case presents serious acts of dishonesty which served to defraud two sellers of valuable real estate. Respondent's many ethical violations featured harm to victims and the honest administration of justice. Offenses concerning the administration of justice have been considered as very serious by the Supreme Court. Disbarment is not reserved just for attorneys with prior disciplinary records. A most significant factor is respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing. This factor makes disbarment appropriate despite the fact that respondent presented some mitigating evidence. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70. **[5]**

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

586.11 Inherent in nature of misconduct

In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391.

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

Respondent's failure to have gained insight into his misconduct was troubling. The discipline imposed for his misconduct of filing and pursuing frivolous actions in bad faith and for a corrupt motive must reflect this lack

of insight as well as the harm to the victims and assurance to the public and bar that such conduct will not be tolerated. The discipline recommended, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years on conditions, including 60 days' actual suspension, appropriately balances these values and the record as a whole.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[6]**

Appropriate level of discipline for respondent's misdemeanor conviction for paying for referral of two clients (Ins. Code, § 750, subd. (a)), where circumstances surrounding conviction involved moral turpitude, was two-year stayed suspension with two-year period of probation and six-month period of actual suspension. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61.**[6 a-g]**

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

Respondent's failure to disclose potential applicability to client's case of statute limiting amount of attorney's fees caused significant harm to client and administration of justice. Failure to comply with statute requiring written fee agreement and disclosures also harmed client. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[18]**

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

Where, in representing four criminal clients, respondent violated six court orders, was held in contempt four times, failed to appear at scheduled court hearings nine times, and had warrants issued against him three times, and where respondent had breached two separate disciplinary orders and defaulted in current disciplinary proceeding, respondent's misconduct reflected disdain and contempt for the orderly process and rule of law and inability to conform to the most basic duties of an attorney. These facts, coupled with lack of mitigation, demonstrated that risk of future misconduct was great and indicated that respondent was not a good candidate for probation and/or suspension. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[14]**

In light of all relevant evidence and comparable case law, as well as heightened concern regarding enforcement of child support orders, respondent's very serious misconduct of advising and aiding a client in avoiding a child support order, which misconduct was substantially aggravated by respondent's overreaching in arranging real property transactions between the client and respondent's father, warranted increasing recommended discipline to one-year actual suspension coupled with three years of probation, even though review department found respondent culpable of less misconduct than did hearing judge. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[12]**

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

Recent Supreme Court decisions reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule 955. One of the primary reasons for the adoption of the Standards for Attorney Sanctions for Professional Misconduct was to achieve greater consistency in disciplinary sanctions for similar offenses. Any reason for deviating from the standards or established case law must be clearly stated. Accordingly, where respondent participated in the rule 955 proceeding, but did not present a convincing case of mitigation, diligence, and rectification of misconduct, and instead demonstrated a pattern of inattention to important duties, an inability to conform to professional norms, and a lack of concern for potential harm to his clients and the public, the public interest and the administration of justice would be served by respondent's disbarment. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[15]**

Because a suspended attorney is unqualified to sit as a judicial arbitrator, any decisions the attorney renders as an arbitrator could be open to attack as void. Thus, respondent's misconduct in failing to disclose his suspended status when applying for an arbitrator position was of most serious concern because of its potential for harm to public confidence in the court system. Respondent's very service as an unqualified arbitrator harmed the administration of justice. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[5]**

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

586.12 Specific interference with justice

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.157.

This case presents serious acts of dishonesty which served to defraud two sellers of valuable real estate. Respondent's many ethical violations featured harm to victims and the honest administration of justice. Offenses concerning the administration of justice have been considered as very serious by the Supreme Court. Disbarment is not reserved just for attorneys with prior disciplinary records. A most significant factor is respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing. This factor makes disbarment appropriate despite the fact that respondent presented some mitigating evidence. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.**[5]**

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

586.19 Other basis

Where respondent not only made a bad loan to a client without complying with the rule governing business transactions with clients, but also thereafter exhibited profound misjudgment which prompted lengthy litigation against an existing client, and which harmed the administration of justice, two-month actual suspension was appropriate discipline despite respondent's initial motive to aid the client and despite his long legal career and the high personal and financial cost he had already paid for his poor judgment. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[16]**

An attorney owes the same fiduciary obligations to all clients, paying or nonpaying. Impecunious clients are ill-served by well-meaning attorneys who fail to deliver the services for which they were engaged. Nor are the courts or public served by litigation brought without likelihood it can be realistically be prosecuted to completion. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[4]**

586.30 Found but discounted or not relied on

586.31 Duplicative of other charges

Where State Bar Court, in finding that respondent's misdemeanor crimes involved moral turpitude, had already considered respondent's bad faith in making false statements to arresting officers and making improper use of his position as a prosecutor, as well as his harm to the administration of justice in violating the law and his criminal probation, it would be improper to consider those facts in aggravation. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[4]**

Where harm to administration of justice was inherent in respondent's probation violation, it would be duplicative to find such harm as an aggravating circumstance. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[5]**

Harm to public and to administration of justice, and risk of harm to client, is inherent in unauthorized practice of law. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[11]**

586.39 Other reason

586.50 Declined to find

Attorney judicial candidate's misrepresentation about opponent was not shown to have caused harm where attorney lost election by significant margin and extensive media coverage exposed the statement as false prior to the election. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[4]**

In the Matter of Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348

Where State Bar did not argue at trial that respondent's inaccurate reporting of her MCLE compliance harmed administration of justice because State Bar expended resources to conduct investigation, it waived argument regarding this potential aggravating factor, and Review Department declined to consider it. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330. **[3 a,b]**

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348

In the Matter of Jensen (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283

The State Bar's argument that respondent significantly harmed his client each time he failed to make timely restitution payments and caused harm to the administration of justice each time he violated his probation was rejected. Although respondent's failures to timely make restitution were numerous, they should not be considered as separate and independent bases of aggravation since, to a great extent, the harm was inherent in the probation violations and therefore would be duplicative. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678. **[2]**

Where, in a particular case involving violation of rule 955, California Rules of Court, and of disciplinary probation reporting requirements, there was no evidence to support a finding of significant harm to the administration of justice, separate and apart from evidence that supported culpability for charged violations, no finding in aggravation based on such harm was appropriate. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[6]**

Facts that respondent's misconduct required unnecessary sanction motions and hearings in one matter, and that respondent filed a cross-complaint against an unpaid medical lienholder in another matter, did not by themselves clearly and convincingly establish significant harm to the administration of justice. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[13]**

588 To all of the above (or unspecified, or other)

588.10 Found

In the Matter of Wenzel (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

Where respondent collected illegal and unconscionable fees and interfered with the investigations by the California State Bar and the State of South Carolina by giving false and misleading information, such conduct significantly harmed the public, administration of justice and her clients and is properly considered as a factor in aggravation. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[10]**

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

In the Matter of Sawyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765.

Attorney who represented the administrator of a decedent's estate owed a duty of care both to the client and to the estate's beneficiary; harm caused to these parties by the attorney's misconduct was an aggravating factor. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[18]**

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

588.30 Found but discounted or not relied on

588.31 Minimal extent of harm

588.32 Duplicative of other charges

Harm to public and to administration of justice, and risk of harm to client, is inherent in unauthorized practice of law. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[11]**

588.39 Other reason

588.50 Declined to find

Where victim of respondent's crime of misdemeanor child endangerment suffered only potential harm from being left alone in hotel room, and child's vulnerability had already been considered in finding that respondent's crime warranted discipline, Review Department declined to consider harm as aggravating factor. In addition, fact that hotel staff, police, and child services personnel had to participate in criminal investigation did not, by itself, clearly and convincingly prove significant harm to the public or the administration of justice. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[7]**

In the Matter of Pierce (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

590 Indifference to rectification/atonement (1.5(k); interim Standard 1.5(g); 1986 Standard (1.2(b)(v))

Where respondent refused at trial to take responsibility for mismanagement of his client trust account; did not recognize that retainer agreement giving him complete control over clients' cases constituted overreaching; and failed to respond when State Bar argued for disbarment in Review Department, respondent's misconduct was aggravated by his indifference to his wrongdoing. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308. **[7]**

Where respondent refused at trial to take responsibility for mismanagement of his client trust account; did not recognize that retainer agreement giving him complete control over clients' cases constituted overreaching; and failed to respond when State Bar argued for disbarment in Review Department, respondent's misconduct was aggravated by his indifference to his wrongdoing. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

591 Found

In the Matter of Guillory (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402.

Where respondent unsuccessfully sought restraining order seeking to halt disciplinary proceedings three days before trial, this was additional evidence of aggravating factor that respondent failed to accept responsibility for his actions. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[8]**

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

Although respondent acknowledged his misconduct and expressed regret for his misappropriation at oral argument before review department, the record provided clear and convincing evidence of lack of insight and remorse. Throughout proceedings before the hearing judge respondent denied culpability for wrongdoing and argued the reasonableness of his conduct; in face of those actions, occasional utterances at trial that he feels remorse were not persuasive. Lack of insight was assigned the most significant weight in aggravation because it showed respondent was an ongoing danger to the public. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273 **[3]**

In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263

Respondent failed to acknowledge that he may not charge any fees in loan modification cases until all services have been completed, as clearly provided in new statute and ethics alert. A respondent may freely urge any creative legal theory in good faith, but must accept responsibility for acts and come to grips with culpability. Where respondent argued against new law prohibiting the collection of up-front fees in loan modification cases, his lack of insight was assigned significant aggravating weight because it suggested his misconduct may reoccur. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[11]**

In the Matter of Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160

Substantial weight in aggravation assigned to respondent's lack of insight into his wrongdoing where he failed to realize his actions while representing both parties to a real property transfer compromised his fiduciary duties, and he believed he was not culpable because one of the clients was awarded only nominal damages in a civil suit against him. Respondent thus misperceived the purpose of disciplinary proceedings, which is protection of the public and the profession, and on which the extent of civil damages awarded have little or no relevance. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117 **[6]**

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

In the Matter of Loftus (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80

Despite executing a stipulation establishing her misconduct as charged, respondent continued to deny any culpability and sought to shift responsibility for the procedural gridlock occasioned by her actions. An attorney's failure to accept responsibility for her actions when it is not based on an honest belief of innocence may be considered an aggravating factor. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[13]**

In the Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

Since as of the date of the hearing respondent had not yet refunded the fees and costs she wrongfully collected, such conduct demonstrated indifference towards the consequences of her misconduct. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[11]**

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

Respondents went beyond tenacity to truculence when they continued to claim in the face of overwhelming facts and legal authority that their conduct was justified which demonstrates an indifference toward rectification of or atonement for the consequences of their misconduct. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[10]**

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

Where respondent violated conditions attached to reproval by failing to file two quarterly probation reports and provide proof of completion of six hours of continuing legal education, respondent's failure to rectify those violations by belatedly filing the reports and providing the proof of completion once he learned a reproval violation proceeding was pending against him was an aggravating circumstances. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[2]**

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

An attorneys failure to repay borrowed money, even if the attorney had funds to pay at least part of the money, without more, does not amount to moral turpitude. However, the failure to pay at least part of the money owed under these circumstances is a factor in aggravation as a demonstrated indifference toward rectification and atonement for respondent's misconduct. *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420. **[4]**

Where respondent misappropriated client trust funds and failed to report court-ordered sanctions, aggravation on account of multiple acts of misconduct was not present, but respondent's misconduct was aggravated by failure to pay sanctions; by failure to make restitution; and, most grievously, by his abuse of his vulnerable client's trust and his misrepresentation of his actions to client and opposing counsel. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[7]**

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

Respondent's sporadic participation in disciplinary proceedings, despite warning from hearing judge regarding consequences of continuing to be derelict in duty to State Bar, demonstrated both respondent's indifference to his professional obligations and a substantial risk to the public. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[17]**

Disbarment is generally ordered for wilful breach of rule 955, and is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[8]**

An attorney's failure to accept responsibility for, or to understand the wrongfulness of, his or her actions may be an aggravating factor unless it is based on an honest belief in innocence. Where respondent's assertions in defense of failure to perform services did not reflect an honest belief in innocence, but rather reinforced the conclusion that respondent simply did not understand or appreciate the requirement to devote diligence necessary to discharge duties arising from employment, respondent's assertions exhibited a disturbing lack of insight into misconduct which in turn caused concern that he would repeat his misdeeds. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[16]**

Where respondent's misconduct in both first and second disciplinary matters involved similar lack of diligence causing delay in closing a simple probate estate, discipline in second matter ordinarily would warrant only slightly greater discipline than in first matter. However, where respondent had failed to understand or appreciate misconduct, causing concern about handling future cases, and in light of absence of mitigating factors and presence of several aggravating factors, significantly greater discipline than in first matter was appropriate in second matter, and review department recommended two-year stayed suspension, three years probation, and six months actual suspension. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[17]**

In rule 955 matter, where respondent did not present any evidence of remedial steps to assist clients in four cases in which he had failed to substitute out when suspended, and remained attorney of record in three of such cases in which litigation was still pending, respondent's inaction indicated indifference to the consequences of his misconduct and was an aggravating circumstance, as was his continued failure to file an affidavit conforming to the requirements of rule 955. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[13]**

Recent Supreme Court decisions reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule 955. One of the primary reasons for the adoption of the Standards for Attorney Sanctions for Professional Misconduct was to achieve greater consistency in disciplinary sanctions for similar offenses. Any reason for deviating from the standards or established case law must be clearly stated. Accordingly, where respondent participated in the rule 955 proceeding, but did not present a convincing case of mitigation, diligence, and rectification of misconduct, and instead demonstrated a pattern of inattention to important duties, an inability to conform to professional norms, and a lack of concern for potential harm to his clients and the public, the public interest and the administration of justice would be served by respondent's disbarment. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[15]**

Respondent's belief that he had not violated probation in framing his probation reports was unreasonable, at least once respondent was advised by probation department that his interpretation of probation conditions was incorrect. Hearing judge was therefore correct in treating respondent's failure to file corrected reports as a failure to rectify his misconduct and therefore an aggravating factor. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[8]**

Disbarment was the appropriate sanction for an attorney's misappropriation of a very large sum of client funds over many years, which was surrounded by utter disregard of the attorney's fiduciary and trust account duties, and aggravated by incompetent representation of the client and prosecution of a lawsuit without the client's consent, demonstrating a lack of basic understanding of the fundamental responsibilities of an attorney. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[10]**

A lengthy suspension with a standard 1.4(c)(ii) showing was not adequate discipline, where respondent committed extensive misdeeds which became commonplace in respondent's practice, caused harm to a number of clients, and failed to rectify the harm. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[9]**

Where respondent took up to two years to pay outstanding medical liens after he discovered them, such delay was the most significant factor in justifying a sanction of one year's actual suspension. Respondent's preoccupation with remedying other unspecified problems in his caseload did not justify his delay in remedying these negligent misappropriations. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[7]**

Where respondent's gross negligence resulted in several incidents of misappropriation over a number of years, and where the record established both compelling mitigating factors and substantial aggravating factors, including prolonged delay in making restitution, discipline including one year's actual suspension was appropriate. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[11]**

Where respondent failed to make restitution efforts until after disciplinary actions had been instituted; asserted that it was the State Bar's duty to contact her clients when she abandoned her practice; and had committed misconduct involving acts of deceit and bad faith, respondent's conduct evidenced a lack of understanding of her duties and insight into her misconduct. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[39]**

An attorney's obligation to make restitution is not limited to legally enforceable claims. An attorney may have a moral obligation to make restitution as part of the duties of an attorney, in order to confront the harm caused by the theft. Nonetheless, payment of restitution is neither mandatory nor determinative of rehabilitation. The

attorney's attitude toward payment to the victim is considered as well as the ability to pay. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[9]**

An attorney's moral duty to make restitution is not limited to clients, and extends to an employer to whom the attorney owed a fiduciary duty. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[10]**

Respondent's use of specious and unsupported arguments in an attempt to evade culpability in his disciplinary matter revealed respondent's lack of appreciation both for his misconduct and for his obligations as an attorney, and his persistent lack of insight into the deficiencies of his professional behavior, and constituted an independent aggravating factor. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[27]**

Attorney's failure to make full restitution was an aggravating factor, where partial restitution was made largely out of attempt to deceive client; client's refusal to accept further restitution after State Bar complaint was filed did not extinguish attorney's moral obligation to complete restitution. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[7]**

Where attorney displayed indifference and lack of remorse by failing to participate in past and present disciplinary proceedings, far more severe discipline was required than in other cases involving similar misconduct where attorneys did participate in disciplinary proceedings. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[28]**

Failure to make restitution is an aggravating factor; thus, incomplete restitution to clients' medical providers constitutes an aggravating factor. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[14]**

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

593 Found but discounted or not relied on

595 Declined to find

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

Substantial weight in aggravation assigned to respondent's lack of insight into his wrongdoing where he failed to realize his actions while representing both parties to a real property transfer compromised his fiduciary duties, and he believed he was not culpable because one of the clients was awarded only nominal damages in a civil suit against him. Respondent thus misperceived the purpose of disciplinary proceedings, which is protection of the public and the profession, and on which the extent of civil damages awarded have little or no relevance. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117 **[6]**

595.10 Belated restitution efforts

Where respondent had already tendered restitution to a former client in an arbitration proceeding, and nevertheless, after a culpability determination by the hearing judge, placed funds in a trust account to cover the amount which the hearing judge considered to be still at issue, the review department rejected the hearing judge's finding in aggravation that respondent displayed indifference toward rectification. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[20]**

Timing of restitution is a factor which may affect the degree of discipline. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[2]**

595.90 Other reason

Respondent's statements to bankruptcy court that she believed she was doing the right thing for her clients, and was using her abilities to help people who were scared, were not clear and convincing evidence that respondent

was indifferent to, or failed to understand, her misconduct in filing multiple improper bankruptcy petitions. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[6]**

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In default proceedings, uncharged facts cannot be relied on as evidence of aggravating circumstances because the respondents are not fairly apprised that additional uncharged facts will be used against them. The use of uncharged facts in a contested proceeding presents a different question. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[4]**

Where respondent's untimely compliance with rule 955 of the California Rules of Court formed a basis for her culpability for violating the rule, and delay in complying with the rule was also found to be an aggravating circumstance because it reflected respondent's indifference toward rectification of her misconduct, the latter finding was duplicative. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[6]**

Where sole evidence of respondent's indifference toward rectification of or atonement for misconduct was failure to refund unearned advanced fee, and such misconduct also formed basis for finding in aggravation of harm to client, finding of indifference to rectification or atonement was rejected as duplicative. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[10]**

Where respondent was legitimately entitled to fees for services to wife in marital dissolution, and honestly believed that couple had allocated trust funds to husband in marital settlement in order to prevent respondent from applying trust funds to wife's debt for fees, there was not clear and convincing evidence that respondent's failure to make restitution of funds to husband was an aggravating circumstance. Respondent's legal position in defense of his retention and use of husband's funds did not evidence a persistent unwillingness to conform his behavior to ethical standards, and did not undercut the force of his mitigating evidence of subsequent reputable practice and community service. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[10]**

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

Community service activities may bear on the showing of rehabilitation in a reinstatement proceeding, but discontinuance of such activity, without more, is not necessarily an adverse factor. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[1]**

Respondent's long period of postmisconduct practice of law without further discipline was a significant mitigating circumstance, because it demonstrated that respondent was able to adhere to acceptable standards of professional behavior and was not likely to commit misconduct in the future. Respondent's good faith defense of his innocence, in which he honestly believed, did not constitute a lack of understanding of his misconduct so as to preclude such finding, especially where respondent offered evidence about his sensitivity to misconduct of which he had been found culpable at an earlier stage in the proceeding. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[20]**

Findings in aggravation of harm to client and indifference to rectification of misconduct, based on delay in restitution of funds, could not be supported where there was no clear and convincing evidence that respondent had originally acted improperly in applying such funds to respondent's fees based on good faith belief that client had authorized such payment. Client's small claims court judgment against respondent did not operate as res judicata on issue of obligation to make restitution. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[21]**

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

Where evidence established that victim of attorney's misconduct had received in compensation from attorney an amount greater than the amount originally embezzled by attorney, attorney's belief that victim was not economically harmed, and failure to make additional restitution, did not demonstrate attorney's failure to appreciate wrongfulness of acts, or lack of remorse. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[15]**

600 Lack of candor/cooperation with victim (1.5(l); interim Standard 1.5(h); 1986 Standard (1.2(b)(vi))

Respondent's lack of candor; which consisted of respondent (1) falsely stating in letters to a State Bar investigator that he had made an "appearance" before a specified workers' compensation judge and that he had attended the trial/hearing in his client's case before the Workers' Compensation Appeals Board; (2) sending the State Bar investigator a copy of the stipulation under which respondent's client settled her workers' compensation case on her own and without respondent's help which copy respondent signed to indicate his approval when he claimed that he did not know whether he was still representing the client and when he had not signed or approved the original that was executed by the client and the opposing party and that filed with and approved by the Workers' Compensation Appeals Board without respondent's involvement; (3) falsely testifying in State Bar Court that he had a conversation with his client in which she told him that she had moved and gave him her new address; (4) falsely testifying in the State Bar Court that he had been in contact with his client with respect to letter from the opposing party and that the client instructed him to proceed with her claim; (5) knowingly making an entry into his client telephone log that inaccurately indicated that, during the logged telephone conversation, the client implied that she was "basically not interested in pursuing this matter" and introducing this telephone log into evidence in the State Bar Court with knowledge that the statement was not true; and (6) falsely testifying in the State Bar Court that he did not know the trial/hearing date in his client's case before the Workers' Compensation Appeals Board; was more egregious than the found misconduct; which consisted of respondent (1) violating rule regarding attorneys' duty of competence by not performing any substantive work on his client's workers' compensation case for more than five years and deliberately and unjustifiably not attending a status conference in the case; (2) violating statutory duty to respond to client's reasonable status inquiries by not responding to a status request letter from the client; (3) violating rule against prejudicial withdrawal from employment by not advising client of dates of upcoming events, not properly responding to client's request for her file, and not removing himself as client's attorney of record; and (4) violating statute proscribing acts of moral turpitude by lying to the opposing party about his activity on the case and they by later lying to the opposing party that his client no longer wanted to purse her workers' compensation case. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[5]**

601 Found

In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

Respondent's duty to medical negligence client was not confined solely to obtaining successful recovery on client's claim. Respondent also had duty of utmost good faith and fidelity to client, which required him to advise client candidly of application of statutory limit on fee he could charge client. Where respondent overreached client by concealing such statute through recklessness or gross neglect, and collected excessive fee thereby, such conduct was patent breach of respondent's duty of good faith and fair dealing to client, and was very serious aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[21]**

Where respondent failed to make restitution efforts until after disciplinary actions had been instituted; asserted that it was the State Bar's duty to contact her clients when she abandoned her practice; and had committed misconduct involving acts of deceit and bad faith, respondent's conduct evidenced a lack of understanding of her duties and insight into her misconduct. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[39]**

Suspension rather than disbarment might be appropriate for isolated misappropriation that is unlikely to be repeated, but was not appropriate where misappropriation was accompanied by lengthy practice of deceit on client's agent and lack of forthrightness during State Bar investigation. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[11]**

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

Attorney's repeated, protracted deceit of clients, which had effect of forestalling them from discovering true status of their matters, was perhaps even more serious than harm caused by attorney's inattention to client duties. An attorney's practice of deceit is inimical to the high ethical standards of honesty and integrity required of members of the legal profession and to the promotion of confidence in the trustworthiness of members of the profession. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[4]**

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

603 Found but discounted or not relied on

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

605 Declined to find

In default proceedings, uncharged facts cannot be relied on as evidence of aggravating circumstances because the respondents are not fairly apprised that additional uncharged facts will be used against them. The use of uncharged facts in a contested proceeding presents a different question. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[4]**

Even if respondent's demand that client return settlement check demonstrated lack of candor or cooperation with client, review department would not consider it as separate aggravating circumstance where it had already been found to be a factor establishing bad faith, a different aggravating circumstance. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[15]**

Under applicable provisions of Commercial Code, handwritten notation on attorney's check stating that it was issued "subject to verbal confirmation" destroys its negotiability and prevented attorney from being criminally liable for issuance of check drawn on insufficient funds. Dishonor of such check due to insufficient funds was not an aggravating factor, because check was issued in non-negotiable form and there was no clear evidence that payee was misled regarding nature of check. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[1]**

Where referee made no finding that respondent misled clients' doctor about status of clients' case, and evidence in record was unclear, review department declined to find such misrepresentation as an aggravating factor. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[9]**

Where evidence showed that attorney was candid about mishandling of trust funds, but failed to keep promises to repay the money, this did not constitute clear and convincing evidence that the attorney made misrepresentations, because failure to keep a promise of future action, without more, is not proof of fraudulent intent. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[13]**

610 Lack of candor/cooperation with Bar (1.5(l); interim Standard 1.5(h); 1986 Standard (1.2(b)(vi))

Misrepresentations in an attorney's verified answers to interrogatories propounded to him by the State Bar, is a serious aggravation warranting increased discipline and might well constitute a greater offense than underlying misconduct. It is no defense that attorney's answers were prepared for him by his counsel. While it might be improper to penalize a lay client for not correcting mistakes that his counsel made in a pleading that the client verified, such reasoning carries little weight when the client is an attorney. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[26 a-c]**

Respondent's lack of candor; which consisted of respondent (1) falsely stating in letters to a State Bar investigator that he had made an "appearance" before a specified workers' compensation judge and that he had attended the trial/hearing in his client's case before the Workers' Compensation Appeals Board; (2) sending the State Bar investigator a copy of the stipulation under which respondent's client settled her workers' compensation case on her own and without respondent's help which copy respondent signed to indicate his approval when he claimed that he did not know whether he was still representing the client and when he had not signed or approved the original that was executed by the client and the opposing party and that filed with and approved by the Workers' Compensation Appeals Board without respondent's involvement; (3) falsely testifying in State Bar Court that he

had a conversation with his client in which she told him that she had moved and gave him her new address; (4) falsely testifying in the State Bar Court that he had been in contact with his client with respect to letter from the opposing party and that the client instructed him to proceed with her claim; (5) knowingly making an entry into his client telephone log that inaccurately indicated that, during the logged telephone conversation, the client implied that she was "basically not interested in pursuing this matter" and introducing this telephone log into evidence in the State Bar Court with knowledge that the statement was not true; and (6) falsely testifying in the State Bar Court that he did not know the trial/hearing date in his client's case before the Workers' Compensation Appeals Board; was more egregious than the found misconduct; which consisted of respondent (1) violating rule regarding attorneys' duty of competence by not performing any substantive work on his client's workers' compensation case for more than five years and deliberately and unjustifiably not attending a status conference in the case; (2) violating statutory duty to respond to client's reasonable status inquiries by not responding to a status request letter from the client; (3) violating rule against prejudicial withdrawal from employment by not advising client of dates of upcoming events, not properly responding to client's request for her file, and not removing himself as client's attorney of record; and (4) violating statute proscribing acts of moral turpitude by lying to the opposing party about his activity on the case and they by later lying to the opposing party that his client no longer wanted to purse her workers' compensation case. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[5]**

611 Found

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

Where the record is at complete odds with respondents' testimony in the hearing department and respondents' testimony is evasive, inconsistent and replete with convenient memory lapses, respondents' lack of candor constitutes a strong aggravating circumstance. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[7 a–c]**

In the Matter of Tenner (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

Respondent's calling and threatening State Bar witness shortly before trial can be for no purpose other than interference with disciplinary proceeding and tends to demonstrate knowledge of culpability on part of respondent. Because such evidence was not offered to show culpability in uncharged count, it was properly admitted and considered as serious aggravation; see Penal Code section 136.1, subdivision (a)(2) (crime to prevent of dissuade another from attending or testifying). *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23. **[8 a-c]**

Party invoking Fifth Amendment bears burden of showing that proffered evidence might tend to incriminate. Thus, while respondents may not be disciplined solely for invoking Fifth Amendment, the improper invocation of that amendment and resulting refusal to testify may be considered as aggravation if culpability has otherwise been found. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23. **[9 a-e]**

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

Respondent's failure to file pre-trial statement and appear at various State Bar Court hearings were serious aggravating circumstances because they showed respondent comprehended neither the seriousness of the charges nor his duty to participate in disciplinary proceedings. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[3]**

Respondent's failure to appear at disciplinary trial in accordance with a notice to appear in lieu of subpoena served on him by State Bar was a particularly aggravating circumstance because it was the equivalent of disobeying a subpoena to appear at trial as the service of a notice to appear on a party has the same effect as the service of a subpoena. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[5]**

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In light of respondent's recognized expertise regarding statutory contingent fee limits in medical negligence cases, his persistent claim that he was not obligated to discuss potential applicability of every law in every book in his library with medical negligence client and superior court judge was frivolous and betrayed disdain for his client and trial court. Similarly, respondent's claim that he was victim of uncertain law regarding fee limitation statute demonstrated lack of candor with State Bar Court. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[19]**

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

Respondent's use of obstructive tactics during his disciplinary proceeding, including abuse of discovery and frivolous motions, constituted a serious aggravating circumstance. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[13]**

Respondent's failure to comply with proper pretrial procedures and to provide list of witnesses prior to day of trial was properly considered as aggravating circumstance. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[7]**

An attorney's lack of concern for the disciplinary process and failure to appreciate the seriousness of the charges is a factor in aggravation. Where respondent displayed a lack of appreciation of the necessity for timely, meaningful participation in the disciplinary process, as demonstrated by his repeated attempts to appear without timely seeking relief from default in both the hearing and review departments, despite repeated warnings by the court, respondent's dilatory conduct was an aggravating factor. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[11]**

Primary aims of attorney disciplinary probation are protection of public and rehabilitation of attorney. Greatest amount of discipline for violating probation conditions is merited for breaches of probation conditions significantly related to misconduct for which probation was given, especially when circumstances raise serious concern about public protection or show probationer's failure to undertake rehabilitative steps. Where misconduct for which respondent was placed on probation included practicing law in violation of court order, and respondent's current misconduct also involved violating numerous court orders and was aggravated by failure to participate in disciplinary proceeding, and where respondent's probation violations involved two of very first steps required by probation conditions, these factors indicated that respondent had a persistent problem with conforming his conduct to requirements of law, raised serious concerns for need to protect public, and showed that respondent had failed to even begin to take steps to rehabilitate himself. Accordingly, imposition of entire period of stayed suspension was appropriate discipline for respondent's violation of probation. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[12]**

Where, in representing four criminal clients, respondent violated six court orders, was held in contempt four times, failed to appear at scheduled court hearings nine times, and had warrants issued against him three times, and where respondent had breached two separate disciplinary orders and defaulted in current disciplinary proceeding, respondent's misconduct reflected disdain and contempt for the orderly process and rule of law and inability to conform to the most basic duties of an attorney. These facts, coupled with lack of mitigation, demonstrated that risk of future misconduct was great and indicated that respondent was not a good candidate for probation and/or suspension. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[14]**

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Howard (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

Additional misconduct which occurred after respondent's claimed rehabilitation, and respondent's subsequent failure to participate fully in disciplinary proceedings, were cogent evidence that respondent had not yet dealt effectively with the problems underlying his misconduct. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[15]**

Respondent's sporadic participation in disciplinary proceedings, despite warning from hearing judge regarding consequences of continuing to be derelict in duty to State Bar, demonstrated both respondent's indifference to his professional obligations and a substantial risk to the public. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[17]**

A short delay in compliance with rule 955, by itself, would not necessitate disbarment. However, where respondent also had failed to appear in the rule 955 violation proceeding, had failed to appear in two prior disciplinary proceedings, and had continued to ignore her obligations thereafter, showing a clear pattern of failure to participate in the disciplinary process and to comply with requirements of Supreme Court, disbarment was clearly appropriate. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[2]**

An attorney's failure to comply with successive orders of the Supreme Court is of concern to the State Bar Court because it repeatedly burdens the resources of the State Bar Court and the disciplinary system. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[11]**

Respondent's declaration presented in an attempt to comply with rule 955 bore little mitigating weight when it was submitted almost two months after respondent's rule 955 affidavit was due to be filed with the Supreme Court, contained inaccurate information and misrepresented a hearing date in one case. The inaccurate declaration raised serious doubts as to respondent's credibility and was an aggravating circumstance. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[8]**

Respondent's tardy and intermittent participation in disciplinary proceedings was an aggravating circumstance, where respondent gave no excuse for failure to appear on last day of hearing, was not represented by counsel, and displayed several failures to participate or tardiness in participating. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[9]**

Where respondent answered one letter from State Bar, but ignored two others before answering a fourth, and was not diligent in responding the State Bar's inquiry, lack of full cooperation with State Bar was a factor in aggravation. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[24]**

Despite respondent's cooperation in executing a detailed and broad pretrial stipulation, his efforts to show his innocence through testimony which was not credible, and his admitted misleading of a State Bar investigator, were aggravating factors. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[6]**

Respondent's failure to maintain a current address with the State Bar's membership records office, which delayed and stymied the investigation of respondent's misconduct, constituted failure to cooperate with the State Bar. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[37]**

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

Where attorney displayed indifference and lack of remorse by failing to participate in past and present disciplinary proceedings, far more severe discipline was required than in other cases involving similar misconduct where attorneys did participate in disciplinary proceedings. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[28]**

An attorney is not a good candidate for suspension and/or probation where that attorney has failed to comply with the terms and conditions of a prior criminal probation, and has failed to participate in present and past disciplinary proceedings. These facts reflect the attorney's disdain and contempt for the orderly process and rule of law and clearly demonstrate that the risk of future misconduct is great. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[29]**

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

Where respondent misrepresented his educational background in his resume, these actions were dishonest, and some period of actual suspension was warranted. Where respondent's misconduct extended over a three-year period, and was aggravated by his misrepresentations in discovery responses in the disciplinary proceeding, and where respondent had personal problems but they did not fully explain his misconduct, a 60-day actual suspension, with one year of probation, was appropriate to recognize the seriousness of the misconduct, the mitigating

circumstances, and the sanction imposed in previous cases. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[5]**

Respondent's deceit in his responses to the State Bar's interrogatories seriously aggravated his misconduct, and might perhaps constitute a greater offense. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[7]**

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

613 Found but discounted or not relied on

613.10 Duplicative of section 6068(i) charge

Attorney's failure to participate in State Bar Court disciplinary proceeding before entry of default was aggravating circumstances, but warranted little aggravating weight because it closely equaled conduct that constituted attorney's violation of statutory duty to cooperate with disciplinary investigations and that resulted in entry of attorney's default. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[1]**

Respondent's failure to cooperate with the State Bar's investigation of his misconduct was a substantive violation of the statute requiring such cooperation, not just an aggravating factor. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[9]**

Respondent's having willfully misled a court during trial and failed to cooperate with the State Bar's investigation of his misconduct were not properly considered as aggravating factors because they were part of the basis for finding respondent culpable of substantive violations. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[10]**

613.90 Other reason

While respondent's improper assertion of various constitutional and statutory privileges showed a lack of cooperation with the State Bar during the disciplinary proceedings and constituted an aggravating factor, such factor was given little weight because (1) there was no evidence of resulting excessive delay in the disciplinary proceedings, (2) respondent willingly responded to most of the questions presented to him and only asserted the privileges as to matters which he believed involved the possibility of criminal prosecution, (3) the delay which did occur was not caused solely by respondent, (4) respondent's assertion of the privileges did not interfere with the State Bar's ability to prove its case, and (5) there was no clear and convincing evidence that respondent asserted the privileges in bad faith. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.**[17]**

Attorney's failure to participate in State Bar Court disciplinary proceeding before entry of default was aggravating circumstances, but warranted little aggravating weight because it closely equaled conduct that constituted attorney's violation of statutory duty to cooperate with disciplinary investigations and that resulted in entry of attorney's default. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[1]**

Where respondent falsely described incident leading to respondent's battery conviction, such conduct did not so much involve lack of candor as it manifested respondent's obsession with his view of facts and lack of insight into seriousness of his actions, itself an important factor bearing on need for measurable discipline. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[1]**

While respondent was less than fully candid with the State Bar Court in his lack of explanation of some of the circumstances surrounding his conviction, the hearing judge properly found that respondent's lapses of candor were not so egregious as to require a finding in aggravation. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[10]**

Respondent's failure to cooperate in disciplinary proceeding was an aggravating factor, but respondent was not deemed entirely uncooperative since he did meet with investigator on one occasion and attended oral argument on review despite entry of default. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[14]**

615 Declined to find

Where respondent failed to file motion to set aside default until after original trial date was set, adverse consequences of failure to file timely motion were sufficient sanction, and Review Department declined to find, in addition, that respondent's failure to cooperate with State Bar constituted aggravating factor. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348 **[6]**

In the Matter of Wolff (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1.

The review department rejected a finding that respondent displayed a lack of cooperation during State Bar proceedings by making unfounded and inflammatory statements in various pleadings filed in this disciplinary matter. Respondent's statements were not proper subjects for aggravation where the State Bar made no showing by clear and convincing evidence that they were false. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[18]**

The review department rejected a finding that respondent displayed a lack of cooperation during State Bar proceedings by filing six petitions for interlocutory review with the review department, at least one petition for review with the California Supreme Court, and over 30 motions in the hearing department. These documents were not proper subjects for aggravation where it was not shown by clear and convincing evidence that the documents were completely lacking in merit and were filed in bad faith. Respondent acted as cocounsel during the hearing department proceedings and was entitled to reasonable access to the courts to seek judicial remedies. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[19]**

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

While it is true that the hearing judge found that some aspects of respondent's testimony lacked credibility, she did not find that respondent's testimony lacked candor or was dishonest. Absent such a finding, aggravation under standard 1.2(b)(vi) is inappropriate. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61. **[5a-b]**

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

An attorney's failure to appear at a disciplinary hearing of which he was not given notice is not an aggravating circumstance. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[4]**

Respondent's failure to appear at and participate in a State Bar Court status conference noticed and held five days before respondent's answer to the notice of disciplinary charges was due or filed was not considered an aggravating circumstance. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[6]**

Where hearing judge did not find respondent's testimony regarding respondent's interpretation of certain events to be credible, record did not, without more, establish that respondent's testimony was less than truthful for purposes of aggravation. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[9]**

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

Lack of candor toward the State Bar during disciplinary investigation or proceedings, including presenting intentionally misleading testimony, fabricating evidence, or attempting to mislead the court through material omissions, is an aggravating circumstance. However, a respondent's honest, if mistaken belief in his or her innocence, and resulting in failure to acquiesce in the State Bar Court's findings, is not in and of itself aggravating. Lack of candor cannot be found based merely on a respondent's different memory of events from that of complaining former clients. Where respondent's testimony concerning his former office manager's conduct in hiding or destroying letters and messages was uncontroverted and not implausible, and was corroborated by an eyewitness, hearing judge's finding that such testimony lacked candor was not adopted by review department. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[9]**

Where respondent was candid and displayed examplary conduct during disciplinary proceedings, respondent's vigorous defense of the charges, which was motivated only by his honest belief in his innocence, did not negate

the mitigating force of his candor and cooperation with the State Bar. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[16]**

It was not an aggravating circumstance that respondent did not personally attend the hearing on the degree of discipline, since respondent was represented by counsel who appeared on respondent's behalf. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[1]**

Finding in aggravation of lack of candor with State Bar was not justified, where respondent's testimony was not implausible, and contrary testimony of complaining witness contained repeated self-contradictions. Respondent's failure to respond to client's small claims complaint did not establish that respondent was not candid, nor did respondent's lapses in memory. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[22]**

Although not constituting a factor in aggravation, respondent's trial tactics in not revealing exhibits to examiner in advance undermined respondent's credibility with hearing judge, created risk that exhibits would be excluded, and unnecessarily prolonged hearing. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[25]**

Respondent's persisting in his belief in his innocence of fundamental misconduct did not necessarily show that respondent was deceitful or had misled the hearing judge, and was not a basis for a finding in aggravation, nor did it prevent a finding in mitigation that respondent had showed recognition of ways he could handle client matters more professionally in the future. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[7]**

Where respondent's client denied having had a certain conversation with respondent, and the hearing judge credited the client on that point, but the record as a whole showed that respondent lacked a motive to lie in testifying about the conversation, the evidence suggested that the client might have forgotten the conversation, and the client exaggerated in other testimony and was very bitter toward respondent, the review department, while not rejecting the credence given to the client's testimony by the hearing judge, did find that the client's testimony failed to constitute clear and convincing evidence of intentional misrepresentation by respondent. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[4]**

Where the hearing judge accepted as true the testimony of two State Bar witnesses, but such testimony did not contradict respondent's own plausible version of events, the review department found that State Bar had failed to prove by clear and convincing evidence that respondent had testified falsely. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[5]**

Where the review department rejected the hearing judge's finding that respondent had lied, it also rejected the hearing judge's finding in aggravation that respondent had lacked candor in part of his testimony. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[18]**

Respondent's failure to obey the hearing referee's order to take the witness stand at the disciplinary hearing was not considered an aggravating factor, where respondent was acting on the advice of counsel and the law was not clear at the time. Nor was the courtroom behavior of respondent's counsel attributable to respondent in assessing respondent's cooperation with the State Bar. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[38]**

Court's rejection, based on documentary and other evidence, of respondent's testimony regarding his knowledge and state of mind six years earlier, did not result in finding that such testimony lacked candor or was offered in bad faith. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[12]**

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

Where respondent admitted many of the serious charges against him during State Bar investigation, review department declined to find failure to cooperate with State Bar as aggravating factor, despite respondent's failure to participate in proceedings against him. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59 **[13]**

616 Failure to make restitution (1.5(m); interim Standard 1.5(i))

616.10 Found

616.30 Found but discounted or not relied on

616.31 Partial or attempted restitution

616.33 Inability to make full restitution

616.39 Other reason

616.50 Declined to find

616.51 Partial or attempted restitution

616.53 Inability to make full restitution

Where respondent's clients could not be located despite State Bar's efforts to find them, Review Department declined to consider respondent's delay in paying restitution as aggravating factor. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. **[6]**

616.59 Other reason

Where respondent's clients could not be located despite State Bar's efforts to find them, Review Department declined to consider respondent's delay in paying restitution as aggravating factor. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. **[6]**

618 High level of vulnerability of victim (1.5(n))

618.10 Found

618.30 Found but discounted or not relied on

618.50 Declined to find

620 Lack of remorse/failure to appreciate seriousness

Respondent's failure to have gained insight into his misconduct was troubling. The discipline imposed for his misconduct of filing and pursuing frivolous actions in bad faith and for a corrupt motive must reflect this lack of insight as well as the harm to the victims and assurance to the public and bar that such conduct will not be tolerated. The discipline recommended, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years on conditions, including 60 days' actual suspension, appropriately balances these values and the record as a whole.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[6]**

621 Found

Respondent failed to acknowledge that he may not charge any fees in loan modification cases until all services have been completed, as clearly provided in new statute and ethics alert. A respondent may freely urge any creative legal theory in good faith, but must accept responsibility for acts and come to grips with culpability. Where respondent argued against new law prohibiting the collection of up-front fees in loan modification cases, his lack of insight was assigned significant aggravating weight because it suggested his misconduct may reoccur. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[11]**

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Sullivan (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

This case presents serious acts of dishonesty which served to defraud two sellers of valuable real estate. Respondent's many ethical violations featured harm to victims and the honest administration of justice. Offenses concerning the administration of justice have been considered as very serious by the Supreme Court. Disbarment is not reserved just for attorneys with prior disciplinary records. A most significant factor is respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing. This factor makes disbarment appropriate despite the fact that respondent presented some mitigating evidence. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70. **[5]**

Respondent failed to demonstrate an appreciation of his misconduct or insight into his wrongdoing. The review department considered this factor to be most related to its adoption of the hearing judge's recommendation of disbarment, noting that as late as oral argument on review, respondent showed no insight into having learned from his extended period of overreaching of his vulnerable client. The review department concluded that the public was therefore at great risk unless respondent was required to successfully complete a reinstatement proceeding before again being allowed to practice law in this state. *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824. **[4]**

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In light of respondent's recognized expertise regarding statutory contingent fee limits in medical negligence cases, his persistent claim that he was not obligated to discuss potential applicability of every law in every book in his library with medical negligence client and superior court judge was frivolous and betrayed disdain for his client and trial court. Similarly, respondent's claim that he was victim of uncertain law regarding fee limitation statute demonstrated lack of candor with State Bar Court. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[19]**

Where attorney is found culpable of intentional or dishonest withholding of funds due to client, issue on degree of discipline is whether mitigating circumstances outweigh general rule of disbarment for such offenses. Cases of misconduct involving funds improperly withheld for reasons other than dishonesty have typically resulted in varying degrees of actual suspension even when attorney had no prior discipline record. Where respondent, through gross neglect, withheld sizable amount of funds due to disabled client, had prior record of discipline for similar misconduct, and persisted in defending his collection of fees in excess of statutory limits despite adverse appellate decisions in suits against him by clients, concern for respondent's lack of insight into his misconduct and possible continued disregard for duty to clients of utmost good faith and fair dealing warranted six months actual suspension. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[23]**

Where respondent seriously abused the judicial system for a dozen years despite heavy sanctions, showed no remorse, and refused to mend his ways, no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession. Because of respondent's total lack of repentance, a lengthy suspension coupled with probation terms was inappropriate; there was a great danger that respondent would fail to comply with any probation terms imposed. Respondent's repeated acts of moral turpitude demonstrated that he was no longer worthy of membership in the bar. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[14]**

Where respondent did not appear from record to be venal or dishonest, but overall nature of respondent's misconduct revealed somewhat indifferent attitude toward ethical obligations, especially those to administration of justice and persons other than current clients, some actual suspension was warranted in order to protect public by augmenting respondent's understanding of his duties. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[34]**

An attorney's lack of concern for the disciplinary process and failure to appreciate the seriousness of the charges is a factor in aggravation. Where respondent displayed a lack of appreciation of the necessity for timely, meaningful participation in the disciplinary process, as demonstrated by his repeated attempts to appear without timely seeking relief from default in both the hearing and review departments, despite repeated warnings by the court, respondent's dilatory conduct was an aggravating factor. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[11]**

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Respondent's sporadic participation in disciplinary proceedings, despite warning from hearing judge regarding consequences of continuing to be derelict in duty to State Bar, demonstrated both respondent's indifference to his professional obligations and a substantial risk to the public. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[17]**

Where two separate disciplinary proceedings were consolidated on review, the first proceeding did not constitute prior discipline for the purpose of enhanced discipline in the consolidated matter. Nonetheless, where the misconduct involved in the second proceeding had continued during the period that the first proceeding was pending in hearing department, the fact that respondent engaged in additional misconduct while he was aware that his conduct was being scrutinized in a pending disciplinary proceeding was significant. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[18]**

Disbarment is generally ordered for wilful breach of rule 955, and is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[8]**

An attorney's failure to accept responsibility for, or to understand the wrongfulness of, his or her actions may be an aggravating factor unless it is based on an honest belief in innocence. Where respondent's assertions in defense of failure to perform services did not reflect an honest belief in innocence, but rather reinforced the conclusion that respondent simply did not understand or appreciate the requirement to devote diligence necessary to discharge duties arising from employment, respondent's assertions exhibited a disturbing lack of insight into misconduct which in turn caused concern that he would repeat his misdeeds. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[16]**

Where respondent's misconduct in both first and second disciplinary matters involved similar lack of diligence causing delay in closing a simple probate estate, discipline in second matter ordinarily would warrant only slightly greater discipline than in first matter. However, where respondent had failed to understand or appreciate misconduct, causing concern about handling future cases, and in light of absence of mitigating factors and presence of several aggravating factors, significantly greater discipline than in first matter was appropriate in second matter, and review department recommended two-year stayed suspension, three years probation, and six months actual suspension. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[17]**

Where an attorney's prior discipline involved culpability of moral turpitude for attempted receipt of stolen property, and the attorney's subsequent misconduct involved moral turpitude in misleading applications for employment, there was no pattern or common thread linking the former misconduct with the later case. However, the attorney's multiple breaches of ethical duties demonstrated that the attorney lacked a true understanding of professional responsibilities. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[11]**

Attorneys placed on disciplinary suspension must be careful not to hold themselves out as being able to practice when they are not and must not mislead employers regarding their prior status. An attorney's statements in a resume or job interview should be as trustworthy as that professional's representation to a court or client. Where respondent did not seem to understand the seriousness of his ethical duties in this regard, and had a prior record of discipline, a period of actual suspension was necessary for the protection of the public. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[13]**

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

Where respondent failed to make restitution efforts until after disciplinary actions had been instituted; asserted that it was the State Bar's duty to contact her clients when she abandoned her practice; and had committed misconduct involving acts of deceit and bad faith, respondent's conduct evidenced a lack of understanding of her duties and insight into her misconduct. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[39]**

Disbarment was not appropriate in a misappropriation case where the misconduct resulted more from respondent's lack of understanding of an attorney's ethical duties rather than innate venality. However, because there was more serious misconduct and less mitigation than in other cases, and respondent had not recognized the seriousness of the misconduct, a three-year actual suspension, a showing of rehabilitation and fitness to practice before termination of the actual suspension, and strict probation conditions were required. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[13]**

Respondent's use of specious and unsupported arguments in an attempt to evade culpability in his disciplinary matter revealed respondent's lack of appreciation both for his misconduct and for his obligations as an attorney, and his persistent lack of insight into the deficiencies of his professional behavior, and constituted an independent aggravating factor. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[27]**

Where attorney displayed indifference and lack of remorse by failing to participate in past and present disciplinary proceedings, far more severe discipline was required than in other cases involving similar misconduct where attorneys did participate in disciplinary proceedings. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[28]**

The law does not require false penitence; however, it does require that the respondent accept responsibility for his acts and come to grips with his culpability. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[6]**

623 Found but discounted or not relied on

Appropriate level of discipline for respondent's misdemeanor conviction for paying for referral of two clients (Ins. Code, § 750, subd. (a)), where circumstances surrounding conviction involved moral turpitude, was two-year stayed suspension with two-year period of probation and six-month period of actual suspension. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. **[6 a-g]**

625 Declined to find

625.10 Good faith belief in innocence

Where respondent was legitimately entitled to fees for services to wife in marital dissolution, and honestly believed that couple had allocated trust funds to husband in marital settlement in order to prevent respondent from applying trust funds to wife's debt for fees, there was not clear and convincing evidence that respondent's failure to make restitution of funds to husband was an aggravating circumstance. Respondent's legal position in defense of his retention and use of husband's funds did not evidence a persistent unwillingness to conform his behavior to ethical standards, and did not undercut the force of his mitigating evidence of subsequent reputable practice and community service. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[10]**

Respondent's long period of postmisconduct practice of law without further discipline was a significant mitigating circumstance, because it demonstrated that respondent was able to adhere to acceptable standards of professional behavior and was not likely to commit misconduct in the future. Respondent's good faith defense of his innocence, in which he honestly believed, did not constitute a lack of understanding of his misconduct so as to preclude such finding, especially where respondent offered evidence about his sensitivity to misconduct of which he had been found culpable at an earlier stage in the proceeding. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[20]**

Respondent's inconsistent responses to State Bar investigators precluded a finding in mitigation that respondent was cooperative with the State Bar. However, respondent's behavior while acting as his own counsel during the disciplinary proceeding, which was consistent with an honest, if mistaken, belief in his own innocence, did not demonstrate an intent to hinder or mislead the court. A respondent is not required to acquiesce in the

findings and conclusions of the State Bar Court, but the respondent's attitude toward the disciplinary process and amenability in conforming to the Rules of Professional Conduct are proper issues for the court's review, particularly in determining appropriate discipline. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[14]**

625.20 Failure of proof

Respondent's statements to bankruptcy court that she believed she was doing the right thing for her clients, and was using her abilities to help people who were scared, were not clear and convincing evidence that respondent was indifferent to, or failed to understand, her misconduct in filing multiple improper bankruptcy petitions. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[6]**

Respondent's submission of allegedly frivolous review brief did not constitute aggravating circumstance where respondent's attorney filed brief in question and there was no evidence that respondent drafted or controlled its contents. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[13]**

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

Where evidence established that victim of attorney's misconduct had received in compensation from attorney an amount greater than the amount originally embezzled by attorney, attorney's belief that victim was not economically harmed, and failure to make additional restitution, did not demonstrate attorney's failure to appreciate wrongfulness of acts, or lack of remorse. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[15]**

625.90 Other reason

690 Other aggravating factors

691 Found

The fact that respondent intentionally engaged in misconduct for personal gain and, in fact, personally profited from his misconduct are aggravating circumstances. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[13]**

Respondents' efforts to simultaneously represent opposing parties in a harassment lawsuit where an actual conflict existed was considered an aggravating factor. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[11 a, b]**

In the Matter of Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In probation revocation proceeding, repeated reminders and pressure from State Bar needed to secure respondent's completion of restitution in accordance with the stipulated discipline imposed on attorney in prior disciplinary proceeding were aggravating factors and inconsistent with the self-governing nature of probation as a rehabilitative part of attorney discipline system. *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567. **[4]**

Attorney's injection of the district attorney's office in which he worked into the defense in his disciplinary probation revocation proceeding, by using its name in caption of his pleadings, when that office had no role in his defense was, at very least, a misrepresentation of that office's official participation and an aggravating circumstance. *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567. **[5]**

It was a factor in aggravation that respondent personally gained from his misconduct. *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[2]**

Where respondent misappropriated his clients' identities, authorized the forgery of clients' signatures, and conspired to use his trust account as a subterfuge to avoid paying income taxes due on legal fees and to fund a massive capping and fee splitting scheme, respondent's misconduct was directly related to his obligations as an attorney. This direct relation between the misconduct and attorney obligations constituted a factor in aggravation. *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[4]**

Respondent's repeated failure to respond to inquiries by clients as to the status of their cases and to investigation inquiries by professional organizations responsible for maintaining standards within the profession constituted an aggravating factor. The combination of respondent's misconduct presented respondent's disregard for his obligations to his profession as well as disregard for his obligations to his clients. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[7]**

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

Respondent's disclosure of former client's confidential information to defendants in lawsuit in which former client was plaintiff was serious aggravating circumstance and was not justified by former client's lawsuit against respondent for return of fees and legal malpractice. *In the Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[16 a-d]**

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9.

Respondent's placement of his interests above the interests of his client warrants significant additional discipline. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[10]**

Respondent's practice of orally authorizing his staff to sign his name to declarations made under the penalty of perjury without disclosing, on the declaration, the fact that they were signing the declaration with respondent's permission or at his direction was misleading and inappropriate and thus was aggravation. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[8]**

Respondent's failure to file pre-trial statement and appear at various State Bar Court hearings were serious aggravating circumstances because they showed respondent comprehended neither the seriousness of the charges nor his duty to participate in disciplinary proceedings. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[3]**

Respondent's failure to appear at disciplinary trial in accordance with a notice to appear in lieu of subpoena served on him by State Bar was a particularly aggravating circumstance because it was the equivalent of disobeying a subpoena to appear at trial as the service of a notice to appear on a party has the same effect as the service of a subpoena. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[5]**

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

Aggravating circumstances were found where respondent conspired to steal and stole from a school while he was working for it. Respondent's participation in the conspiracy to steal and theft were not only criminal acts, but also brazen breaches of the fiduciary duties an employee owes his employer. Observance of such fiduciary responsibility is central to the practice of law. Moreover, that respondent committed these felonies while he was in law school was also a factor of grave concern. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[3]**

Respondent's argument that his employer's action in forcing him to become the supervisor of employees that the employer knew were stealing from the employer was the equivalent of entrapment, was found to be meritless and an aggravating circumstance because it patently demonstrated that respondent lacked insight into the wrongfulness of his actions and that he had not accepted responsibility for them. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[4]**

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

Fact that respondent's misconduct involved client who was member of respondent's family was not mitigating but rather aggravating circumstance, since respondent's family ties to client made respondent more aware of client's vulnerabilities and trust client placed in respondent. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[16]**

Respondent's carelessness in losing control of four to five hundred case files when respondent's practice closed raised grave doubts about respondent's ability to protect client interests and constituted evidence in aggravation. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[17]**

Respondent's use of obstructive tactics during his disciplinary proceeding, including abuse of discovery and frivolous motions, constituted a serious aggravating circumstance. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[13]**

Where respondent seriously abused the judicial system for a dozen years despite heavy sanctions, showed no remorse, and refused to mend his ways, no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession. Because of respondent's total lack of repentance, a lengthy suspension coupled with probation terms was inappropriate; there was a great danger that respondent would fail to comply with any probation terms imposed. Respondent's repeated acts of moral turpitude demonstrated that he was no longer worthy of membership in the bar. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[14]**

Disciplinary conviction referral cases in which assaultive behavior was the principal offense have generally resulted in suspension of varying degrees. In matter arising from misdemeanor conviction for battery on police officer, it was an aggravating circumstance that respondent provoked a dangerous and risky confrontation with police responding to his own domestic disturbance notwithstanding respondent's significant experience as a practicing lawyer in handling family law matters. Where this and other aggravating circumstances clearly outweighed mitigating ones, discipline of two years stayed suspension, two years probation, and 60 days actual suspension was abundantly fair and warranted. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[10]**

Where respondent had made a loan to a client, and later represented that client in a lawsuit in which respondent was a codefendant, and where, in order to secure the client's debt to him, respondent had obtained an ownership interest in property which was a subject of that lawsuit and respondent later sued to foreclose on that interest, the fact that respondent's original business transaction with the client became the subject matter of litigation aggravated his initial misconduct in failing to comply with the rule governing business transactions with clients, but did not constitute a separate ethical violation. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[5]**

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

Where an attorney has previously been disciplined for misappropriation, the attorney is eligible for disbarment if found culpable of misappropriation in a second matter. Where respondent's total misconduct in two separate disciplinary cases involved ten client matters, spanned all but three years of his practice, and harmed or jeopardized numerous clients, and respondent had an ongoing substance abuse problem and had not complied with his probation in the first matter, his aggregate misconduct clearly required imposition of the harshest discipline, and there was no basis for a recommendation of suspension rather than disbarment. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[13]**

An attorney's admitted cocaine dependency is an appropriate factor to consider in determining the appropriate discipline for public protection. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[17]**

Suspension resulting from respondent's failure to pass professional responsibility examination as ordered by Supreme Court did not constitute prior discipline, but was relevant to determination of appropriate discipline for failure to comply with rule 955 as required by same Supreme Court order. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[12]**

Recent Supreme Court decisions reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule 955. One of the primary reasons for the adoption of the Standards for Attorney Sanctions for Professional Misconduct was to achieve greater consistency in disciplinary sanctions for similar offenses. Any reason for deviating from the standards or established case law must be clearly stated. Accordingly, where respondent participated in the rule 955 proceeding, but did not present a convincing case of mitigation, diligence, and rectification of misconduct, and instead demonstrated a pattern of inattention to important duties, an inability to conform to professional norms, and a lack of concern for potential harm to his clients and the public, the public interest and the administration of justice would be served by respondent's disbarment. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[15]**

An attorney's criminal misconduct is aggravated when the attorney's previous experiences demonstrate that the attorney was aware of the issues involved in the criminal behavior. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[4]**

Where respondent's drunk driving convictions involved more serious misconduct than in prior reported disciplinary cases involving drunk driving, including repeated abusive conduct with law enforcement officers, and respondent had two prior disciplinary reprovals, but respondent presented favorable evidence of professional ability and character references as well as efforts toward overcoming his addiction to alcohol, a 60-day actual suspension was appropriate to serve the aims of attorney discipline and, coupled with three years of probation, to assist in convincing respondent to deal with his alcohol abuse problems seriously. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[7]**

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

An attorney is not a good candidate for suspension and/or probation where that attorney has failed to comply with the terms and conditions of a prior criminal probation, and has failed to participate in present and past disciplinary proceedings. These facts reflect the attorney's disdain and contempt for the orderly process and rule of law and clearly demonstrate that the risk of future misconduct is great. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[29]**

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

Failure to make restitution is an aggravating factor; thus, incomplete restitution to clients' medical providers constitutes an aggravating factor. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[14]**

If respondent displayed a reckless or indifferent attitude toward his recordkeeping duties with regard to client trust funds, by using an ATM card to make repeated cash withdrawals of personal funds from his client trust account, this could constitute a factor in aggravation of commingling charges. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[14]**

Respondent's extensive law enforcement background, first as FBI agent and then as deputy district attorney, was factor in aggravation in conviction referral matter as it gave respondent special awareness of law's requirements. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[4]**

693 Found but discounted or not relied on

695 Declined to find

Where factual findings were used by the hearing judge to find culpability, it would be improper to again consider those same findings as factors in aggravation. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. **[7]**

Review department is very reluctant to consider State Bar's request for a holding that respondent's failure to comply with the terms of a civil settlement agreement was an aggravating circumstance because the State Bar did not request such a holding from the hearing judge, but requested it for the first time on review. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[3]**

In default proceedings, uncharged facts cannot be relied on as evidence of aggravating circumstances because the respondents are not fairly apprised that additional uncharged facts will be used against them. The use of uncharged facts in a contested proceeding presents a different question. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585. **[4]**

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

Where respondent's first actual suspension ended in December 1991, and his second actual suspension, which was ordered to be "consecutive" to the first, did not take effect until June 1992, hearing judge did not err in finding that respondent could have practiced law during the interval, and fact that respondent did not in fact practice law during such time did not entitle him to "credit for time served" and was neither a mitigating nor an

aggravating circumstance in subsequent proceeding for probation violation and failure to comply with rule 955, California Rules of Court. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[7]**

Community service activities may bear on the showing of rehabilitation in a reinstatement proceeding, but discontinuance of such activity, without more, is not necessarily an adverse factor. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[1]**

While a suspension for failure to pass the Professional Responsibility Examination may be considered in determining appropriate discipline, it is not prior discipline under the Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[2]**

Where an attorney permitted a non-lawyer to misuse the attorney's name to conduct a large personal injury practice, the attorney could not be held separately culpable for each item of harm that resulted, without proof of his or her actual knowledge. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[3]**

A respondent's criminal conduct might well be relevant as an aggravating factor in a different case, but where respondent's criminal conviction had been found not to constitute a basis for discipline and State Bar had not challenged that conclusion, it was not appropriate to consider such conviction as a factor in aggravation of other misconduct. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[14]**

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

While respondent's criminal offense was surrounded by his possession of firearms, such possession was not a separate aggravating circumstance, where there was no evidence that the firearms were illegal or that they were used in an aggressive or threatening manner. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[11]**

While attorneys' illicit conduct involving minors has been viewed critically by the Supreme Court in the past, the presence of marijuana in respondent's home where his teenage sons resided was not an aggravating factor in the absence of direct evidence that the minors were exposed to illegal conduct or had access to the marijuana. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[12]**

In a disciplinary hearing, the record of a felony conviction conclusively establishes the attorney's guilt of the felony. Nevertheless, testimony from attorney character witnesses as to their belief that the respondent was innocent should not have been considered as an aggravating circumstance. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[8]**

Respondent's withdrawal of his resignation with charges pending should not have been relied on as an aggravating factor. Respondents should be permitted to submit their resignations without fear that if a resignation is subsequently withdrawn, the respondent will be penalized by the court's reliance on that fact as an aggravating factor. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[15]**

Neither a respondent's section 6007(c) inactive enrollment itself nor the unproven charges underlying it should be relied upon as aggravation in a subsequent disciplinary proceeding. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[24]**

Under applicable provisions of Commercial Code, handwritten notation on attorney's check stating that it was issued "subject to verbal confirmation" destroys its negotiability and prevented attorney from being criminally liable for issuance of check drawn on insufficient funds. Dishonor of such check due to insufficient funds was not an aggravating factor, because check was issued in non-negotiable form and there was no clear evidence that payee was misled regarding nature of check. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[1]**

Fact that in a disciplinary proceeding arising from an attorney's criminal conviction, the conviction is conclusive evidence of the attorney's guilt, is not an aggravating factor, but the basis of the attorney's culpability. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[11]**

Failure to present expert psychological testimony regarding purportedly aberrant nature of attorney's misconduct was not an aggravating factor. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[12]**

Failure to explain motive for misconduct is not an aggravating factor. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[13]**

700 Mitigation (references in parentheses are to Standards)

710 Long practice with no prior discipline record (1.6(a); 1986 Standard (1.2(e)(i))

710.10 Found

Where respondent was a licensed attorney for 22 and one-half years before her misconduct, but she worked in non-attorney positions for 12 years, she was entitled to credit for 10 and one-half years of discipline-free practice, which is significant mitigation. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330. **[4]**

Where attorney had practiced for over 30 years without prior discipline, and State Bar stipulated that present misconduct was not serious, attorney's lack of prior record was entitled to significant weight in mitigation. Even if present misconduct had been serious, lack of prior record still would have established that respondent's misconduct was not likely to recur, where misconduct occurred during single, relatively short period of aberrant behavior, respondent voluntarily ceased committing misconduct before authorities or State Bar became involved, and respondent was remorseful and accepted responsibility for misconduct. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320 **[3 a,b]**

In the Matter of Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160

Mitigative credit must be given in a disciplinary proceeding where an attorney sufficiently proves the absence of a prior record of discipline over many years and where the misconduct is not deemed serious. However, the Supreme Court and this court routinely have considered the absence of prior discipline in mitigation even when the misconduct was serious. Therefore, respondent's practice of law for over twelve years with no prior record of discipline was a mitigating factor. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[12]**

Although standard 1.2(e) of the Standards for Attorney Sanctions for Professional Misconduct describes instances when consideration of certain mitigating circumstances is mandatory, it is by no means an exclusive list of every factor that may be considered in mitigation. The Supreme Court has considered the absence of prior discipline in mitigation even when the misconduct was serious, thus respondent's practice of law for more than 17 years with no prior record of discipline is a significant mitigating factor. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 **[4]**

In the Matter of Wolff (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1.

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403.

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364.

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.

In the Matter of Sawyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765.

The review department recommended a one-year stayed suspension and three-year probation, conditioned on a sixty-day actual suspension, where an attorney had recklessly failed to provide competent legal services in four matters, had failed to communicate properly with a client in one matter, had failed to forward a client's file promptly upon request in one matter, and had significantly harmed two clients, but where the attorney had practiced law without discipline for over 21 years, had recognized his misconduct, had reshaped his office procedures, and had demonstrated full candor and acknowledgment of responsibility for his misconduct before the State Bar Court. *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608. **[4]**

In the Matter of Respondent X (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

Where respondent had been disciplined in another jurisdiction, his record of practice prior to his first California disciplinary proceeding was not "unblemished." However, his over 30 years of practice prior to such out-of-state discipline constituted an important mitigating circumstance. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[14]**

Failing to appear as ordered at settlement conference, and intentionally misleading settlement judge regarding client's death, was serious misconduct which threatened public and undermined its confidence in legal profession. However, considering comparable case law, and in view of respondent's many years of practice prior to misconduct, and lack of proven aggravating factors, appropriate discipline was one-year stayed suspension and two years probation with no actual suspension, rather than two-year stayed suspension with two years probation and thirty days actual suspension. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[15]**

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

Where respondent had practiced law for more than 25 years before committing misconduct, such practice was entitled to considerable weight in mitigation. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[14]**

Where respondent not only made a bad loan to a client without complying with the rule governing business transactions with clients, but also thereafter exhibited profound misjudgment which prompted lengthy litigation against an existing client, and which harmed the administration of justice, two-month actual suspension was

appropriate discipline despite respondent's initial motive to aid the client and despite his long legal career and the high personal and financial cost he had already paid for his poor judgment. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[16]**

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

Where respondent's misconduct involved eight instances of abandonment or failure to provide services, three instances of failure to return unearned fees, lack of communication with three clients, failure to pay court-ordered sanctions in two cases, misappropriation of a small amount of advanced costs, improper securing of a large loan from a client, and failure to cooperate with the State Bar investigation, and respondent did not fully participate in the disciplinary proceedings, then despite respondent's lengthy unblemished record and public sector service, the appropriate discipline included a lengthy period of actual suspension and probation, and a requirement that respondent prove rehabilitation, fitness to practice, and learning and ability in the law prior to returning to active practice. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[19]**

In matters involving abandonment of a single client by an attorney with no prior record of discipline, discipline imposed by Supreme Court has ranged from no actual suspension to 90 days of actual suspension. Where respondent's misconduct was serious, harmed client, and included trust account violation as well as abandonment and failure to communicate, but respondent presented impressive mitigating evidence, including services to disadvantaged clients and to minority community, and respondent expressed sincere aspiration not to be involved in disciplinary proceedings again, review department recommended actual suspension of 30 days, with stayed suspension of six months and one year of probation. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[9]**

Not all serious trust fund misappropriation cases warrant disbarment. Where respondent had a 21-year record of practice without prior discipline and respondent's misconduct took place within a relatively narrow time frame, standard 1.4(c)(ii) hearing, with three-year actual suspension and five-year stayed suspension and probation, would be adequate to protect public, despite gravity of respondent's misconduct and lack of evidence regarding its cause. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[8]**

Even though an attorney has a record of prior discipline, it is appropriate to consider a lengthy period of blemish-free practice prior to the attorney's first act of misconduct as a mitigating circumstance, where the prior misconduct occurred during the same time period as the present misconduct and both the prior and current misconduct occurred within a narrow time frame. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[18]**

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

Where respondent had practiced law for over 30 years before his current misconduct and where respondent's prior disciplinary record consisted solely of a private reproval for minor misconduct early in his career, respondent was entitled to a finding in mitigation based on his long years of practice. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[15]**

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

Where respondent successfully performed services for which he was retained, and his sole culpability was for single act of failing to inform client of respondent's entirely proper exercise of judgment not to pursue damages, and both harm to client and extent of misconduct were minimal, appropriate discipline would have been private reproval. However, in light of attorney's many years of practice without prior disciplinary record, and other extenuating circumstances, discipline would be punitive and would not further purposes of attorney discipline. Since finding of culpability precluded dismissal, admonition was an appropriate disposition. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[20]**

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

Thirteen years of practice without discipline, before engaging in first act of misconduct, is appropriate factor in mitigation; such factor was appropriately considered even though respondent had prior disciplinary record, because such record stemmed from conduct roughly contemporaneous with that involved in subsequent disciplinary matter. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[10]**

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

Record of practicing without complaint subsequent to misconduct is as valid a mitigating circumstance as lack of a prior record. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[18]**

Contrary to express terms of standard 1.2(e)(i), case law permits long record of practice without prior discipline to be treated as mitigation notwithstanding seriousness of present misconduct. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[19]**

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

710.30 Mitigation—Long Practice With No Prior Discipline Record—Found but discounted or not relied on

Where respondent had a license to practice law in Nebraska since 1973 but offered no evidence as to the scope or continuing nature of his practice there, mitigating credit for 27 years of discipline–free practice in Nebraska is severely diminished. However, respondent is entitled to full credit for 10 years of discipline–free practice in California. *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 **[4]**

710.31 Not in practice long enough

710.32 Prior to discipline proceedings

710.33 Prior to commission of misconduct

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

In the Matter of Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.

In the Matter of Elliott (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541.

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

The absence of a prior disciplinary record over many years of practice is a mitigating circumstance. Where respondent had practiced law discipline-free for about eight years prior to the start of his misconduct, such a period of unblemished practice was a mitigating factor, but did not merit significant weight. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[5]**

Respondent's unblemished practice of law for slightly less than eight years and four months prior to the start of her misconduct was a mitigating circumstance, but did not deserve significant weight. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[8]**

Where respondent had refrained from practicing law for five years and then had committed misconduct just over a year after returning to practice, respondent's lack of prior discipline record was properly discounted as mitigating circumstance. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[6]**

Where respondent had no prior record of discipline in sixteen years from admission to bar until hearing judge's decision, but respondent's misconduct began nine years after his admission to practice and continued for at least four years, review department did not view respondent's clean record as being as long or entitled to as much weight as did hearing judge. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[31]**

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

Seven years of law practice in California prior to respondent's misconduct was worth only slight weight in mitigation. Respondent's additional years in practice in a foreign jurisdiction were not shown by clear and convincing evidence to be mitigating because the record lacked information on the similarities and differences between the attorney discipline systems in the United States and the foreign jurisdiction. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[11]**

Respondent's lack of a prior record was not a significant mitigating factor since he had only been in practice for eight years prior to his misconduct. However, where respondent had practiced without incident for more than twelve years since the misconduct occurred, he was entitled to have this taken into account, and the review department concluded based on respondent's record that respondent's criminal conduct was aberrational and unlikely to recur. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[13]**

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

710.34 Both (or unclear from opinion)

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

Even though respondent was not entitled to any mitigating credit for five years of discipline free practice under standard 1.2(e)(i) and case law, there was no error in hearing judge's giving respondent mitigating credit for discipline free practice because weight assigned to such mitigation by hearing judge was nominal (i.e., "exists in name only;" not real or substantial). *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.**[2]**

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

710.35 Present misconduct too serious (interim Standard 1.6(a); 1986 Standard 1.2(e)(i))

Where respondent's misconduct was serious, involved intentional dishonesty, and continued over three and a half years, and respondent's only evidence that it was aberrational consisted of a short letter from a psychologist who had only treated respondent for six months and who did not testify at trial, respondent's record of 22 years in practice without prior discipline was entitled to only minimal credit in mitigation. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[7]**

Respondent was not entitled to mitigation for lack of prior discipline, despite his 31 years of discipline-free practice, where the misconduct was serious, part of a pattern, and highly likely to recur. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[7]**

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

Respondent's 12-years of discipline-free practice before misappropriation from CTA was assigned limited weight in mitigation; respondent acted dishonestly for three years, during which time he made 65 unauthorized withdrawals from his CTA that did not reflect aberrational misconduct, and he demonstrated lack of insight about his misappropriations. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273 **[4]**

No mitigation credit for attorney's 13-year discipline-free record because attorney engaged in 10-year pattern of dishonesty and serious misconduct and did not prove significant mitigation or rehabilitation. Attorney's lack of prior record was irrelevant to prove he would avoid future misconduct. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[9]**

Case law permits long period of discipline free practice to be treated as mitigation even though present misconduct is serious.*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.**[3]**

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

Respondent's lack of a prior record of discipline in 14 years of practice was entitled to mitigating weight but did not of itself prove that disbarment was excessive for convictions of grand theft and forgery. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[6]**

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

Record of 14 years of practice without prior discipline was mitigating circumstance but could not outweigh seriousness of attorney's misconduct and aggravating circumstances. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[9]**

Contrary to express terms of standard 1.2(e)(i), case law permits long record of practice without prior discipline to be treated as mitigation notwithstanding seriousness of present misconduct. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[19]**

710.36 Present misconduct likely to recur (1.6(a))

Where respondent's misconduct was serious, involved intentional dishonesty, and continued over three and a half years, and respondent's only evidence that it was aberrational consisted of a short letter from a psychologist who had only treated respondent for six months and who did not testify at trial, respondent's record of 22 years in practice without prior discipline was entitled to only minimal credit in mitigation. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[7]**

When present misconduct is serious, long record of practice without prior discipline is most relevant when misconduct is aberrational. Where respondent with over 30 years of discipline-free practice planned and repeatedly committed misdemeanor even after having time to reflect on and consider consequences of misconduct, misconduct could not be characterized as aberrational or unlikely to recur. Accordingly, respondent's lack of prior record warranted only modest mitigation. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[3]**

710.39 Other reason

Even though respondent was not entitled to any mitigating credit for five years of discipline free practice under standard 1.2(e)(i) and case law, there was no error in hearing judge's giving respondent mitigating credit for discipline free practice because weight assigned to such mitigation by hearing judge was nominal (i.e., "exists in name only;" not real or substantial). *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. **[2]**

Respondent's 15 years of blemish-free practice prior to committing the misconduct did not indicate that his misconduct was aberrational where respondent intentionally misappropriated a substantial sum of money from his client for no apparent reason other than to keep his practice afloat. Then, for the next year, he repeatedly covered-up his misdeeds by means of misrepresentation and concealment. Thus, the totality of respondent's misconduct was serious and repeated. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[7]**

Where respondent had been disciplined in another jurisdiction, his record of practice prior to his first California disciplinary proceeding was not "unblemished." However, his over 30 years of practice prior to such out-of-state discipline constituted an important mitigating circumstance. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[14]**

Where respondent had refrained from practicing law for five years and then had committed misconduct just over a year after returning to practice, respondent's lack of prior discipline record was properly discounted as mitigating circumstance. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[6]**

Seven years of law practice in California prior to respondent's misconduct was worth only slight weight in mitigation. Respondent's additional years in practice in a foreign jurisdiction were not shown by clear and convincing evidence to be mitigating because the record lacked information on the similarities and differences between the attorney discipline systems in the United States and the foreign jurisdiction. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[11]**

710.50 Declined to find

710.51 Not in practice long enough

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

710.52 Prior to discipline proceedings

710.53 Prior to commission of misconduct

In the Matter of Guillory (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402.

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

In the Matter of Babero (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

Where an attorney had been admitted to practice less than seven years at the time of his misconduct, his prior good record was not significant as mitigation. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[8]**

Where respondent had practiced for only four years prior to his misconduct, his lack of prior discipline was not mitigating. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[17]**

Six or seven years of trouble-free law practice prior to commission of misconduct was an insufficient period to be considered a mitigating factor, despite evidence that misconduct was aberrational, had not recurred, and had resulted from lax supervision of staff rather than venality. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[11]**

An attorney's unblemished record for eight years prior to the attorney's misconduct was not long enough to constitute strong mitigation. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[7]**

Where respondents had been in practice without prior discipline for approximately four years before the commission of their misconduct, their records were far too short to constitute significant mitigation, but it was appropriate to consider their prior clean records in conjunction with their subsequent good conduct to demonstrate the aberrational nature of their misconduct. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[14]**

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

710.54 Both (or unclear from opinion)

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

710.55 Prior record exists

Note: See topic number 802.21 for a definition of prior record.

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.

Only if attorney's prior and present misconduct occurred during same time period and within narrow time frame can many years of discipline-free practice before prior misconduct be deemed mitigating circumstance. Where respondent's prior and present misconduct occurred neither during same period nor within narrow time frame, and where misconduct in subsequent matter continued while prior matter was pending before State Bar court, respondent's discipline-free practice before prior misconduct was not mitigating in subsequent proceeding. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[22]**

Where respondent's 17 years of practice without misconduct had been considered a compelling mitigating circumstance in respondent's first disciplinary proceeding, this factor was not properly considered mitigating in respondent's second disciplinary proceeding. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[11]**

Because respondent's first and second episodes of misconduct did not occur during same time period or within narrow time frame, his many years of practice before his first misconduct were not an important mitigating factor in his second discipline matter, especially where other facts in case indicated risk that misconduct would be repeated. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[13]**

In the Matter of Babero (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.

An attorney's prior private reproval which originated only four years before his current misconduct was not so remote in time to the current proceeding that the imposition of greater discipline in the present case based on the prior discipline would be manifestly unjust, even though the prior private reproval involved misconduct which did not bear any substantive relationship to the subsequent misconduct. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[17]**

710.56 Present misconduct likely to recur (1.6(a))

Respondent was not entitled to mitigation for lack of prior discipline, despite his 31 years of discipline-free practice, where the misconduct was serious, part of a pattern, and highly likely to recur. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[9]**

710.59 Other reason

Respondent was not entitled to mitigation for lack of prior discipline, despite his 31 years of discipline-free practice, where the misconduct was serious, part of a pattern, and highly likely to recur. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[9]**

Case law permits long period of discipline free practice to be treated as mitigation even though present misconduct is serious. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. **[3]**

Because respondent's first and second episodes of misconduct did not occur during same time period or within narrow time frame, his many years of practice before his first misconduct were not an important mitigating factor in his second discipline matter, especially where other facts in case indicated risk that misconduct would be repeated. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[13]**

715 Good faith (1.6(b); 1986 Standard (1.2(e)(ii))

715.10 Found

Even though an attorney's willful violation of his statutory duty to obey court orders issued in connection with his profession is stated grounds for disbarment or suspension, discipline within that range is not mandated. Thus, in light of the unusual circumstances surrounding respondent's violation of this duty, a private reproval was the appropriate level of discipline. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[4]**

Once violation of ethical duties is found, hearing judge should not disregard culpability finding, but must examine surrounding circumstances and may consider either good or bad faith of respondent in mitigation or aggravation. Where respondent was found culpable of wilful failure to return illegal fees on demand, such culpability should have been considered in making discipline recommendation despite respondent's good faith belief in entitlement to funds, which was properly considered as mitigating factor. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[13]**

Wilfully failing to comply fully with a disciplinary probation condition constitutes a violation of the statute providing that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline. Wilfulness in this context requires merely that the person charged acted or omitted to act purposely, that is, knew what he was doing or not doing and intended either to commit the act or abstain from committing it. The violation must be proved by a preponderance of the evidence. Substantial compliance is insufficient to avoid culpability on this charge, and any good faith on the part of the attorney is relevant to mitigation rather than culpability. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[3]**

Substantial compliance with a disciplinary probation requirement is not a defense to violation of the requirement. Where respondent's probation conditions required that he obtain therapy from licensed practitioner, and where respondent made efforts to obtain therapy but did not seek to have probation conditions modified to include therapy provided by unlicensed practitioner, respondent's uncharged probation violation of failing to comply with therapy requirement was aggravating circumstance in probation revocation proceeding. However, respondent's efforts to comply constituted significant mitigating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[9]**

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

The lack of judicial precedent clearly establishing an attorney's duty at the time of the attorney's misconduct may be considered on the issue of possible mitigation. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[11]**

Respondent's carelessness and confusion concerning the requirements of rule 955 did not obviate culpability of wilful failure to file a rule 955 affidavit timely, where respondent did not seek relief based on good cause for his late filing. All that is necessary for a wilful violation of rule 955 is a general purpose or willingness to commit the act or make the omission. However, respondent's credible evidence of carelessness was properly considered in considering respondent's good faith attempts at timely compliance. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[4]**

Where respondent had filed his required rule 955 affidavit prior to the initiation of rule 955 proceedings by referral order, had met the notice requirements of the rule timely, had taken responsibility for his own errors, and, because of other discipline, might remain on actual suspension for over two years, a six-month actual suspension for respondent's untimely filing of his rule 955 affidavit would be excessive. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[9]**

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

Where respondent in criminal conviction matter had acted in what he believed to be the best interests of both his client and the criminal justice system, his good motives were not a defense to his breach of duty, but did constitute a strong factor in mitigation. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[16]**

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

Where facts deemed conclusively established by court order, following respondent's failure to respond to examiner's requests for admissions, showed that respondent had wilfully misled judge, but respondent was permitted to testify that representations made to judge, though false, were true to the best of respondent's knowledge at the time they were made, respondent's testimony on this point was properly received, but only in mitigation, and not to contradict deemed admissions on which culpability findings were based. Deemed admissions, while conclusive as to literal truth of facts clearly set forth in request for admissions, did not preclude

referee from admitting and considering other evidence that tended to explain or helped to interpret admitted facts. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[2]**

Although an attorney is culpable for misconduct committed by inadequately supervised office staff, the degree of the attorney's personal involvement in the misconduct is relevant to the degree of culpability and the appropriate discipline to be imposed. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[5]**

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

It was an important mitigating factor that respondents, due to youth and inexperience, honestly believed their conduct was not wrongful, and intended no harm; were very remorseful once they realized they had acted wrongfully, and thereafter candidly discussed the facts with their principal victim and disgorged the money they had received as a result of their acts. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[18]**

715.30 Found but discounted or not relied on

In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364.

Improper business transactions with clients have resulted in discipline ranging from reproval to suspension. Where, despite respondent's asserted intent to advance interests of beneficiaries of trust of which respondent was trustee, respondent realized significant benefits from improper loans from trust to himself, and where respondent also was grossly negligent in handling his duties as trustee, in view of the seriousness of respondent's misconduct, and comparable case law, the review department recommended three years stayed suspension, three years probation, and 60 days actual suspension. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[7]**

715.50 Declined to find

Respondent's honest belief that his reinstatement to practice in California permitted him also to resume practicing trademark law without applying for reinstatement to patent and trademark bar was not objectively reasonable, and therefore did not provide a basis for finding good faith as a mitigating circumstance. Expert witness's testimony that respondent's belief was reasonable did not establish respondent's good faith, where expert admitted that respondent's exclusion from practice by federal agency applied to trademark as well as patent law. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418. **[3 a-c]**

In the Matter of Kinney (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360.

Where respondent was unaware of duty to report to State Bar that respondent had engaged services of resigned attorney, Review Department reversed hearing judge's consideration of this fact in mitigation as good faith, because attorneys are not rewarded for ignorance of their ethical responsibilities. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320 **[7]**

In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41

In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held and reasonable. To conclude otherwise would reward an attorney for his unreasonable beliefs and for his ignorance of his ethical responsibilities. Where injunctions proscribed certain conduct, respondent's claim that he believed he was not subject to the injunctions was not reasonable, particularly because the Federal Rules of Civil Procedure made them binding on him. *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966. **[3 a, b]**

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

Although attorneys have a duty to zealously represent their clients and assert unpopular and novel positions in advancing their clients' legitimate objectives, they also have a duty to the judicial system to assert only legal claims or defenses that are warranted by the law or are supported by a good faith belief in their correctness. Thus, in order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were

both honestly held and reasonable. Even though respondents and the State Bar stipulated that respondents had researched the law and believed a tribal election was valid, that stipulation does not establish good faith mitigation since respondents' misrepresentations of fact and law went far beyond the specific issue of the validity of the election results. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[4a, b]**

Individually and collectively, (1) hearing judge's finding that respondent repeatedly and deliberately abdicated his ethical duties to properly represent his immigration clients and to competently perform the legal services that he had a legal duty to perform, repeatedly accepted more immigration cases than he could properly handle, routinely placed his interests above those of his clients by permitting nonattorneys to prepare and file applications, pleadings, and other documents in his clients' immigration court cases, and consistently demonstrated a profound lack of understanding of his duty of fidelity to his clients and (2) review department's independent finding of uncharged misconduct aggravation that respondent engaged in a course of practicing law that was reckless and involved gross carelessness not only negated respondent's claims that almost all the hearing judge's findings of misconduct were improperly based on unintentional acts and omissions that resulted from respondent's simple negligence or honest mistakes respondent made in good faith as a product of trying to do too much, not too little, for his clients, but they also precluded a finding of good faith mitigation.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[10 a-c]**

An attorney's lack of experience is not a mitigating circumstance. It is when an attorney is newly licensed or begins to practice in a new area of law that he should take proper steps necessary to learn governing law, rules, and regulations.*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[30]**

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364.

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In a conviction referral proceeding involving respondent's misdemeanor conviction of being an accessory after the fact in connection with the submission of false information to a federally insured bank for the purpose of inducing it to loan money to respondent for the purchase of a farm (18 U.S.C. §1014), respondent's contention that, at the time she obtained the loan, she fully expected the farm to succeed and to repay the loan in full might avoid a finding in aggravation, but did not entitle her to any mitigating credit. Respondent was not entitled to any credit for merely intending to do that which she contracted to do. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[4]**

In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held and reasonable. Respondent's beliefs regarding his interpretation of the Supreme Court order were honestly held but were unreasonable and, therefore, were not a mitigating circumstance. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[5]**

The hearing judge's finding in mitigation that respondent's actions were in good faith because he did not believe at the time that it was improper for him to allow a non-client to use his client trust account as a business account was rejected by the review department because it was not appropriate to reward respondent for his ignorance of his ethical responsibilities. *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420. **[5]**

Respondent had duty of candor to superior court approving his fee. Respondent was entitled to urge any creative theory in good faith that statutory fee limitation might not apply to his case, but he could not simply conceal material fact that fee limitation statute might apply and profit sizably thereby at expense of his client. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[22]**

Respondent was not entitled to finding in mitigation based on asserted good faith belief that reports required by disciplinary probation conditions were due only during actual suspension, where hearing judge did not find respondent's testimony regarding his belief credible; where language of probation conditions at best established ambiguity; where respondent did not research the issue, did not seek clarification, and did not consult with anyone regarding his interpretation of disciplinary order; and where probation department informed respondent that reports were due during entire period of probation. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[3]**

Respondent's contention that he detrimentally relied on advice from his probation monitor and counsel regarding compliance with rule 955 might have been persuasive as mitigation if respondent had raised it at the hearing level and produced supporting evidence. However, where record did not support and even contradicted such contention, review department rejected respondent's attempt to argue it as mitigation. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[3]**

Respondent's failure to notify a client of respondent's disciplinary suspension was not justified by respondent's belief that he had been retained only for limited services, where respondent had accepted a retainer fee and filed a civil complaint listing himself as the plaintiff's attorney. There was no legal support for the distinction respondent attempted to draw between being attorney of record and "attorney in fact." *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[4]**

Where respondent in a rule 955 matter gave different explanations at the hearing and on review for his failure to advise eight clients of his disciplinary suspension, and had not taken responsibility for making sure that substitutions of counsel he executed in the clients' cases had been filed, his attempted explanations constituted questionable mitigation. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[5]**

In rule 955 proceeding, respondent's claim that his failure to withdraw from one matter after suspension resulted from an oversight in transferring over 200 files to successor counsel was not a factor in mitigation. Respondent's conduct in connection with such transfer constituted evidence in aggravation, because respondent irresponsibly executed in blank hundreds of substitution association or substitution of counsel forms and relinquished of the client files to successor counsel without obtaining the clients' consent, safeguarding their interests, or even keeping a list of the clients or case names transferred. This conduct posed a significant potential harm to the clients and to the public interest generally. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[7]**

Where respondent unreasonably persisted in refusing to include certain language in probation reports even after being informed by probation department employees that his interpretation of probation conditions as not requiring such language was incorrect, this effectively refuted respondent's contention that he acted in good faith, which would have constituted a mitigating factor if factually correct. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[12]**

Documentary evidence of communications to respondent from probation department regarding interpretation of probation conditions was judicially noticeable. It was not admissible to show truth of statements contained in such documents; for that purpose, it was hearsay. However, it was admissible to show that respondent had notice of probation department's interpretation, which was relevant to issue of respondent's good faith. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[13]**

720 Lack of harm to client/public/justice (1.6(c); 1986 Standard (1.2(e)(iii))

720.10 Found

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Respondent V (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442.

The lack of client harm is a relevant mitigating circumstance in the context of a criminal conviction. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. [4]

Where respondent attempted to file required affidavit of compliance with rule 955, California Rules of Court, within two weeks after it was due and before he was aware of initiation of rule 955 violation proceeding, and no clients were harmed, but respondent had also violated probation and had substantial prior discipline record, nine months actual suspension was appropriate discipline for respondent's wilful failure to comply with rule 955(c). *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[15]**

Where respondent represented wife in marital dissolution proceeding, and at respondent's suggestion, husband also hired respondent to represent both clients in joint bankruptcy proceeding, and where consent to such joint representation signed by husband stated misleadingly that there was no conflict of interest between clients, and wife consented to joint representation orally but not in writing, respondent violated former rule prohibiting representation

of clients with conflicting interests without written consent of all clients. However, where husband had consulted with separate counsel before retaining respondent; potential conflict was remote and no actual conflict materialized; and neither client was harmed, respondent's misconduct was substantially mitigated by surrounding circumstances and was relatively minor. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[2]**

By failing to disclose to clients the potential conflict between driver and passenger in an automobile accident case, and to secure their written consent to joint representation, an attorney exposes the clients to sharing confidences without realizing the potential impact of doing so; to possible delay if the attorney is later disqualified due to the development of an actual conflict; and to reduction of the passenger's recovery through failure to allege the driver's negligence. However, where it was not clear that respondent's clients would not have given their informed consent if they had been afforded the opportunity do so, respondent's violation of the rule requiring him to obtain such consent was not serious. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[8]**

Advancing expenses to clients is not a generally accepted practice because it may cause clients to choose attorneys on the basis of the loans they are willing to make rather than the services they offer and may also create an attorney-client conflict. The rule permitting attorneys to advance client expenses is limited to expenses related to litigation or legal services. Where, after respondent was retained by a client in a personal injury action, he made an interest-free, unsecured loan to the client to cover funeral costs and other expenses, such advance was not permitted by the rule even though the expenses might be recoverable as damages in the litigation. The loan was also improper because respondent did not obtain the client's informed written consent. However, where there was no evidence of client harm, the violation was not serious. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[9]**

In the Matter of Friedman (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

The Standards for Attorney Sanctions for Professional Misconduct provide that the appropriate discipline for culpability for professional misconduct where the member has a record of two prior impositions of discipline is disbarment unless the most compelling circumstances clearly predominate. Application of this standard was not appropriate where the attorney's criminal convictions and prior discipline, which were caused by an extensive history of drug and alcohol abuse, did not directly involve clients or the practice of law, and did not cause specific harm to the public or courts, and where the attorney had taken steps to address the underlying substance abuse problem, and had already been under suspension for five years as a result of previous discipline. Continued probation monitoring with substance abuse conditions, and a requirement that the attorney demonstrate rehabilitation and fitness to practice, would ensure that the substance abuse was controlled prior to the attorney's resuming the practice of law. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[9]**

Where respondent in criminal conviction matter had acted in what he believed to be the best interests of both his client and the criminal justice system, his good motives were not a defense to his breach of duty, but did constitute a strong factor in mitigation. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[16]**

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

720.30 Found but discounted or not relied on

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

Attorneys who engage in an extended practice of inattention to official actions should not be allowed to create the risk that it will extend to clients resulting in inevitable and grievous harm to them. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[10]**

In order to determine that a crime involved moral turpitude, specific resulting harm need not be shown. Conduct which poses a danger to the public, such as drunk driving, is no less serious because it did not result in death or injury. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[5]**

Harm to public and to administration of justice, and risk of harm to client, is inherent in unauthorized practice of law. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[11]**

720.50 Declined to find

Where victims of respondent's misconduct felt threatened for their own safety compelling them to obtain a stay-away protective order, respondent was not entitled to mitigation for lack of harm. *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 **[7]**

Although respondent's filing of a false verification burdened opposing counsel and the court, there was no evidence that the burden rose to the level of cognizable harm in aggravation. Nevertheless, it clearly repudiates a finding of no harm in mitigation. *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151 **[3]**

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

Respondent failed to establish lack of harm as a mitigating circumstance where he harmed the object of his misconduct, a superior court, by appearing in the court and by signing and serving a trial brief while he was suspended from the practice of law. *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639. **[1]**

Fact that respondent's clients received funds which should have gone to pay clients' medical bills did not negate aggravating factor of harm to clients, where several clients were sued by medical creditors whom respondent should have paid. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[30]**

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

Respondent's claim of lack of harm to his clients in mitigation of rule 955 violation overlooked fact that parties protected by rule 955 include not only clients, but co-counsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending. Moreover, nothing in rule 955 or case law distinguishes between a substantial or insubstantial violation of the rule, and respondent would have been required to comply with rule 955 whether or not he had any clients. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[10]**

Misrepresentations are no less egregious when made to a public agency than when made to an individual client, and warrant discipline of no less magnitude. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[9]**

Finding of lack of harm to clients as mitigating factor was unsupported in the record where respondent failed to submit any evidence at the hearing of lack of harm resulting from his misconduct, and where respondent's clients (and the Client Security Fund, which had reimbursed them) had to wait years for restitution. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[18]**

725 Emotional/physical disability/illness (1.6(d); 1986 Standard (1.2(e)(iv))

Note: See also topic number 760 et seq.

725.10 Found

725.11 With expert testimony

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403.

In the Matter of Anderson (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

Extreme emotional and physical difficulties suffered by an attorney at the time of professional misconduct constitute a mitigating circumstance when expert testimony establishes that such difficulties were directly responsible for the misconduct. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[12]**

Where respondent committed serious misconduct shortly after admission to practice, including abandoning several clients and failing to perform legal services competently; four instances of failure to return unearned advance fees promptly; misleading two clients; misappropriating trust funds of a bankruptcy estate; and accepting employment without sufficient time, resources and ability to perform competently; but respondent presented mitigating evidence of emotional and psychological difficulties and rehabilitation, disbarment was not required, and protection of the public and profession was satisfied by five-year stayed suspension, three-year actual suspension, requirements to make restitution and show rehabilitation before returning to practice, and a period of supervised probation. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[1]**

Extreme emotional difficulties or stressful family circumstances can be considered as mitigating evidence where it is established by expert testimony that the emotional difficulties were responsible for the attorney's misconduct, and the attorney has demonstrated full recovery and rehabilitation by clear and convincing evidence, such that recurrence of further misconduct is unlikely. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[40]**

Acute depression and other psychological problems can explain, but not excuse inattention to the demands of a law practice and the ethical improprieties that result. To the degree that emotional problems underlay respondent's failure to provide competent legal services, to communicate with clients, and to protect clients' rights when ceasing to practice, evidence of respondent's recovery from these problems and the unlikelihood of a recurrence was mitigating. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[42]**

In disciplinary matters, greater mitigating weight is given to financial pressures if the pressures are extreme and result from circumstances beyond the control of the attorney, such as undiagnosed psychiatric problems. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[1]**

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

725.12 Without expert testimony

Recognizing that some physical disabilities are permanent, standard 1.2(e)(iv) must be considered in the context of an attorney's fitness and ability to practice law. After suffering from serious medical condition for many years, respondent is in best position to discuss impact, if any, he is currently experiencing from the medical condition. Fifteen months may not be long enough to establish that condition has permanently subsided, but it is sufficient time to establish that respondent is rehabilitated from the severity of the illnesses that contributed to his misconduct. *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239 **[3]**

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

Although the Supreme Court requires that lawyers' claims in mitigation based upon substance abuse show adequate evidence of a causal connection between the abuse and misconduct and a meaningful and sustained rehabilitative period, the Court does not require that the respondent's rehabilitation be complete to qualify as mitigation. Where respondent showed that his marijuana use and alcohol abuse led in part to his criminal activity, and that he had undertaken a program of steady progress toward rehabilitation, and had successfully dealt with his addiction and maintained sobriety, mitigation was properly found. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[8]**

725.30 Found but discounted or not relied on

725.31 Lack of expert testimony

In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

725.32 Lack of causal relation to misconduct

Respondent established that he suffered from anxiety and depression for years. However, the review department assigned no mitigating weight to his emotional difficulties where one expert did not believe respondent committed wrongdoing and neither of respondent's experts opined that his emotional problems actually caused him to misappropriate client funds. Further, where respondent's experts did not provide specifics about his future prognosis or stage of recovery, there was no clear and convincing evidence that he no longer suffers from emotional problems. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273 **[7 a,b]**

In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

Rehabilitation from alcoholism or drug addiction is a mitigating circumstance only if the substance abuse caused the attorney's misconduct. Where respondent failed to present clear and convincing evidence of a causal nexus between her substance abuse and her misconduct, the review department denied her request for a remand to the hearing department to provide evidence of her continued sobriety, and did not consider her steps toward recovery a mitigating circumstance. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[1]**

The review department denied respondent's request for judicial notice of general facts about alcoholism and declined to consider several character references stressing respondent's recovery from alcoholism on the aggregate grounds that respondent had not shown at the disciplinary hearing that her alcoholism caused her misconduct, that she failed to show why she should be excused from not having presented the proffered evidence at the disciplinary hearing, and that she failed to show that the specific matters which she wanted to be judicially noticed were proper subjects of judicial notice. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 306(c); former Trans. Rules Proc. of State Bar, rule 556; Evid. Code, § 452, subd. (h).) *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[3]**

Problems such as disabling psychological disorders or substance abuse proven to have led to misconduct may mitigate discipline when accompanied by adequate rehabilitative evidence. However, evidence of psychological difficulty will not always warrant reduced discipline. Where respondent suffered from an adjustment disorder and not any chronic psychological condition, and where prior to his crimes respondent had done excellent work despite being under great stress, review department concluded that respondent's proof fell short of entitling him to significant mitigation. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[8]**

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

Evidence of severe emotional problems does not mitigate misconduct which arose prior to the triggering of the attorney's emotional difficulties. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[41]**

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

Without evidence that death of respondent's parent resulted in disabling psychological distress, record did not show that attorney's failure to prepare trust documents was affected thereby. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[13]**

Where there was evidence that respondent was ill during the time period in which misconduct occurred, but there were no details of duration or extent of illness or how it may have accounted for respondent's misconduct, illness was not considered to be a mitigating factor. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[12]**

725.33 Problem not sufficiently extreme

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

Problems such as disabling psychological disorders or substance abuse proven to have led to misconduct may mitigate discipline when accompanied by adequate rehabilitative evidence. However, evidence of psychological difficulty will not always warrant reduced discipline. Where respondent suffered from an adjustment disorder and not any chronic psychological condition, and where prior to his crimes respondent had done excellent work despite being under great stress, review department concluded that respondent's proof fell short of entitling him to significant mitigation. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[8]**

Without evidence that death of respondent's parent resulted in disabling psychological distress, record did not show that attorney's failure to prepare trust documents was affected thereby. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[13]**

725.35 Problem produced by illegal conduct

725.36 Inadequate showing of rehabilitation

Respondent established that he suffered from anxiety and depression for years. However, the review department assigned no mitigating weight to his emotional difficulties where one expert did not believe respondent committed wrongdoing and neither of respondent's experts opined that his emotional problems actually caused him to misappropriate client funds. Further, where respondent's experts did not provide specifics about his future prognosis or stage of recovery, there was no clear and convincing evidence that he no longer suffers from emotional problems. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273 **[7 a,b]**

Extreme emotional difficulties directly responsible for attorney's misconduct constitute mitigating circumstance if clear and convincing evidence proves that attorney no longer suffers from such difficulties. Where respondent's chronic depression was a major cause of his misconduct, but respondent had not clearly and convincingly established recovery, such depression failed to constitute mitigating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[10]**

Where respondent misused client trust account as personal account, failed to respond to client's reasonable status inquiries, did not keep client's settlement check in safe place, and did not respond to State Bar investigation, and where at time of disciplinary hearing respondent still suffered from chronic depression which was major cause of misconduct, and had been ineligible to practice law for two years, appropriate discipline was three years stayed suspension, four years probation, and actual suspension for one year and until respondent proved rehabilitation, fitness to practice competently, including mental fitness, and present learning and ability in the law. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[24]**

Where petitioner for reinstatement admitted his alcoholism, but his showing of recovery rested entirely on his own efforts at abstinence as supplemented by favorable character testimony, and he failed to present any medical or other expert opinion attesting to his recovery and prognosis, or any evidence that he had undergone recent treatment or participated in any recovery program, hearing judge's conclusion that such showing was insufficient to establish rehabilitation was entitled to considerable weight. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[4]**

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

Mitigating evidence of family pressures and misfortunes, good character, therapy, community service, and compliance with probation duties, similar to evidence which had been found sufficiently mitigating to avert an attorney's disbarment for prior misconduct, was not sufficient to justify a recommendation short of disbarment in a subsequent matter in view of the attorney's additional, serious misconduct and the need for protection of the public. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[6]**

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

Evidence of psychological problems was not compelling mitigation where attorney's expert witness testified that he needed further treatment before he could be considered rehabilitated; primary function of attorney discipline is to fulfill proper professional standards regardless of cause for attorney's failure to do so. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[10]**

725.39 Other reason

In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.

Disbarment was warranted for convictions of grand theft and forgery unless most compelling mitigating circumstances clearly predominated. Despite hearing judge's conclusion that respondent's crimes were aberrant and brought on by incredible psychological stress due to marital and business problems, review department did not agree that mitigation was compelling. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[5]**

Not all instances of serious professional misconduct warrant disbarment, depending on mitigating circumstances. Theft crimes unrelated to the practice of law have resulted in less than disbarment. However, where respondent's offenses of grand theft and forgery were extremely grave and multiple examples of felonious and fraudulent misconduct, likely to impugn public confidence in the legal profession, and respondent's experience in sophisticated law practice, public office and private business should have dissuaded him from committing felonies, review department recommended disbarment notwithstanding respondent's evidence of stress caused by personal and financial problems. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[11]**

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

725.50 Declined to find

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

725.51 Lack of expert testimony

No mitigation credit for emotional problems where absence of expert testimony left court to speculate about relevance and weight to be given respondent's testimony concerning alcoholism and where absence of such testimony also left court unable to reasonably evaluate the temporal aspects of respondent's personal issues surrounding his alcohol consumption. *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131 **[1]**

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

Where respondent failed (1) to establish through expert testimony that his depression, his physical maladies, and his financial difficulties were directly responsible for his misconduct and (2) to establish through clear and convincing evidence that he no longer suffered from the difficulties and disabilities or even that he could take, and was taking, steps to overcome them, the difficulties and disabilities were not treated as mitigating circumstances. *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416. **[4]**

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70.

725.52 Problem not sufficiently extreme

725.53 Problem produced by illegal conduct

725.56 Inadequate showing of rehabilitation

In the Matter of Guillory (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402.

Where respondent failed to establish that his bipolar disorder was directly responsible for his many acts of misconduct, and admitted to long-standing substance abuse problem with which he continued to struggle, and no evidence showed that respondent was no longer at risk of committing future misconduct, respondent was not entitled to mitigating credit for bipolar disorder. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[4]**

725.59 Other reason

Where respondent's misconduct began two years before the onset of the stressful circumstances to which her therapist partially attributed her misconduct, respondent did not demonstrate by clear and convincing evidence that her emotional difficulties were responsible for her misconduct, and thus was not entitled to mitigating credit for these difficulties. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[8]**

Where respondent admitted that he hid cameras in restaurant bathrooms for specific purpose of making surreptitious recordings, and that he knew at the time his actions were unethical and illegal, and where respondent's psychiatrist was unaware of respondent's prior similar conduct, had not directly observed respondent in manic state, and based his opinion solely on respondent's version of the facts, psychiatrist's opinion that respondent was not responsible for his misconduct due to bipolar disorder was contrary to evidence, and did not preclude finding that respondent's criminal conduct involved moral turpitude. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[2]**

Respondent was not afforded mitigative credit for extreme emotional difficulties he suffered as a result of his father's death and the prospective loss of the family home because he failed to establish a causal nexus between those emotional difficulties and his misconduct. *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 **[6]**

Where respondent failed (1) to establish through expert testimony that his depression, his physical maladies, and his financial difficulties were directly responsible for his misconduct and (2) to establish through clear and convincing evidence that he no longer suffered from the difficulties and disabilities or even that he could take, and was taking, steps to overcome them, the difficulties and disabilities were not treated as mitigating circumstances. *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416. **[4]**

Where the record failed to show that respondent suffered from extreme emotional difficulties which caused respondent's misconduct, it was inappropriate to make a finding in mitigation based on emotional difficulties. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[7]**

Office workload does not generally serve to substantially mitigate misconduct. Stressful personal problems may mitigate misconduct, but where respondent's asserted workload or personal problems occurred during first year of administration of probate estate, such problems did not adequately explain five-year delay in administration of estate, and did not constitute mitigation. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[14]**

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

Evidence concerning respondent's education, experience and drug use which occurred well prior to his probation violations was not causally related to the misconduct, nor did it demonstrate why a lesser disciplinary sanction would adequately protect the public, the courts and the legal profession. Therefore, it did not constitute mitigating evidence. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[13]**

Fact that an attorney was undergoing therapy at the time of the disciplinary hearing did not constitute relevant mitigation where attorney did not present expert testimony establishing psychological problems at time of misconduct, and did not demonstrate recovery from such problems such that they would no longer affect his fitness to practice. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[17]**

730 Candor and cooperation with victim (1.6(e); 1986 Standard (1.2(e)(v))

730.10 Found

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Jensen (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Friedman (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

Where respondent, after authorities' discovery of welfare fraud committed by him and his wife, was cooperative with welfare authorities and remorseful, took full responsibility, and stipulated to most of the facts at the State Bar hearing, hearing judge was justified in recommending lengthy suspension in lieu of disbarment. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[4]**

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

It was an important mitigating factor that respondents, due to youth and inexperience, honestly believed their conduct was not wrongful, and intended no harm; were very remorseful once they realized they had acted wrongfully, and thereafter candidly discussed the facts with their principal victim and disgorged the money they had received as a result of their acts. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[18]**

730.30 Found but discounted or not relied on

In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469.

730.50 Declined to find

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

Respondent failed to establish spontaneous candor as a mitigating circumstance where he admitted to a superior court that he had appeared before the court while on actual suspension, but where the admission might well have resulted from his fear that the opposing counsel would disclose the unlawful appearance. *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639. **[2]**

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

735 Candor and cooperation with Bar (1.6(e); 1986 Standard 1.2(e)(v))

735.10 Found

Where respondent entered into an extensive stipulation that disclosed his intent in committing misdemeanor, and volunteered facts regarding his prior similar misconduct, respondent's admissions entitled him to significant mitigation. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[5]**

In the Matter of Yee (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

Where attorney stipulated to admission of documents which established his culpability for misconduct warranting discipline and assisted the prosecution, such cooperation warranted considerable weight in mitigation. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[10]**

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338.

Significant mitigating weight given for candor and cooperation with OCTC where attorney stipulated to material facts, culpability and discipline because it greatly conserved resources. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320 **[4]**

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273.

Although it did not admit culpability, respondent's stipulation as to facts and admissibility of exhibits was extensive, relevant, and assisted in the State Bar's prosecution of the case and was accorded limited mitigation. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[13]**

Where stipulated facts were not difficult to prove and did not admit culpability but were extensive, relevant and assisted the State Bar's prosecution of the case, respondent's factual stipulation was a mitigating circumstance. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 **[6]**

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403.

Respondent was entitled to mitigating consideration for stipulating to the use of a declaration of a witness, thereby avoiding the necessity of bringing that witness from Michigan to testify. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[5]**

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

Very limited mitigating weight is afforded on account of respondent's cooperation with the State Bar in entering into a factual stipulation covering background facts in most of the matters. More extensive mitigating weight is accorded those who, where appropriate, willingly admit their culpability as well as the facts. *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. **[4]**

The hearing judge did not err in prohibiting respondent from presenting evidence of his willingness to settle the case by stipulating to the misconduct and a reasonable level of discipline and of the State Bar's unwillingness to present a settlement offer that contained what he considered to be a reasonable level of discipline. Respondent is afforded substantial mitigation for cooperation because, in addition to other instances of cooperation throughout the investigation of the matter, he stipulated to the facts underlying the misconduct and because the stipulated facts were not easily provable. Substantial mitigation is given without regard to the fact that the parties were unable to stipulate to an appropriate level of discipline. Not doing so would "punish" respondent merely for seeking his day in court as to the level of discipline. Not being able to reach a stipulated discipline does not have any effect on the court's analysis of the degree of mitigation awarded for respondent's overall cooperation in helping resolve the charged misconduct. *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902. **[1]**

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788.

Candor and cooperation with the State Bar during the disciplinary investigation and proceeding can be a mitigating circumstance. However, an attorney has a legal and ethical duty to cooperate with the State Bar's disciplinary investigation, and that cooperation, in and of itself, is not entitled to great weight as a mitigating factor. Nevertheless, where respondent admitted his wrongdoing when first contacted by an investigator for the State Bar, and stipulated to the facts and his culpability, such evidence was a mitigating circumstance. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[9]**

In the Matter of Ike (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

Respondent's cooperation with State Bar in agreeing to allow complaining former client to testify by telephone at disciplinary hearing constituted mitigating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[23]**

In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

Where respondent almost completely abdicated to a non-lawyer his professional duties with respect to a personal injury practice; failed to take prompt, realistic action to stop the non-lawyer's capping practices, and had not presented clear evidence regarding rehabilitation and necessary changes in his practice, then despite mitigating factors including

respondent's cooperation with law enforcement and State Bar and satisfaction of medical liens out of his own funds, appropriate discipline for protection of public was three-year stayed suspension with three years probation and actual suspension for two years and until proof of rehabilitation, fitness to practice, and learning in the general law. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[7]**

Where respondent was candid and displayed examplary conduct during disciplinary proceedings, respondent's vigorous defense of the charges, which was motivated only by his honest belief in his innocence, did not negate the mitigating force of his candor and cooperation with the State Bar. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[16]**

Where respondent, after authorities' discovery of welfare fraud committed by him and his wife, was cooperative with welfare authorities and remorseful, took full responsibility, and stipulated to most of the facts at the State Bar hearing, hearing judge was justified in recommending lengthy suspension in lieu of disbarment. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[4]**

In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175.

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737.

Where respondent appeared to have cooperated fully with the State Bar's investigator, and stipulated at the hearing to facts demonstrating culpability on one charge, respondent's cooperation with the State Bar was a mitigating factor. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[19]**

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Potack (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

735.30 Found but discounted or not relied on

In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391.

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338

Where respondent entered into stipulation as to facts and documents, but stipulation was not extensive, involved easily provable facts, and did not admit culpability, respondent's cooperation was assigned limited weight as a mitigating factor. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308. **[8]**

Diminished weight given for cooperation in State Bar Court proceedings after respondent entered into extensive stipulation as to facts and admission of documents, but did not stipulate to culpability and continued to dispute it before the review department. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250 **[8]**

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Downey (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151

Court routinely recognizes limited mitigation when a respondent stipulates to material facts. *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131 **[4]**

Because respondent's admissions of culpability for violating rules 1–320 and 1–311 were easily provable violations, his cooperation during the disciplinary proceedings did not warrant significant mitigative weight. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[14]**

In probation revocation proceeding, while attorney's cooperation in stipulating to facts warranted some mitigative consideration, such consideration is not extended to either attorney's participation in prior disciplinary proceeding or in probation revocation proceeding, in which he had a statutory duty to participate.*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.**[2]**

In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349.

Respondent's cooperation with the State Bar in, for example, stipulating to the facts and circumstances surrounding his conviction, is a mitigating circumstance. However, it is entitled to only nominal weight where the stipulated facts were easily provable. *In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.**[1]**

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

Despite respondent's cooperation in executing a detailed and broad pretrial stipulation, his efforts to show his innocence through testimony which was not credible, and his admitted misleading of a State Bar investigator, were aggravating factors. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[6]**

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

735.50 Declined to find

In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

In the Matter of Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160

In probation revocation proceeding, while attorney's cooperation in stipulating to facts warranted some mitigative consideration, such consideration is not extended to either attorney's participation in prior disciplinary proceeding or in probation revocation proceeding, in which he had a statutory duty to participate.*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.**[2]**

Even if issue had properly been before review department on summary review, respondent would not have been entitled to any mitigating credit for self reporting to State Bar his misdemeanor conviction for paying for referral of clients because respondent had a pre-existing statutory duty to report his criminal conviction. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.**[1]**

Belated stipulations to facts which mainly concern easily provable facts merit limited weight in mitigation. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[8]**

Respondent's participation in probation revocation proceeding was not a mitigating circumstance because his participation was mandated by Business and Professions Code section 6068, subdivision (i). *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[2]**

Where respondent was ordered by hearing judge to file pretrial statement as provided by rule 1222, Provisional Rules of Practice, respondent's actions in entering into joint pretrial statement with State Bar did not constitute spontaneous candor and cooperation which would warrant finding in mitigation. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[5]**

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

Respondent's inconsistent responses to State Bar investigators precluded a finding in mitigation that respondent was cooperative with the State Bar. However, respondent's behavior while acting as his own counsel during the disciplinary proceeding, which was consistent with an honest, if mistaken, belief in his own innocence, did not demonstrate an intent to hinder or mislead the court. A respondent is not required to acquiesce in the findings and conclusions of the State Bar Court, but the respondent's attitude toward the disciplinary process and amenability in conforming to the Rules of Professional Conduct are proper issues for the court's review, particularly in determining appropriate discipline. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[14]**

Respondent's testimony that he unsuccessfully tried to telephone a State Bar investigator in response to a letter the investigator sent him regarding his possible misconduct was admissible only in mitigation, not in defense to his culpability of failing to cooperate in the investigation, which was conclusively established by his deemed admissions resulting from his failure to respond to discovery. Such testimony was not a sufficient basis for a finding in mitigation. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[8]**

740 Good character references (1.6(f); 1986 Standard (1.2(e)(vi))

Note: See also topic number 765 et seq.

Attorney presented an extraordinary demonstration of good character where 36 character witnesses consisting of judges, attorneys, public officials, law enforcement personnel, community leaders, victims of crime and friends who knew attorney between 5 to 30 years uniformly attested to attorney's character and integrity despite knowledge of charges against attorney. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[11]**

740.10 Found

In the Matter of Parish (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370

In the Matter of Yee (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788.

Candor and cooperation with the State Bar during the disciplinary investigation and proceeding can be a mitigating circumstance. However, an attorney has a legal and ethical duty to cooperate with the State Bar's disciplinary investigation, and that cooperation, in and of itself, is not entitled to great weight as a mitigating factor. Nevertheless, where respondent admitted his wrongdoing when first contacted by an investigator for the State Bar, and stipulated to the facts and his culpability, such evidence was a mitigating circumstance. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[9]**

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

Judges are required under canon 2B of the California Code of Judicial Conduct not to testify voluntarily as character witnesses, but where subpoenas were issued to compel judges to testify, their declarations regarding good character of disciplinary respondent could be considered by State Bar Court. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[3]**

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

Civic service, such as valuable charitable work, can deserve recognition as a mitigating circumstance under the standard providing that evidence of good character is mitigating. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[18]**

Where respondent's drunk driving convictions involved more serious misconduct than in prior reported disciplinary cases involving drunk driving, including repeated abusive conduct with law enforcement officers, and respondent had two prior disciplinary reprovals, but respondent presented favorable evidence of professional ability and character references as well as efforts toward overcoming his addiction to alcohol, a 60-day actual suspension was appropriate to serve the aims of attorney discipline and, coupled with three years of probation, to assist in convincing respondent to deal with his alcohol abuse problems seriously. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[7]**

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

If an attorney engages in criminal conduct, it is not a minimum requirement for rehabilitation that the attorney turn himself or herself in to law enforcement authorities. Where the attorney was not hiding from anyone except those who wished him to resume his criminal activities; he cooperated fully with law enforcement once asked, and he presented character witnesses who attested to his current good character, the hearing judge's finding of rehabilitation was appropriate. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[2]**

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

Testimonials from clients regarding respondent's service on their behalf, in some instances on a pro bono basis, constituted mitigating evidence. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[12]**

Where a great number of character witnesses, including two judges who had known respondent for a very long time, testified about respondent's impeccable honesty and reliability and where two of the character witnesses were very knowledgeable about the nature of respondent's misconduct and it had no effect on their opinion, it was extremely unlikely that the extraordinarily high opinion of respondent's honesty and trustworthiness expressed by the character witnesses would change much with knowledge of the details. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[17]**

The confidence in respondent expressed by fellow attorneys may be considered in mitigation. Where attorneys who testified as character witnesses knew respondent well and were aware of the circumstances prompting the disciplinary proceeding, their testimony regarding respondent's integrity and honesty deserved consideration. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[7]**

Testimony of several highly reputable character witnesses attesting to respondent's otherwise high standing in the legal community and high ethical standards and demonstration of diligence on behalf of clients, as well as substantial community service and pro bono activities, should have been given more than a little weight in mitigation; review department found it to be significant. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[12]**

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

Where examiner stipulated to admissibility of character reference letters at hearing, and thus chose not to require the declarants to be cross-examined, examiner's attempt to discount letters before review department was without foundation. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[21]**

740.30 Found but discounted or not relied on

In the Matter of Downey (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151

740.31 Insufficient number or range of references

Review Department assigned minimal weight to character evidence provided by three attorneys who were aware of respondent's misconduct, because number and range of references was insufficient to warrant more mitigation. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418. **[2]**

Where respondent's five character witnesses consisted of her husband, two attorneys, a law firm librarian, and the owner of a real estate business, respondent's evidence of good character was entitled only to limited weight, because her witnesses did not constitute a broad range of references from both the legal and general communities. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[9]**

Where respondent's seven character witnesses all came from a narrow cross-section of the legal community, his good character evidence was not entitled to substantial weight in mitigation. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[6]**

Modest mitigation credit for good character where attorney presented four witnesses from varied backgrounds that included an attorney. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320. **[5]**

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Esau (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131

In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41

In the Matter of Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

Where respondent's character evidence was not from a sufficiently wide range of references, did not demonstrate that each witness was aware of the full extent of respondent's misconduct, and did not address the State Bar's disciplinary concerns or discuss respondent's fitness for practice, the evidence was entitled to only limited weight in mitigation. *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[5]**

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

Good character evidence consisting of recent letters from two judges before whom respondent had regularly appeared and two attorneys who had known respondent since 1986 was not entitled to substantial mitigating credit because evidence did not come from a wide range of references in general and legal communities as required by standard 1.2(e)(vi). However, respondent was entitled to some mitigating weight for that evidence because it represented a fair reference from legal community. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23. **[4 a-b]**

Appropriate level of discipline for respondent's misdemeanor conviction for paying for referral of two clients (Ins. Code, § 750, subd. (a)), where circumstances surrounding conviction involved moral turpitude, was two-year stayed suspension with two-year period of probation and six-month period of actual suspension. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.**[6 a-g]**

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

Where three clients and three attorneys offered positive character assessments of respondent, their testimony received limited mitigating weight because they did not constitute a broad range of references from the legal and general communities. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[9]**

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

The weight to be accorded to respondent's character evidence was diminished somewhat where respondent presented a limited range of character witnesses, only one of whom revealed a full understanding of respondent's culpability. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[17]**

The requirement that mitigating character testimony come from a wide range of references exhibiting a familiarity with the details of respondent's misconduct was not met by testimony by respondent himself and a letter from one character witness reflecting no knowledge of respondent's misconduct. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[17]**

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

A respondent's own testimony regarding the respondent's community service may be considered as some evidence in mitigation notwithstanding that it does not meet the requirement that good character be established by a wide range of references. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[16]**

740.32 References unfamiliar with misconduct

Limited weight was assigned to good character evidence from relevant communities where respondent failed to establish that his witnesses knew the full extent of his misconduct. Many witnesses believed the charges against respondent were due to mistake or misunderstanding, and some did not know respondent had stipulated to facts establishing his misconduct. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273 **[5]**

Respondent received only modest mitigating credit for good character where most of his 11 witnesses did not have a lengthy relationship or much recent contact with respondent, and several stated they had little understanding about the discipline charges. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[9]**

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

Minimal weight afforded to character testimony where respondent presented testimony from only three witnesses which did not constitute a wide range of references and where two witnesses did not become aware of the full extent of respondent's disciplinary proceedings until called to testify and third witness did not become aware of respondent's disciplinary record until three months prior to the hearing. *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131 **[2 a, b]**

The fact that respondent's good character witnesses did not establish that they possessed adequate knowledge of respondent's convictions or of the facts and circumstances surrounding them and the fact that at least two witnesses rarely saw or interacted with respondent reduced the mitigating weight given to their testimony. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[16]**

Where respondent's character evidence was not from a sufficiently wide range of references, did not demonstrate that each witness was aware of the full extent of respondent's misconduct, and did not address the State Bar's disciplinary concerns or discuss respondent's fitness for practice, the evidence was entitled to only limited weight in mitigation.*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[5]**

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.157.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

Candor and cooperation with the State Bar during the disciplinary investigation and proceeding can be a mitigating circumstance. However, an attorney has a legal and ethical duty to cooperate with the State Bar's disciplinary investigation, and that cooperation, in and of itself, is not entitled to great weight as a mitigating factor. Nevertheless, where respondent admitted his wrongdoing when first contacted by an investigator for the State Bar, and stipulated to the facts and his culpability, such evidence was a mitigating circumstance. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[9]**

Respondent's favorable character showing, while attested to by many references, did not amount to a showing of extraordinary demonstration of good character, where not all witnesses were familiar with the magnitude and nature of respondent's crimes, and where respondent's repeated contention that he did not act to defraud his victim served to undercut his favorable character showing in light of the conclusive effect of his convictions for grand theft and forgery. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[7]**

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

The weight to be accorded to respondent's character evidence was diminished somewhat where respondent presented a limited range of character witnesses, only one of whom revealed a full understanding of respondent's culpability. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[17]**

In the Matter of Lybbert (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297.

The mitigating value of character testimony is undermined when the witness is unaware of the full extent of a respondent's misconduct. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[16]**

Where hearing judge found that character witnesses' testimony was undercut by their inability to point to any persuasive reason for their belief in respondent's good character, and where the witnesses' lack of knowledge of the details of respondent's conviction also undermined the value of their testimony, respondent's contention that character evidence had not been sufficiently credited was rejected by review department. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[10]**

In the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.

740.33 Inadequate showing generally

Minimal weight in mitigation afforded to respondent's credible testimony as to his community service and pro bono activities because the brevity and lack of detail of respondent's testimony left court unable to assess the breadth or significance of these activities. *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131 **[3]**

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

Mitigating evidence of family pressures and misfortunes, good character, therapy, community service, and compliance with probation duties, similar to evidence which had been found sufficiently mitigating to avert an attorney's disbarment for prior misconduct, was not sufficient to justify a recommendation short of disbarment in a subsequent matter in view of the attorney's additional, serious misconduct and the need for protection of the public. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[6]**

Favorable testimony by six character witnesses, four of whom were respondent's co-workers, was not sufficient to show that disbarment was excessive given the many aggravating circumstances surrounding respondent's misappropriation of a large sum of client trust funds. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[5]**

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

Where hearing judge found that character witnesses' testimony was undercut by their inability to point to any persuasive reason for their belief in respondent's good character, and where the witnesses' lack of knowledge of the details of respondent's conviction also undermined the value of their testimony, respondent's contention that character evidence had not been sufficiently credited was rejected by review department. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[10]**

740.39 Other reason

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

Where respondent's character evidence was not from a sufficiently wide range of references, did not demonstrate that each witness was aware of the full extent of respondent's misconduct, and did not address the State Bar's disciplinary concerns or discuss respondent's fitness for practice, the evidence was entitled to only limited weight in mitigation. *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[5]**

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

Good character evidence consisting of recent letters from two judges before whom respondent had regularly appeared and two attorneys who had known respondent since 1986 was not entitled to substantial mitigating credit because evidence did not come from a wide range of references in general and legal communities as required by standard 1.2(e)(vi). However, respondent was entitled to some mitigating weight for that evidence because it represented a fair reference from legal community. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23. **[4 a-b]**

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

Respondent's favorable character showing, while attested to by many references, did not amount to a showing of extraordinary demonstration of good character, where not all witnesses were familiar with the magnitude and nature of respondent's crimes, and where respondent's repeated contention that he did not act to defraud his victim served to undercut his favorable character showing in light of the conclusive effect of his convictions for grand theft and forgery. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[7]**

A recommendation as to the degree of discipline properly results from a balanced consideration of all factors, requiring the State Bar Court to weigh mitigating and aggravating factors. Where respondent had committed serious and wide-ranging misconduct, his sincere expression of remorse and his favorable character references could not be weighed heavily, and had been given greater weight by the hearing judge than warranted by the record. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[17]**

740.50 Declined to find

In the Matter of Kinney (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360.

Respondent failed to establish mitigating circumstances by clear and convincing evidence, where respondent presented the testimony of only one character witness who had only limited knowledge of the disciplinary issues. The testimony of this witness does not constitute a broad range of references from the legal and general communities. *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. **[8]**

740.51 Insufficient number or range of references

In the Matter of Guillory (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402.

Attorney not entitled to mitigation for good character because he presented the testimony of only two character witnesses. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[8]**

Respondent was not entitled to mitigation for good character because he had only one witness testify and this did not constitute a broad range of references from the legal and general communities. *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 **[5]**

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

A single character witness is insufficient to be a mitigating circumstance. *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 **[5]**

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

Testimony by three character witnesses was not entitled to significant weight in mitigation since it was not an extraordinary demonstration of good character attested to by a wide range of references. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[16]**

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

740.52 References unfamiliar with misconduct

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

740.53 Inadequate showing generally

Where respondent's charitable work in the form of donating to charity the sales proceeds of a compact disc he recorded was uncontroverted, respondent's testimony on its own is not sufficient to establish his charitable work as a mitigating factor since there was no evidence as to where the proceeds were delivered or any supporting witnesses to attest to the work. *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 **[6]**

In the Matter of Wolff (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Babero (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.

740.59 Other reason

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

The fact that misconduct arose from aberrant facts and circumstances has been accorded mitigating weight in appropriate cases. However, where respondent's prior misconduct had involved multiple acts over his relatively few years of practice, and his prior and current misconduct together spanned six of his ten years in practice, it was not appropriate to consider respondent's misconduct as aberrational. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[5]**

In proceeding to determine whether criminal convictions involved moral turpitude, declarations submitted by respondent in which clients attested to respondent's character and legal abilities were properly disregarded as irrelevant, because neither declarant was present during the incident underlying the convictions nor did the declarations contain any information which could shed light on the incident. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[1]**

Focusing on technicalities in the law is a very shortsighted approach to the ethical obligations of attorneys; such technical approaches to the body of law regulating attorneys' ethics may be described as undermining the moral fiber of the profession. Evidence of good character does not rest on technicalities. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[9]**

745 Remorse/restitution/atonement (1.6(g); 1986 Standard (1.2(e)(vii))

Note: See also topic number 757 et seq.

745.10 Found

In the Matter of Wenzel (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380

Attorney judicial candidate was entitled to significant mitigation for his remorse and recognition of wrongdoing for issuing a prompt statement of regret and suspending judicial campaign after learning he had falsely connected opponent to bribery and corporate fraud. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[3]**

Attorney's admission that his actions evidenced a significant lapse in judgment, his willingness to accept discipline, and his post-conviction voluntary enrollment in parenting courses beyond those required as a condition of probation established acceptance of responsibility for misconduct and warranted significant weight in mitigation. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[9]**

In the Matter of Yee (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Jensen (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[6]**

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

The review department recommended a one-year stayed suspension and three-year probation, conditioned on a sixty-day actual suspension, where an attorney had recklessly failed to provide competent legal services in four matters, had failed to communicate properly with a client in one matter, had failed to forward a client's file

promptly upon request in one matter, and had significantly harmed two clients, but where the attorney had practiced law without discipline for over 21 years, had recognized his misconduct, had reshaped his office procedures, and had demonstrated full candor and acknowledgment of responsibility for his misconduct before the State Bar Court. *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608. **[4]**

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

Where respondent was not aware of pendency of rule 955 violation proceeding when he belatedly attempted to file affidavit required by rule 955(c), California Rules of Court, respondent's attempted untimely filing was basis for mitigation as spontaneous recognition of wrongdoing. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[9]**

Where respondent attempted to file required affidavit of compliance with rule 955, California Rules of Court, within two weeks after it was due and before he was aware of initiation of rule 955 violation proceeding, and no clients were harmed, but respondent had also violated probation and had substantial prior discipline record, nine months actual suspension was appropriate discipline for respondent's wilful failure to comply with rule 955(c). *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[15]**

Where, after initially failing to perform services regarding joint bankruptcy filed by divorcing couple, respondent provided assistance to both parties in completing bankruptcy at no charge, this was voluntary ameliorative behavior which disciplinary standards are designed to encourage, and was entitled to mitigating weight even though respondent had duty to perform services for wife in any event. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[11]**

Where respondent had filed his required rule 955 affidavit prior to the initiation of rule 955 proceedings by referral order, had met the notice requirements of the rule timely, had taken responsibility for his own errors, and, because of other discipline, might remain on actual suspension for over two years, a six-month actual suspension for respondent's untimely filing of his rule 955 affidavit would be excessive. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[9]**

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

External pressures to pay restitution for misappropriated funds, including court orders and agreements with victims of misappropriation, do not preclude consideration of such restitution in reinstatement proceedings. The weight to be accorded to restitution depends on the petitioner's attitude, as evidenced by a spirit of willingness, earnestness, and sincerity. Where a reinstatement petitioner who had misappropriated funds from a probate estate had subsequently recognized the gravity of his misconduct; admitted his misappropriation to the probate court and the State Bar; cooperated in an audit of the estate's records; secured his debt to the estate by granting it interests in his real and personal property, and fully repaid both the misappropriated funds and additional interest, surcharges, fees, and costs, his restitution deserved significant weight even though it was required by a probate court order. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[5]**

Where respondent almost completely abdicated to a non-lawyer his professional duties with respect to a personal injury practice; failed to take prompt, realistic action to stop the non-lawyer's capping practices, and had not presented clear evidence regarding rehabilitation and necessary changes in his practice, then despite mitigating factors including respondent's cooperation with law enforcement and State Bar and satisfaction of medical liens out of his own funds, appropriate discipline for protection of public was three-year stayed suspension with three years probation and actual suspension for two years and until proof of rehabilitation, fitness to practice, and learning in the general law. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[7]**

Where respondent, after authorities' discovery of welfare fraud committed by him and his wife, was cooperative with welfare authorities and remorseful, took full responsibility, and stipulated to most of the facts at the State Bar hearing, hearing judge was justified in recommending lengthy suspension in lieu of disbarment. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[4]**

In matters involving abandonment of a single client by an attorney with no prior record of discipline, discipline imposed by Supreme Court has ranged from no actual suspension to 90 days of actual suspension. Where

respondent's misconduct was serious, harmed client, and included trust account violation as well as abandonment and failure to communicate, but respondent presented impressive mitigating evidence, including services to disadvantaged clients and to minority community, and respondent expressed sincere aspiration not to be involved in disciplinary proceedings again, review department recommended actual suspension of 30 days, with stayed suspension of six months and one year of probation. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[9]**

In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

Although respondent's use and distribution of illegal drugs did not result from an initial, legal use of prescribed medications, which would have mitigated his later, reprehensible drug transactions, the great number of years which had passed since the attorney's misconduct, coupled with evidence of impressive and sustained rehabilitation, were sufficiently mitigating to conclude that disbarment would be excessive discipline. To underscore the gravity of the attorney's misconduct, which occurred after the attorney had completed law school and had applied unsuccessfully to the California bar, the review department recommended two years actual suspension, retroactive to the start of the attorney's interim suspension. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[3]**

Respondent's persisting in his belief in his innocence of fundamental misconduct did not necessarily show that respondent was deceitful or had misled the hearing judge, and was not a basis for a finding in aggravation, nor did it prevent a finding in mitigation that respondent had showed recognition of ways he could handle client matters more professionally in the future. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[7]**

In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

Voluntary restitution to all but one client prior to the involvement of the State Bar was a mitigating factor. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[12]**

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

Where restitution to client was made after disciplinary hearing despite respondent's bankruptcy, this fulfilled a rehabilitative purpose which was appropriate to consider in disciplinary proceedings. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[3]**

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

It was an important mitigating factor that respondents, due to youth and inexperience, honestly believed their conduct was not wrongful, and intended no harm; were very remorseful once they realized they had acted wrongfully, and thereafter candidly discussed the facts with their principal victim and disgorged the money they had received as a result of their acts. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[18]**

Fact that respondent readily admitted misuse of client trust account and had taken steps to change business practices to alleviate pressures that led to the misuse constituted a mitigating circumstance. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[12]**

Where respondent had no prior or subsequent discipline; respondent was not venal; respondent's misconduct was an aberration occurring over a short period of time and contributed to by respondent's poor business judgment at a time when he was under financial pressures; respondent accepted responsibility for his misconduct, taking objective steps to avoid further misconduct; and other mitigating factors existed, it was appropriate to recommend lesser sanction than minimum actual suspension indicated by applicable standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[16]**

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

Restitution made voluntarily and before the commencement of disciplinary proceedings is entitled to consideration as a mitigating factor. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[17]**

Where respondent took a year to complete restitution, but never disavowed his debt; where respondent made partial payment before client complained, and had paid in full before disciplinary proceeding commenced; and where there was no evidence in the record tending to show whether respondent had the financial wherewithal to have made restitution any faster or sooner than he did, respondent's restitution was a mitigating factor. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[18]**

745.30 Found but discounted or not relied on

745.31 Coerced or belated restitution

Where respondent apologized to bankruptcy court for her misconduct in filing improper bankruptcy petitions, explained she realized her conduct was not justified by her intent to help her clients, and disgorged wrongfully obtained fees pursuant to sanctions order, her belated expressions of remorse and payment of sanctions showed recognition of wrongdoing and were entitled to moderate weight in mitigation. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[10]**

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

Restitution paid under the force or threat of disciplinary proceedings does not have any mitigating effect. No restitution was paid in this case until after respondent received a letter from his client threatening to file a complaint with the State Bar, and most of the restitution was not paid until after the client actually filed the complaint. Accordingly, this was not found to be significantly mitigating. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[4]**

Where bankruptcy court order which was not already part of record showed that restitution payments had been made to victim of respondent's misconduct, review department granted request to take judicial notice of such order. Undisputed evidence bearing on issue of restitution is important, if for no other purpose than to create an accurate record on the status of restitution. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[2]**

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In light of respondent's very limited ability to pay, it was appropriate to consider in mitigation fact that restitution ordered by criminal court was nearly complete, but such fact was given less weight than if restitution had begun earlier as a voluntary act. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[5]**

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

Restitution of misappropriated client trust funds which occurred very belatedly and after the start of disciplinary proceedings was not entitled to any significant weight in mitigation. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[9]**

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

Restitution payments made under the direct pressure of probation revocation proceedings were entitled to little weight in mitigation. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[14]**

Timing of restitution is a factor which may affect the degree of discipline. *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207. **[2]**

745.32 Inadequate showing generally

In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

Respondent's confession of his misdeeds to his client could be viewed as voluntary and therefore could be considered a mitigating circumstance as a recognition of wrongdoing. However, the weight attached to this factor

was greatly reduced because a confession a year after the fact was not an objective step promptly taken spontaneously demonstrating remorse and recognition of the wrongdoing. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[5]**

The weight accorded respondent's remorse and recognition of wrongdoing was reduced where respondent's guilt and shame did not result in objective steps promptly taken by him to atone for his misconduct. Expressing remorse for one's misconduct is an elementary moral precept which, standing alone, deserves no special consideration in determining the appropriate discipline. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[6]**

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

745.39 Other reason

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

Respondent's confession of his misdeeds to his client could be viewed as voluntary and therefore could be considered a mitigating circumstance as a recognition of wrongdoing. However, the weight attached to this factor was greatly reduced because a confession a year after the fact was not an objective step promptly taken spontaneously demonstrating remorse and recognition of the wrongdoing. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[5]**

The weight accorded respondent's remorse and recognition of wrongdoing was reduced where respondent's guilt and shame did not result in objective steps promptly taken by him to atone for his misconduct. Expressing remorse for one's misconduct is an elementary moral precept which, standing alone, deserves no special consideration in determining the appropriate discipline. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[6]**

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

A recommendation as to the degree of discipline properly results from a balanced consideration of all factors, requiring the State Bar Court to weigh mitigating and aggravating factors. Where respondent had committed serious and wide-ranging misconduct, his sincere expression of remorse and his favorable character references could not be weighed heavily, and had been given greater weight by the hearing judge than warranted by the record. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[17]**

Where respondent included declaration regarding abstinence in probation reports after hearing judge ruled that such declaration was required, such probation reports were relevant to issue of mitigation. However, respondent's change of behavior was not given very great weight in mitigation, where respondent could have avoided probation revocation proceeding altogether if respondent had heeded advice of probation department staff instead of continuing to follow respondent's own interpretation of probation conditions until rejected by source respondent considered sufficiently authoritative. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[15]**

Respondent could not claim mitigating credit for restitution of misappropriated client funds, where the funds used for restitution were funds which the attorney had no right to use, and the client had to hire counsel and undergo litigation prior to receiving restitution. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[7]**

Attorney's failure to make full restitution was an aggravating factor, where partial restitution was made largely out of attempt to deceive client; client's refusal to accept further restitution after State Bar complaint was filed did not extinguish attorney's moral obligation to complete restitution. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[7]**

745.50 Declined to find

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

745.51 Coerced or belated restitution

Respondent's restitution payment to his client of misappropriated funds was assigned no mitigation credit. Although repayment occurred before the State Bar investigation, it was not spontaneous. Rather, respondent waited until his client reappeared with her attorney, demanded payment, and ultimately filed a lawsuit against him. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273 **[6]**

To give attorney mitigating credit for restitution he made to credit card company under pressure of State Bar's investigation and disciplinary proceedings and of credit card company's money judgement against him would inappropriately reward attorney for merely doing what he was already legally required to do. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[13]**

Respondent's prompt compliance with a criminal restitution order was not a mitigating circumstance. An attorney is not entitled to any mitigation for restitution made as a matter of expediency or under pressure. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[6]**

Payments of restitution prompted by litigation have no mitigating force, even if made prior to initiation of disciplinary proceedings; their only relevance is to amount of restitution which may be appropriate. Where respondent did not pay medical liens until after being sued by lienholders, such payment was entitled to no mitigating weight whatsoever. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[32]**

Respondent's partial restitution and attempts to obtain an accountant in order to file his quarterly probation reports were not entitled to any mitigating weight, because he did not complete restitution until the eve of his disciplinary hearing, and failed to notify his probation monitor of his difficulty in complying with the disciplinary order requiring him to have an accountant certify his trust account records. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[14]**

Restitution payments made under pressure of disciplinary proceedings are entitled to little or no weight in mitigation of discipline. However, whether restitution has been completed is important to deciding whether it should be required as a condition of probation, or, if disbarment is recommended, to whether respondent must make restitution as an issue bearing on rehabilitation for reinstatement. Thus, evidence of restitution payments made by respondent's father was relevant and properly admissible, even though not constituting mitigation, and review department granted motion to admit such evidence on review where hearing judge had declined to accept it. However, other evidence offered by respondent on review regarding Client Security Fund claim filed by respondent's client was not admitted by review department where it was not relevant to issues in proceeding. (See rule 570, Trans. Rules Proc. of State Bar.) *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[12]**

Where an attorney was convicted of mail fraud based on fraudulently billing an insurance company for services rendered on behalf of its insureds, the insureds, as the attorney's clients, were victimized by the crime, and the crime therefore involved a client as a victim within the meaning of the summary disbarment statute (Bus. & Prof. Code § 6102 (c)). The attorney's subsequent restitution to the insurance company, ordered as part of the attorney's criminal sentence, did not negate the harm caused by the crime. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[6]**

Belated restitution is not an appropriate basis for a finding in mitigation, and review department declined to adopt such finding even though not challenged by the parties. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[5]**

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

Where respondent made partial restitution of misappropriated client funds only after the institution of a disciplinary investigation, this negated the otherwise mitigating effect of his amends. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[7]**

An offer of restitution made in response to litigation by the client, and long after the initiation of State Bar proceedings, does not constitute proper mitigation. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[30]**

Restitution coming on the heels of threats of a lawsuit and after a State Bar complaint has been filed is not a mitigating factor. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[6]**

745.52 Inadequate showing generally

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

Respondent's declaration presented in an attempt to comply with rule 955 bore little mitigating weight when it was submitted almost two months after respondent's rule 955 affidavit was due to be filed with the Supreme Court, contained inaccurate information and misrepresented a hearing date in one case. The inaccurate declaration raised serious doubts as to respondent's credibility and was an aggravating circumstance. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[8]**

Recent Supreme Court decisions reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule 955. One of the primary reasons for the adoption of the Standards for Attorney Sanctions for Professional Misconduct was to achieve greater consistency in disciplinary sanctions for similar offenses. Any reason for deviating from the standards or established case law must be clearly stated. Accordingly, where respondent participated in the rule 955 proceeding, but did not present a convincing case of mitigation, diligence, and rectification of misconduct, and instead demonstrated a pattern of inattention to important duties, an inability to conform to professional norms, and a lack of concern for potential harm to his clients and the public, the public interest and the administration of justice would be served by respondent's disbarment. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[15]**

An attorney's obligation to make restitution is not limited to legally enforceable claims. An attorney may have a moral obligation to make restitution as part of the duties of an attorney, in order to confront the harm caused by the theft. Nonetheless, payment of restitution is neither mandatory nor determinative of rehabilitation. The attorney's attitude toward payment to the victim is considered as well as the ability to pay. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[9]**

An attorney's moral duty to make restitution is not limited to clients, and extends to an employer to whom the attorney owed a fiduciary duty. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[10]**

The law does not require false penitence; however, it does require that the respondent accept responsibility for his acts and come to grips with his culpability. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[6]**

745.59 Other reason

To give attorney mitigating credit for restitution he made to credit card company under pressure of State Bar's investigation and disciplinary proceedings and of credit card company's money judgement against him would inappropriately reward attorney for merely doing what he was already legally required to do. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231. **[13]**

Tardy compliance with conditions of probation after being notified by the probation unit of the failure to comply is not a mitigating circumstance as it is not a "spontaneous" recognition of wrongdoing. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[6]**

Respondent's belated filing of probation reports was not a mitigating circumstance as an objective step promptly taken spontaneously demonstrating remorse or recognition of wrongdoing where he filed the reports after he had knowledge of the probation revocation proceeding. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[3]**

A disciplinary probationer's belated filing of required probation reports could, under appropriate circumstances, demonstrate recognition of wrongdoing, even if such reports were technically defective. However, where respondent did not file late reports until after he learned probation revocation proceeding was pending against him, his actions were not a spontaneous recognition of wrongdoing and thus were not a mitigating circumstance. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[8]**

A respondent has the burden of proving mitigation by clear and convincing evidence. While respondent's honest belief in his innocence was not an aggravating factor, it precluded finding by clear and convincing evidence that respondent's recognition of his wrongdoing was a mitigating factor. Recognition of wrongdoing does not require false penitence, but it does require acceptance of culpability. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[19]**

750 Passage of time and rehabilitation (1.6(h); 1986 Standard 1.2(e)(viii))

750.10 Found

Although the hearing judge neither referenced Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(e)(viii) nor specifically found respondent to be rehabilitated, this does not foreclose consideration of respondent's three and one–half years of successful post–misconduct practice since the Supreme Court has found mitigation where there was no specific showing of rehabilitation other than the practice of law for a period of time without further misconduct. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 **[5]**

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.157.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

Where respondent was legitimately entitled to fees for services to wife in marital dissolution, and honestly believed that couple had allocated trust funds to husband in marital settlement in order to prevent respondent from applying trust funds to wife's debt for fees, there was not clear and convincing evidence that respondent's failure to make restitution of funds to husband was an aggravating circumstance. Respondent's legal position in defense of his retention and use of husband's funds did not evidence a persistent unwillingness to conform his behavior to ethical standards, and did not undercut the force of his mitigating evidence of subsequent reputable practice and community service. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[10]**

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

Where respondent's misconduct involved negligent law office management over an extended period of time, resulting in delay and disservice to a number of clients but no act of moral turpitude or serious misconduct in any individual matter, and respondent had since changed his office practices, a one-year actual suspension was excessive in the absence of serious aggravation. However, where no persuasive reason had been offered to go below the minimum three-month actual suspension called for by the standards, a one-year stayed suspension, two years probation, and a three-month actual suspension, with law office management requirements, constituted sufficient discipline. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[10]**

Respondent's long period of postmisconduct practice of law without further discipline was a significant mitigating circumstance, because it demonstrated that respondent was able to adhere to acceptable standards of professional behavior and was not likely to commit misconduct in the future. Respondent's good faith defense of his innocence, in which he honestly believed, did not constitute a lack of understanding of his misconduct so as to preclude such finding, especially where respondent offered evidence about his sensitivity to misconduct of which he had been found culpable at an earlier stage in the proceeding. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[20]**

Where respondent was culpable of failing to set aside $942 of his legal fee in a trust account pending resolution of a dispute with his client; aggravating factor of bad faith arose from respondent's intent to serve his clients rather than from any venal purpose; aggravating factors were outweighed by mitigating factors including long period of unblemished practice since misconduct, indicating unlikelihood of further misconduct; and prior similar cases indicated that it would be appropriate to depart from the 90-day minimum actual suspension for trust account violations, appropriate discipline was private reproval conditioned on passage of professional responsibility examination. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[22]**

Evidence that an attorney has taken steps to deal with an alcohol problem is mitigating evidence that may properly be taken into account in determining the degree and nature of discipline, but does not eliminate the initial misconduct as an appropriate basis for discipline. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[11]**

Where respondent's drunk driving convictions involved more serious misconduct than in prior reported disciplinary cases involving drunk driving, including repeated abusive conduct with law enforcement officers, and respondent had two prior disciplinary reprovals, but respondent presented favorable evidence of professional ability and character references as well as efforts toward overcoming his addiction to alcohol, a 60-day actual suspension was appropriate to serve the aims of attorney discipline and, coupled with three years of probation, to assist in convincing respondent to deal with his alcohol abuse problems seriously. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[7]**

In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

The Standards for Attorney Sanctions for Professional Misconduct provide that the appropriate discipline for culpability for professional misconduct where the member has a record of two prior impositions of discipline is disbarment unless the most compelling circumstances clearly predominate. Application of this standard was not appropriate where the attorney's criminal convictions and prior discipline, which were caused by an extensive history of drug and alcohol abuse, did not directly involve clients or the practice of law, and did not cause specific harm to the public or courts, and where the attorney had taken steps to address the underlying substance abuse problem, and had already been under suspension for five years as a result of previous discipline. Continued probation monitoring with substance abuse conditions, and a requirement that the attorney demonstrate rehabilitation and fitness to practice, would ensure that the substance abuse was controlled prior to the attorney's resuming the practice of law. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[9]**

No question on respondent's application for admission to practice law called upon respondent, as an applicant, to reveal criminal conduct for which respondent had not yet been convicted or arrested and for which respondent was not awaiting trial. If any such question had been asked, respondent would have had a good argument for withholding information that would lead to criminal liability. Nothing in respondent's manner of completing the application, or in respondent's subsequent two-month delay in reporting to the State Bar a criminal indictment handed down after the application was completed, undermined respondent's showing of rehabilitation from pre-admission criminal conduct. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[1]**

If an attorney engages in criminal conduct, it is not a minimum requirement for rehabilitation that the attorney turn himself or herself in to law enforcement authorities. Where the attorney was not hiding from anyone except those who wished him to resume his criminal activities; he cooperated fully with law enforcement once asked, and he presented character witnesses who attested to his current good character, the hearing judge's finding of rehabilitation was appropriate. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[2]**

Although respondent's use and distribution of illegal drugs did not result from an initial, legal use of prescribed medications, which would have mitigated his later, reprehensible drug transactions, the great number of years which had passed since the attorney's misconduct, coupled with evidence of impressive and sustained rehabilitation, were sufficiently mitigating to conclude that disbarment would be excessive discipline. To underscore the gravity of the attorney's misconduct, which occurred after the attorney had completed law school and had applied unsuccessfully to the California bar, the review department recommended two years actual suspension, retroactive to the start of the attorney's interim suspension. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[3]**

Respondent's lack of a prior record was not a significant mitigating factor since he had only been in practice for eight years prior to his misconduct. However, where respondent had practiced without incident for more than twelve years since the misconduct occurred, he was entitled to have this taken into account, and the review department concluded based on respondent's record that respondent's criminal conduct was aberrational and unlikely to recur. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[13]**

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

Although the Supreme Court requires that lawyers' claims in mitigation based upon substance abuse show adequate evidence of a causal connection between the abuse and misconduct and a meaningful and sustained rehabilitative period, the Court does not require that the respondent's rehabilitation be complete to qualify as mitigation. Where respondent showed that his marijuana use and alcohol abuse led in part to his criminal activity, and that he had undertaken a program of steady progress toward rehabilitation, and had successfully dealt with his addiction and maintained sobriety, mitigation was properly found. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[8]**

Where attorney represented to State Bar Court that no disciplinary investigations against him were pending, examiner's failure to rebut this contention, as permitted by rule 573, Trans. Rules Proc. of State Bar, warranted inference that State Bar did not dispute attorney's representation. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[16]**

If a misappropriation of entrusted funds results from an attorney's laxity in supervising office staff, and not from an intent to defraud, and remedial steps are instituted by the attorney upon discovery of the situation, further underscoring the lack of fraudulent intent, far less discipline than disbarment is appropriate. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[17]**

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

Where attorney found culpable of practicing while suspended no longer posed threat of harm to public, 30-day actual suspension was nonetheless appropriate to protect integrity of profession and courts. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[15]**

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

A delay of approximately three and one half years in the filing of a notice to show cause after the client's initial complaint, and a period of more than six years of unblemished practice between the misconduct and the disciplinary hearing, were properly considered mitigating factors. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[9]**

Where respondents had been in practice without prior discipline for approximately four years before the commission of their misconduct, their records were far too short to constitute significant mitigation, but it was appropriate to consider their prior clean records in conjunction with their subsequent good conduct to demonstrate the aberrational nature of their misconduct. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[14]**

Where respondent's misconduct occurred four years prior to disciplinary hearing, and five years prior to proceedings on review, and respondent had not committed misconduct since then, this constituted a mitigating circumstance. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[13]**

Where respondent had no prior or subsequent discipline; respondent was not venal; respondent's misconduct was an aberration occurring over a short period of time and contributed to by respondent's poor business judgment at a time when he was under financial pressures; respondent accepted responsibility for his misconduct, taking objective steps to avoid further misconduct; and other mitigating factors existed, it was appropriate to recommend lesser sanction than minimum actual suspension indicated by applicable standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[16]**

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

750.30 Found but discounted or not relied on

750.31 Insufficient time since misconduct

750.32 Inadequate showing of rehabilitation

The passage of considerable time since misconduct and proof of subsequent rehabilitation constitute a mitigating circumstance. Where respondent practiced law without disciplinary problems for more than four years after the end of his misconduct and then held a responsible job with a mortgage lending business for more than two years, such conduct was clearly to respondent's credit, but did not establish full rehabilitation from a very serious criminal record. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[8]**

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

Mitigating evidence of family pressures and misfortunes, good character, therapy, community service, and compliance with probation duties, similar to evidence which had been found sufficiently mitigating to avert an attorney's disbarment for prior misconduct, was not sufficient to justify a recommendation short of disbarment in a subsequent matter in view of the attorney's additional, serious misconduct and the need for protection of the public. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[6]**

Respondent's bitterness and disaffection over his prior disciplinary suspension might explain some misconduct toward his clients thereafter, but it could not excuse his misconduct, especially since the suspension and its terms were designed to seek respondent's rehabilitation. Also, respondent's evidence of rehabilitation was depreciated by his inability to comply with his probation conditions, which was relatively recent and occurred after respondent had time to become familiar with his responsibilities. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[21]**

750.39 Other reason

Where respondent included declaration regarding abstinence in probation reports after hearing judge ruled that such declaration was required, such probation reports were relevant to issue of mitigation. However, respondent's change of behavior was not given very great weight in mitigation, where respondent could have avoided probation revocation proceeding altogether if respondent had heeded advice of probation department staff instead of continuing to follow respondent's own interpretation of probation conditions until rejected by source respondent considered sufficiently authoritative. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[15]**

750.50 Declined to find

750.51 Insufficient time since misconduct

In the Matter of Duxbury (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.

750.52 Inadequate showing of rehabilitation

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

Where respondent failed to offer clear and convincing proof of rehabilitation, respondent did not establish mitigation under standard 1.2(e)(viii), which requires not only the passage of considerable time since the acts of professional misconduct, but also subsequent rehabilitation. *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. **[8]**

The fact that misconduct arose from aberrant facts and circumstances has been accorded mitigating weight in appropriate cases. However, where respondent's prior misconduct had involved multiple acts over his relatively few years of practice, and his prior and current misconduct together spanned six of his ten years in practice, it was not appropriate to consider respondent's misconduct as aberrational. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[5]**

Disbarment is generally the appropriate sanction for a wilful violation of rule 955, California Rules of Court. Where respondent not only failed to notify courts and file timely affidavit of compliance as required by rule 955, but also had wilfully failed to comply with other stipulated conditions of prior discipline; respondent had injured a number of clients, and posed substantial risk of continuing to do so; respondent's participation in rule 955 proceeding was sporadic; respondent provided evidence of personal problems but no evidence that he was likely to overcome them, organize his practice, and comply with prior disciplinary probation; and respondent provided no evidence of rehabilitation, but rather evidence that his problems had increased, then despite respondent's history of pro bono work, idealism, honesty, and altruism, disbarment recommendation was required for public protection. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[2]**

Where respondent almost completely abdicated to a non-lawyer his professional duties with respect to a personal injury practice; failed to take prompt, realistic action to stop the non-lawyer's capping practices, and had not presented clear evidence regarding rehabilitation and necessary changes in his practice, then despite mitigating factors including respondent's cooperation with law enforcement and State Bar and satisfaction of medical liens out of his own funds, appropriate discipline for protection of public was three-year stayed suspension with three years probation and actual suspension for two years and until proof of rehabilitation, fitness to practice, and learning in the general law. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[7]**

Evidence of uncharged misconduct may not be used as an independent basis for discipline, but may be used in a contested proceeding for purposes such as impeaching the credibility of the respondent's testimony regarding rehabilitation, or establishing evidence of aggravating circumstances. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[6]**

Additional misconduct which occurred after respondent's claimed rehabilitation, and respondent's subsequent failure to participate fully in disciplinary proceedings, were cogent evidence that respondent had not yet dealt effectively with the problems underlying his misconduct. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[15]**

Respondent's sporadic participation in disciplinary proceedings, despite warning from hearing judge regarding consequences of continuing to be derelict in duty to State Bar, demonstrated both respondent's indifference to his professional obligations and a substantial risk to the public. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[17]**

Where two separate disciplinary proceedings were consolidated on review, the first proceeding did not constitute prior discipline for the purpose of enhanced discipline in the consolidated matter. Nonetheless, where the misconduct involved in the second proceeding had continued during the period that the first proceeding was pending in hearing department, the fact that respondent engaged in additional misconduct while he was aware that his conduct was being scrutinized in a pending disciplinary proceeding was significant. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[18]**

Where respondent had engaged in a pattern of misconduct involving 14 matters spanning six of his nine years of practice, and had misappropriated over $17,000 of client funds and caused the extinction of legal claims for eight clients, and where respondent had engaged in further misconduct after he had recognized his case management difficulties, and had barely begun his rehabilitation, the fact that the parties did not stipulate that respondent engaged in acts of moral turpitude in any individual matter did not necessarily mean that his misconduct warranted less discipline than in comparable cases where disbarment was ordered. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[7]**

750.59 Other reason

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

Absence of evidence of rehabilitation from drug and alcohol problems was significant where respondent's probation violation involved failure to give adequate assurance of compliance with probation requirement of abstention from alcohol and drugs. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[21]**

The lack of any subsequent misconduct charges against a respondent who had moved to another state was not compelling mitigation, since respondent had not been representing California clients and misconduct

allegations arising in another state would not necessarily be reported to discipline authorities in California. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[44]**

Evidence of convicted attorney's efforts toward rehabilitation would be relevant at the hearing on final discipline, but could not be relied upon in proceedings seeking to vacate interim suspension because of lack of opportunity for pretrial discovery and full development of facts. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[7]**

755 Prejudicial delay in proceeding (1.6(i); 1986 Standard 1.2(e)(ix))

755.10 Found

Despite absence of prejudice that would warrant dismissal of charges, State Bar's nearly five–year delay in filing disciplinary charges was accorded considerable mitigative weight. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[10]**

Where extended time had passed since hearing judge's decision in consolidated probation revocation and original discipline matters, during which time respondent had been ineligible to practice law, review department recommended that actual suspension in original discipline matter be fully concurrent with, and retroactive to effective date of, respondent's actual suspension in probation revocation matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[25]**

Excessive delay in conducting disciplinary proceedings, not attributable to respondent and resulting in prejudice to respondent, should be taken into account in mitigation, especially in probation revocation proceedings which are required to be expedited. Where, due to delay in proceedings, actual suspension in probation matter would not commence until after start of actual suspension in separate matter which was supposed to be served concurrently with prior suspensions, review department modified recommended discipline in probation matter to provide for actual suspension to be served concurrently with previously ordered actual suspension to extent it was still in effect. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[16]**

Credit for interim suspension in conviction matters is not restricted to cases in which there are compelling mitigating factors. All facts and circumstances, including unexplained delay in State Bar proceedings, are considered, and all relevant factors are balanced in arriving at a proper discipline. Disciplinary recommendations should not penalize the respondent for appealing a criminal conviction or contesting the State Bar Court's findings and recommendations. Where lengthy interim suspension has occurred, the appropriate consideration in determining whether prospective suspension is necessary is whether the facts and circumstances of a particular matter require a further period of actual suspension for the protection of the public, the profession or the courts. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[13]**

A delay of approximately three and one half years in the filing of a notice to show cause after the client's initial complaint, and a period of more than six years of unblemished practice between the misconduct and the disciplinary hearing, were properly considered mitigating factors. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[9]**

755.30 Found but discounted or not relied on

755.31 Delay not sufficiently lengthy

755.32 Inadequate showing of prejudice

Where notice to show cause was not filed until about five years after misconduct and over a year after State Bar's initial inquiry to attorney regarding misconduct, and attorney had assumed matter had been dropped and thus had not taken steps to preserve recollection, there was some evidence that attorney was prejudiced in legally cognizable fashion by State Bar's delay. However, where attorney did not point to any specific factual issue as to which better-preserved recollection could have materially affected outcome of disciplinary proceeding, delay in prosecution had little weight as mitigating factor. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[12]**

Nothing in lengthy pendency of probation revocation proceeding delayed or prevented respondent's filing of application for termination of suspension pursuant to standard 1.4(c)(ii). (Trans. Rules Proc. of State Bar, rules 810-826.) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[17]**

755.33 Respondent contributed to delay

755.39 Other reason

755.50 Declined to find

755.52 Inadequate showing of prejudice

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.157.

In the Matter of Duxbury (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.

Where respondent failed to show that delay in his disciplinary proceeding was not attributable to him and that it caused specific, legally cognizable prejudice, the delay was not a mitigating circumstance. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[13]**

Excessive delay in the conduct of a disciplinary proceeding may be a mitigating circumstance, but the attorney must demonstrate that the delay impeded the preparation or presentation of an effective defense. A delay in a disciplinary proceeding merits consideration only if it has caused specific, legally cognizable prejudice. Where respondent was able to present evidence on all issues as to which respondent claimed prejudicial delay, and did not specify what missing evidence would have shown, respondent failed to show that delay caused specific prejudice. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[21]**

Respondent was not prejudiced by inability to corroborate testimony regarding trust account practices, due to destruction of respondent's trust account bank records, because hearing judge essentially accepted respondent's testimony regarding trust account practices, and respondent admitted gross negligence in handling clients' funds. Accordingly, delay in prosecution was not a mitigating factor. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[17]**

Where a fire which destroyed some of respondent's files did not occur until over a year after respondent had promised the State Bar to check his files in response to a client complaint, respondent demonstrated no prejudice from the State Bar's delay in bringing formal charges arising out of the complaint. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[1]**

The passage of time since respondent's misconduct and the failure of the State Bar to consolidate respondent's two disciplinary matters did not render the disbarment recommendation in the second matter unfair. Consolidation of disciplinary matters, while preferable when reasonably possible and not prejudicial, is not mandatory, and independent consideration of separate matters involving the same attorney is not uncommon. Where an investigation by state law enforcement and the State Bar of respondent's misconduct in the second matter was still ongoing after the initiation and disposition of respondent's earlier disciplinary matter, consolidation would not have been possible. Further, it could not be presumed that if the matters had been consolidated, the recommended discipline would have been suspension rather than disbarment, given the far greater seriousness of the misconduct in the second matter. Finally, respondent had shown no prejudice from the delay, and had benefited from being able to practice almost continually in the interim. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[8]**

Delays in disciplinary proceedings merit consideration only if they have caused specific, legally cognizable prejudice (e.g., by impairing the presentation of evidence). Where respondent was not prepared to state that his case would have been stronger if no delays had occurred, and respondent received credit for time on interim suspension following conviction, respondent failed to demonstrate prejudice from delay in disciplinary proceeding. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[1]**

Evidence provided by State Bar demonstrated that closure and reopening of investigation of disciplinary matter was in compliance with applicable rules and did not bar disciplinary proceedings; respondent had not been prejudiced by delay. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[12]**

755.53 Respondent contributed to delay

Where respondent failed to show that delay in his disciplinary proceeding was not attributable to him and that it caused specific, legally cognizable prejudice, the delay was not a mitigating circumstance. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[13]**

755.59 Other reason

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

757 Restitution made without threat or force of proceedings (1.6(j))

Note: See also topic number 745 et seq.

757.10 Found

757.30 Found but discounted or not relied on

757.31 Coerced or belated restitution

757.32 Inadequate showing generally

757.39 Other reason

757.50 Declined to find

757.51 Coerced or belated restitution

757.52 Inadequate showing generally

757.59 Other reason

760 Marital, family, and/or financial difficulties

Note: See also topic number 725 et seq.

760.10 Found

760.11 With expert testimony

In disciplinary matters, greater mitigating weight is given to financial pressures if the pressures are extreme and result from circumstances beyond the control of the attorney, such as undiagnosed psychiatric problems. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[1]**

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

760.12 Without expert testimony

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In light of respondent's very limited ability to pay, it was appropriate to consider in mitigation fact that restitution ordered by criminal court was nearly complete, but such fact was given less weight than if restitution had begun earlier as a voluntary act. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[5]**

Severe emotional problems which can be related to the misconduct at issue can be considered to have a mitigating weight. Respondent's misrepresentations to his clients, made two days after the funeral of his murdered son, while not excusable, were tempered in their otherwise aggravating effect by respondent's emotional stress, and the hearing judge should have given such stress more weight in mitigation. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[13]**

Where respondent misrepresented his educational background in his resume, these actions were dishonest, and some period of actual suspension was warranted. Where respondent's misconduct extended over a three-year period, and was aggravated by his misrepresentations in discovery responses in the disciplinary proceeding, and where respondent had personal problems but they did not fully explain his misconduct, a 60-day actual suspension, with one year of probation, was appropriate to recognize the seriousness of the misconduct, the mitigating circumstances, and the sanction imposed in previous cases. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[5]**

Hearing judge should not have entirely discounted respondent's testimony regarding family problems, on ground that no causal connection was established by expert testimony between personal problems and misconduct. The Supreme Court has often considered lay testimony of emotional problems as mitigation. It was readily conceivable that respondent's concern for his wife and unborn child and his ability to support them would cloud his judgment as he stated it did, and be directly responsible for some of his misconduct; accordingly, review department gave such evidence more weight than did hearing judge. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[9]**

Supreme Court precedent has not laid down a per se rule that serious marital difficulties cannot be raised in mitigation without the aid of expert testimony. The Supreme Court has often accepted lay testimony regarding marital difficulties as appropriate mitigation. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[17]**

Where attorney's two instances of misconduct took place during the same short period of time, and attorney attributed them to the same problem of financial difficulty, this factor could properly be considered in mitigation. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[15]**

760.30 Found but discounted or not relied on

760.31 Lack of expert testimony

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

Personal stress factors, such as the estrangement, illness, or death of a family member, can constitute mitigating evidence. However, they were properly accorded less weight than would otherwise have been appropriate, where there was evidence that the attorney was responsive to other clients during the same period, the attorney's own testimony did not convincingly show what role these stress factors played in the misconduct, and there was no expert testimony clearly establishing a nexus between the personal difficulties and the attorney's disregard of professional duties. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[10]**

760.32 Lack of causal relation to misconduct

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.157.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

Marital problems can be a mitigating circumstance. However, such emotional problems are not mitigating unless they are extreme and are directly responsible for the misconduct. Where the asserted cause for the marital problems was the financial pressures respondent was experiencing, and where the record indicated, at most, that respondent and his wife constantly argued over their financial problems, the marital problems were not found to be extreme. In addition, respondent failed to prove by clear and convincing evidence that the marital difficulties were directly responsible for his misconduct. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[3]**

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

Personal stress factors, such as the estrangement, illness, or death of a family member, can constitute mitigating evidence. However, they were properly accorded less weight than would otherwise have been appropriate, where there was evidence that the attorney was responsive to other clients during the same period, the attorney's own testimony did not convincingly show what role these stress factors played in the misconduct, and there was no expert testimony clearly establishing a nexus between the personal difficulties and the attorney's disregard of professional duties. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[10]**

Failure of respondent's estranged wife, who worked as his secretary, to deliver telephone messages did not excuse respondent's abandonment of clients. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[12]**

Without evidence that death of respondent's parent resulted in disabling psychological distress, record did not show that attorney's failure to prepare trust documents was affected thereby. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[13]**

Where respondent did not demonstrate that he suffered from such extreme personal pressures related to his financial difficulties that his misconduct could have been reasonably understandable as a desperate response to such pressures, respondent's financial difficulties were not considered a significant factor in mitigation. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[17]**

760.33 Problem not sufficiently severe

Financial difficulties can be considered in mitigation. However, in misappropriation cases, financial problems are given significant weight in mitigation only if they are extreme and result from circumstances not reasonably foreseeable or that are beyond the attorney's control. The evidence presented indicated that respondent's financial pressures differed little from the financial pressures many attorneys experience at some point in their career. Respondent's practice simply was not generating enough income. No extraordinary or unforeseeable event caused this problem. The risk of financial difficulties should have been reasonably foreseeable to respondent, especially in view of the fact that he had practiced in his community for many years under similar financial conditions. Therefore, respondent's financial difficulties deserved little weight in mitigation. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[2]**

Marital problems can be a mitigating circumstance. However, such emotional problems are not mitigating unless they are extreme and are directly responsible for the misconduct. Where the asserted cause for the marital problems was the financial pressures respondent was experiencing, and where the record indicated, at most, that respondent and his wife constantly argued over their financial problems, the marital problems were not found to be extreme. In addition, respondent failed to prove by clear and convincing evidence that the marital difficulties were directly responsible for his misconduct. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[3]**

Stress from pressure of other business was not sufficiently linked to misappropriation of client's funds to constitute mitigation; family health difficulties also were not mitigating when they arose after the misappropriation occurred; financial pressure from inability to pay office rent was entitled to little weight in mitigation. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[11]**

Without evidence that death of respondent's parent resulted in disabling psychological distress, record did not show that attorney's failure to prepare trust documents was affected thereby. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[13]**

Where respondent did not demonstrate that he suffered from such extreme personal pressures related to his financial difficulties that his misconduct could have been reasonably understandable as a desperate response to such pressures, respondent's financial difficulties were not considered a significant factor in mitigation. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[17]**

760.34 Inadequate showing of rehabilitation

Mitigating evidence of family pressures and misfortunes, good character, therapy, community service, and compliance with probation duties, similar to evidence which had been found sufficiently mitigating to avert an attorney's disbarment for prior misconduct, was not sufficient to justify a recommendation short of disbarment in a subsequent matter in view of the attorney's additional, serious misconduct and the need for protection of the public. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[6]**

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

Disbarment is generally the appropriate sanction for a wilful violation of rule 955, California Rules of Court. Where respondent not only failed to notify courts and file timely affidavit of compliance as required by rule 955, but also had wilfully failed to comply with other stipulated conditions of prior discipline; respondent had injured a number of clients, and posed substantial risk of continuing to do so; respondent's participation in rule 955 proceeding was sporadic; respondent provided evidence of personal problems but no evidence that he was likely to overcome them, organize his practice, and comply with prior disciplinary probation; and respondent provided no evidence of rehabilitation, but rather evidence that his problems had increased, then despite respondent's history of pro bono work, idealism, honesty, and altruism, disbarment recommendation was required for public protection. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[2]**

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

760.39 Other reason

Financial difficulties can be considered in mitigation. However, in misappropriation cases, financial problems are given significant weight in mitigation only if they are extreme and result from circumstances not reasonably foreseeable or that are beyond the attorney's control. The evidence presented indicated that respondent's financial pressures differed little from the financial pressures many attorneys experience at some point in their career. Respondent's practice simply was not generating enough income. No extraordinary or unforeseeable event caused this problem. The risk of financial difficulties should have been reasonably foreseeable to respondent, especially in view of the fact that he had practiced in his community for many years under similar financial conditions. Therefore, respondent's financial difficulties deserved little weight in mitigation. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[2]**

Disbarment was warranted for convictions of grand theft and forgery unless most compelling mitigating circumstances clearly predominated. Despite hearing judge's conclusion that respondent's crimes were aberrant and brought on by incredible psychological stress due to marital and business problems, review department did not agree that mitigation was compelling. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[5]**

While financial stress may be a factor in mitigation, neither an attorney's lack of management skills necessary to succeed in private practice nor the difficulties inherent in solo practice are ordinarily considered mitigating. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[16]**

760.50 Declined to find

760.51 Lack of expert testimony

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

760.52 Lack of causal relation to misconduct

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

Office workload does not generally serve to substantially mitigate misconduct. Stressful personal problems may mitigate misconduct, but where respondent's asserted workload or personal problems occurred during first year of administration of probate estate, such problems did not adequately explain five-year delay in administration of estate, and did not constitute mitigation. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[14]**

Stress from pressure of other business was not sufficiently linked to misappropriation of client's funds to constitute mitigation; family health difficulties also were not mitigating when they arose after the misappropriation occurred; financial pressure from inability to pay office rent was entitled to little weight in mitigation. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[11]**

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

Fact that an attorney was undergoing therapy at the time of the disciplinary hearing did not constitute relevant mitigation where attorney did not present expert testimony establishing psychological problems at time of misconduct, and did not demonstrate recovery from such problems such that they would no longer affect his fitness to practice. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[17]**

760.53 Problem not sufficiently severe

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

760.59 Other reason

Where respondent failed (1) to establish through expert testimony that his depression, his physical maladies, and his financial difficulties were directly responsible for his misconduct and (2) to establish through clear and convincing evidence that he no longer suffered from the difficulties and disabilities or even that he could take, and was taking, steps to overcome them, the difficulties and disabilities were not treated as mitigating circumstances.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[4]**

Financial difficulties may be considered in mitigation if they are extreme and result from circumstances that are not reasonably foreseeable or that are beyond the attorney's control. Respondent bears the burden of establishing mitigating circumstances by clear and convincing evidence. Respondent failed to present a complete picture of his financial condition and therefore failed to establish that any financial problems he was facing were extreme or beyond his control. Further, the little evidence that was presented indicated that respondent's income was limited at the time he entered into the stipulation to facts and disposition in the underlying disciplinary case. Thus, respondent also failed to establish that any financial problems he experienced were not reasonably foreseeable. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.**[6]**

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

Every attorney convicted of a felony or crime of moral turpitude can anticipate an order of interim suspension and attendant hardships, but hardship to the attorney's family does not outweigh the need to protect the public and maintain the integrity of the legal profession pending a full hearing on the merits. Where, due to delay in transmittal of conviction, attorney had had several months to make alternative employment arrangements, and attorney had given no details of his current income, recent earnings, or efforts to seek other employment, attorney's showing of hardship was insufficient in light of all factors to constitute good cause to vacate interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[9]**

765 Substantial pro bono work

Note: See also topic number 740 et seq.

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

765.10 Found

In the Matter of Wenzel (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380

In the Matter of Yee (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330

In the Matter of Jensen (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283

In the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273.

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.157.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511.

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

Disbarment is generally the appropriate sanction for a wilful violation of rule 955, California Rules of Court. Where respondent not only failed to notify courts and file timely affidavit of compliance as required by rule 955, but also had wilfully failed to comply with other stipulated conditions of prior discipline; respondent had injured a number of clients, and posed substantial risk of continuing to do so; respondent's participation in rule 955 proceeding was sporadic; respondent provided evidence of personal problems but no evidence that he was likely to overcome them, organize his practice, and comply with prior disciplinary probation; and respondent provided no evidence of rehabilitation, but rather evidence that his problems had increased, then despite respondent's history of pro bono work, idealism, honesty, and altruism, disbarment recommendation was required for public protection. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[2]**

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In matters involving abandonment of a single client by an attorney with no prior record of discipline, discipline imposed by Supreme Court has ranged from no actual suspension to 90 days of actual suspension. Where respondent's misconduct was serious, harmed client, and included trust account violation as well as abandonment and failure to communicate, but respondent presented impressive mitigating evidence, including services to disadvantaged clients and to minority community, and respondent expressed sincere aspiration not to be involved in disciplinary proceedings again, review department recommended actual suspension of 30 days, with stayed suspension of six months and one year of probation. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[9]**

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

Respondent's leadership in minority bar associations, service as a delegate to the State Bar Conference of Delegates, and post-misconduct service as a municipal court judge pro tempore constituted mitigating circumstances. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[12]**

Testimonials from clients regarding respondent's service on their behalf, in some instances on a pro bono basis, constituted mitigating evidence. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[12]**

Evidence of respondent's extensive pro bono activities and community involvement was entitled to greater weight as mitigating evidence than given to it in the hearing judge's decision, in which it was not mentioned. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[16]**

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

Respondent deserved mitigating credit for practice on behalf of poor and disadvantaged clients, which should have been weighed more heavily than did the hearing judge. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[9]**

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

Testimony of several highly reputable character witnesses attesting to respondent's otherwise high standing in the legal community and high ethical standards and demonstration of diligence on behalf of clients, as well as substantial community service and pro bono activities, should have been given more than a little weight in mitigation; review department found it to be significant. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[12]**

Medical volunteer work demonstrated community service and was properly relied on in mitigation, but artistic activities were not mitigating factors. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[15]**

A respondent's own testimony regarding the respondent's community service may be considered as some evidence in mitigation notwithstanding that it does not meet the requirement that good character be established by a wide range of references. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[16]**

765.30 Found but discounted or not relied on

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

765.31 Insufficient evidence

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Sullivan (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189

Respondent performed pro bono legal work for a few hours each week during much of his legal career. Where respondent offered only his own testimony to establish this pro bono activity, only modest weight was afforded to this mitigation evidence. *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189 **[2]**

Respondent's 12 years of service as a judge pro tem was entitled to substantial mitigation credit. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117 **[4]**

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

Respondent's having performed a substantial amount of pro bono work for indigents and minorities, at considerable personal sacrifice due to hostility engendered on the part of local press and elected officials, constituted legitimate mitigation. However, where respondent's testimony was the only evidence on the subject, and meaning of "substantial" was not clear from record, respondent's pro bono record could not be given as much weight in mitigation as in some other cases. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[29]**

Where attorney testified to involvement in pro bono activities, but hearing referee's findings did not specify extent of such involvement and evidence in record was sketchy, review department accorded such evidence little weight as mitigation. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[8]**

765.32 Pro bono work not substantial

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

765.39 Other reason

While respondent's representation of clients for reduced or no fees constituted evidence in mitigation, such evidence was given little mitigating weight where the evidence established that respondent was eligible to receive substantial attorney fees in many of the cases and it was therefore unclear whether respondent's motive for taking such cases was to help others or to collect attorney fees. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. **[15]**

Mitigating evidence of family pressures and misfortunes, good character, therapy, community service, and compliance with probation duties, similar to evidence which had been found sufficiently mitigating to avert an attorney's disbarment for prior misconduct, was not sufficient to justify a recommendation short of disbarment in a subsequent matter in view of the attorney's additional, serious misconduct and the need for protection of the public. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[6]**

An attorney owes the same fiduciary obligations to all clients, paying or nonpaying. Impecunious clients are ill-served by well-meaning attorneys who fail to deliver the services for which they were engaged. Nor are the courts or public served by litigation brought without likelihood it can be realistically be prosecuted to completion. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[4]**

Respondent's public service work and representation of juveniles under court appointment deserved credit and recognition, but did not relieve respondent of his restitution obligations; it was incumbent on respondent to manage his limited finances to meet those obligations. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[15]**

765.50 Declined to find

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387

765.51 Insufficient evidence

Where respondent's charitable work in the form of donating to charity the sales proceeds of a compact disc he recorded was uncontroverted, respondent's testimony on its own is not sufficient to establish his charitable work as a mitigating factor since there was no evidence as to where the proceeds were delivered or any supporting witnesses to attest to the work. *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 **[6]**

In the Matter of Wolff (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1.

Where respondent moved to augment record on review to include documentary evidence regarding respondent's pro bono activities, but respondent did not establish good cause why such evidence could not have been presented to hearing department, review department declined to consider such evidence. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[15]**

List of representative cases respondent had handled, including pro bono matters, which was attached to respondent's brief on review, and expanded from similar list introduced at trial, was of minimal value in terms of mitigation, especially without explanation. Review department therefore declined to augment record to include list and did not consider it. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[11]**

A record of extensive representation of pro bono clients is a proper factor in mitigation, but where respondent testified that he represented primarily lower income and middle income clients, and that over half his clients were

served either on a pro bono or reduced fee basis, such evidence was too sketchy to support a finding in mitigation based on pro bono work. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[15]**

765.52 Pro bono work not substantial

765.59 Other reason

Clients of limited or no means are entitled to able, responsive and trustworthy counsel from the attorneys they hire. Improper or unethical conduct is not excused because the attorney represents those of limited means. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[45]**

Medical volunteer work demonstrated community service and was properly relied on in mitigation, but artistic activities were not mitigating factors. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[15]**

790 Other mitigating factors

791 Found

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788.

Even though an attorney's willful violation of his statutory duty to obey court orders issued in connection with his profession is stated grounds for disbarment or suspension, discipline within that range is not mandated. Thus, in light of the unusual circumstances surrounding respondent's violation of this duty, a private reproval was the appropriate level of discipline. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[4]**

In the Matter of Respondent V (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442.

Although agreeable demeanor is not a recognized factor in mitigation, where respondent committed a violent crime, the hearing judge's finding that respondent had an agreeable demeanor and was not violent or aggressive, was a factor to consider in determining the degree of discipline because it was relevant to his potential capacity for future violence. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[2]**

Although the record indicated that respondent was not likely to commit similar misconduct in the future, the discipline system also has a responsibility to preserve the integrity of the legal profession. That concern persuaded the review department that public discipline, including a period of suspension, was warranted for an attorney's conviction of assault with a firearm, with the enhancement that he discharged a firearm at an occupied motor vehicle which caused great bodily injury to the person of another. However, given the totality of the circumstances, including the fact that respondent had already been interimly suspended for ten and one-half months as the result of his conviction, and comparable case law, the review department did not believe that a period of prospective actual suspension was necessary. Accordingly, it recommended a period of stayed suspension along with a period of probation with conditions. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[6]**

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

Respondent's ignorance of statute requiring attorneys to report court-ordered sanctions to State Bar was not a defense to violation of such statute, but respondent's awareness that court itself had reported sanctions to State Bar substantially mitigated such violation. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[4]**

Even under the threat of a malpractice action by a client, an attorney is not excused from complying with the duty to provide the client with his or her file. The trial court's determination of the requirements of discovery in the malpractice case is irrelevant to this ethical obligation. Where a client sued respondent for malpractice and respondent failed to turn over the client's file on request, respondent violated the rule requiring release of the client's file, but his misconduct was mitigated by his adherence to the discovery conditions allowing access to the client's files ordered by the trial judge in the malpractice case. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[12]**

The lack of judicial precedent clearly establishing an attorney's duty at the time of the attorney's misconduct may be considered on the issue of possible mitigation. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[11]**

Where respondent settled a personal injury claim on behalf of a Medi-Cal beneficiary without ensuring the payment of the applicable Medi-Cal lien, an issue to be addressed on remand was the effect, if any, on the appropriate degree of discipline of the policy adopted by the Office of the Chief Trial Counsel, with the approval of a committee of the Board of Governors, against prosecuting future health care provider "collection" cases, at least for private lienholders. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[15]**

A respondent's substantial compliance with rule 955 is mitigating evidence which can influence the determination whether to impose discipline less than disbarment, the generally imposed sanction for a wilful violation of the rule. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[6]**

Where respondent had awakened to his responsibilities to the discipline system and participated in rule 955 proceeding, had produced evidence that he posed less risk to clients than suggested by his prior disciplinary record, gave proper notice in compliance with rule 955(a), and filed the required affidavit only 14 days late and before referral order was issued or formal disciplinary proceedings initiated, respondent's very brief failure to comply with rule 955 warranted a very modest sanction. However, even given the wide range of discipline available for a rule 955 violation, it would require an extraordinary case where no discipline of any form was merited. Considering the emphasis placed by the Supreme Court on strict compliance with rule 955, as well as considerations of attorney discipline, maintenance of the standards of the profession, and respondent's rehabilitation, some discipline was required. A 30-day suspension would serve to underline to respondent the seriousness of his duty to comply with all aspects of court orders. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[7]**

Where respondent had filed his required rule 955 affidavit prior to the initiation of rule 955 proceedings by referral order, had met the notice requirements of the rule timely, had taken responsibility for his own errors, and, because of other discipline, might remain on actual suspension for over two years, a six-month actual suspension for respondent's untimely filing of his rule 955 affidavit would be excessive. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[9]**

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Pierce (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382.

Uncontroverted evidence of respondent's church, community, and volunteer activities was appropriate to consider in mitigation. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[6]**

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175.

If an attorney engages in criminal conduct, it is not a minimum requirement for rehabilitation that the attorney turn himself or herself in to law enforcement authorities. Where the attorney was not hiding from anyone except those who wished him to resume his criminal activities; he cooperated fully with law enforcement once asked, and he presented character witnesses who attested to his current good character, the hearing judge's finding of rehabilitation was appropriate. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[2]**

The extraordinarily harsh effect of a disciplinary proceeding on the respondent and the respondent's ability to earn a living may be taken into account in assessing the appropriate discipline. Respondent's resignation from a law firm because of concern about the effect on the firm of charges of moral turpitude (later disproved) demonstrated extreme conscientiousness. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[13]**

In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

Although an attorney is culpable for misconduct committed by inadequately supervised office staff, the degree of the attorney's personal involvement in the misconduct is relevant to the degree of culpability and the appropriate discipline to be imposed. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[5]**

If a misappropriation of entrusted funds results from an attorney's laxity in supervising office staff, and not from an intent to defraud, and remedial steps are instituted by the attorney upon discovery of the situation, further underscoring the lack of fraudulent intent, far less discipline than disbarment is appropriate. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[17]**

While gross negligence is not a defense to a charge of misappropriation, the absence of evidence of intentional misappropriation is a substantial factor in mitigation. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[19]**

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

Fact that respondent readily admitted misuse of client trust account and had taken steps to change business practices to alleviate pressures that led to the misuse constituted a mitigating circumstance. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[12]**

Where attorney's two instances of misconduct took place during the same short period of time, and attorney attributed them to the same problem of financial difficulty, this factor could properly be considered in mitigation. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[15]**

793 Found but discounted or not relied on

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

Respondent's 15 years of blemish-free practice prior to committing the misconduct did not indicate that his misconduct was aberrational where respondent intentionally misappropriated a substantial sum of money from his client for no apparent reason other than to keep his practice afloat. Then, for the next year, he repeatedly covered-up his misdeeds by means of misrepresentation and concealment. Thus, the totality of respondent's misconduct was serious and repeated. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[7]**

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

Mitigating evidence of family pressures and misfortunes, good character, therapy, community service, and compliance with probation duties, similar to evidence which had been found sufficiently mitigating to avert an attorney's disbarment for prior misconduct, was not sufficient to justify a recommendation short of disbarment in a subsequent matter in view of the attorney's additional, serious misconduct and the need for protection of the public. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[6]**

While the leniency of an attorney's criminal sentence might be relevant in assessing final discipline, punishment by the criminal court serves a fundamentally different purpose than the provisions of the State Bar Act, and leniency of the criminal sentence therefore is not relevant to the determination whether there is good cause to vacate the attorney's interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[6]**

795 Declined to find

Naivete had nothing to do with respondent's decision to enter into a business relationship with a resigned attorney that involved capping and fee splitting. Most importantly, naivete had little if anything to do with the criminal recklessness respondent engaged in which resulted in two felony convictions. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[15]**

An attorney's lack of experience is not a mitigating circumstance. It is when an attorney is newly licensed or begins to practice in a new area of law that he should take proper steps necessary to learn governing law, rules, and regulations. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. **[30]**

No mitigating weight was given to the fact that respondent was not a leader in the conspiracy to defraud the Internal Revenue Service where respondent knew virtually from the outset that what he was doing was wrong, participated as an equal in the conspiracy, decided with the others in the conspiracy on various modifications to the scheme to assure its ongoing success, drew an equal amount of the fees, and misappropriated the names of his own clients in furtherance of the conspiracy. *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[6]**

No mitigating credit was given to any changes respondent made to his office practices as the changes would not prevent similar misconduct, where, as here, the misconduct resulted from moral deficiency, not faulty office procedures. *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. **[5]**

Even if issue had properly been before review department on summary review, respondent would not have been entitled to any mitigating credit for self reporting to State Bar his misdemeanor conviction for paying for referral of clients because respondent had a pre-existing statutory duty to report his criminal conviction. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. **[1]**

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

The pressure of a prior disciplinary proceeding does not justify lenient discipline for the current misconduct. By filing the initial notice to show cause in the prior disciplinary proceeding, the State Bar alerted respondent to his questionable behavior. Instead of providing mitigation, the prior disciplinary proceeding demonstrated the need for respondent to examine his conduct carefully and to avoid further ethical violations. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[7]**

Lack of experience in managing a law office does not mitigate misconduct. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[9]**

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

As respondent was under a duty to report his criminal guilty plea to the State Bar under Business and Professions Code section 6068, subdivision (o)(5), his action in doing so was not a mitigating circumstance. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[5]**

Criminal court's lenient sentence did not change the nature of respondent's convictions of felony conspiracy to commit theft and theft for disciplinary purposes and was therefore not a mitigating circumstance. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[7]**

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

Where respondent committed a number of acts of moral turpitude over a period lasting about four years, such misconduct was not aberrational. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[6]**

The occurrence of misconduct during a short time can be a mitigating circumstance. However, where respondent's acts of wrongdoing, including misrepresentation to hearing judge in disciplinary proceeding, spanned more than three years, her claim to such mitigation was without merit. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[9]**

Fact that respondent's misconduct involved client who was member of respondent's family was not mitigating but rather aggravating circumstance, since respondent's family ties to client made respondent more aware of client's vulnerabilities and trust client placed in respondent. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233. **[16]**

Respondent was not entitled to finding in mitigation based on asserted reliance on advice of probation clerk regarding due date of probation reports, where hearing judge found clerk's testimony denying such advice credible; where any confusion respondent may have had regarding due date of reports was not reasonable; and where letter sent to respondent by probation department contained information which should have dispelled any confusion respondent may have had regarding due dates of reports. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[4]**

Where respondent's first actual suspension ended in December 1991, and his second actual suspension, which was ordered to be "consecutive" to the first, did not take effect until June 1992, hearing judge did not err in finding that respondent could have practiced law during the interval, and fact that respondent did not in fact practice law during such time did not entitle him to "credit for time served" and was neither a mitigating nor an aggravating circumstance in subsequent proceeding for probation violation and failure to comply with rule 955, California Rules of Court. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[7]**

Where respondent and his paralegal testified that respondent had reduced his case load and was more involved in operation of practice, but respondent had not shown that his office was problem-free or properly organized, and did not testify that he had designed and implemented an office organization plan, and where respondent's misconduct lasted at least three and a half years and included repeated misuse of settlement funds and numerous ethical violations, respondent's misconduct was not aberrational. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[14]**

Where respondent's misconduct lasted over a long period of time, it could not be considered aberrational, despite his lengthy record of prior practice without misconduct and his good reputation in the legal community. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[15]**

List of representative cases respondent had handled, including pro bono matters, which was attached to respondent's brief on review, and expanded from similar list introduced at trial, was of minimal value in terms of mitigation, especially without explanation. Review department therefore declined to augment record to include list and did not consider it. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[11]**

Where respondent's declaration attached to stipulation suggested mitigating circumstances, but stipulation did not specify whether State Bar accepted statements in declaration as true and hearing judge did not indicate whether statements were found to be persuasive, review department declined to reach conclusion regarding possible mitigating factors suggested by declaration. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[8]**

Respondent's partial restitution and attempts to obtain an accountant in order to file his quarterly probation reports were not entitled to any mitigating weight, because he did not complete restitution until the eve of his disciplinary hearing, and failed to notify his probation monitor of his difficulty in complying with the disciplinary order requiring him to have an accountant certify his trust account records. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[14]**

The fact that misconduct arose from aberrant facts and circumstances has been accorded mitigating weight in appropriate cases. However, where respondent's prior misconduct had involved multiple acts over his relatively few years of practice, and his prior and current misconduct together spanned six of his ten years in practice, it was not

appropriate to consider respondent's misconduct as aberrational. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[5]**

Respondent's bitterness and disaffection over his prior disciplinary suspension might explain some misconduct toward his clients thereafter, but it could not excuse his misconduct, especially since the suspension and its terms were designed to seek respondent's rehabilitation. Also, respondent's evidence of rehabilitation was depreciated by his inability to comply with his probation conditions, which was relatively recent and occurred after respondent had time to become familiar with his responsibilities. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[21]**

Office workload does not generally serve to substantially mitigate misconduct. Stressful personal problems may mitigate misconduct, but where respondent's asserted workload or personal problems occurred during first year of administration of probate estate, such problems did not adequately explain five-year delay in administration of estate, and did not constitute mitigation. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[14]**

Respondent's contention that he detrimentally relied on advice from his probation monitor and counsel regarding compliance with rule 955 might have been persuasive as mitigation if respondent had raised it at the hearing level and produced supporting evidence. However, where record did not support and even contradicted such contention, review department rejected respondent's attempt to argue it as mitigation. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[3]**

In rule 955 proceeding, respondent's claim that his failure to withdraw from one matter after suspension resulted from an oversight in transferring over 200 files to successor counsel was not a factor in mitigation. Respondent's conduct in connection with such transfer constituted evidence in aggravation, because respondent irresponsibly executed in blank hundreds of substitution association or substitution of counsel forms and relinquished of the client files to successor counsel without obtaining the clients' consent, safeguarding their interests, or even keeping a list of the clients or case names transferred. This conduct posed a significant potential harm to the clients and to the public interest generally. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[7]**

Respondent's failure to comply with rule 955 was not excused by criticism of its wording as complex. The mandate of rule 955 is clear and requires little if any assistance to fulfill its requirements. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[11]**

Where respondent, who had pleaded guilty to welfare fraud based on eligibility statements signed by him but filled out by his wife, attempted to establish in mitigation that he did not know of his wife's fraudulent conduct, it was respondent's burden to prove such mitigation, and review department gave great weight to hearing judge's contrary finding based on evaluation of credibility of respondent and his wife. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[2]**

It was not mitigating that when respondent signed a declaration that the information on welfare eligibility forms was true, the forms were actually still blank, and untrue information was filled in thereafter by respondent's wife. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[8]**

Misrepresentations are no less egregious when made to a public agency than when made to an individual client, and warrant discipline of no less magnitude. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[9]**

Where misconduct involves misappropriation, inexperience is irrelevant and has no weight as mitigation. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[43]**

Respondent's claim of inexperience did not mitigate misappropriation of client funds nor breach of related fiduciary duties to client. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[10]**

An attorney's being busy with other personal and client-related matters at the time of the attorney's misconduct does not constitute mitigation; if the attorney is too busy to handle a matter competently and complete

the necessary work within an appropriate time frame, the attorney should not take on the case. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[28]**

Attorney's deceit of client's agent on 11 separate occasions over a considerable period was an aggravating factor, and militated strongly against considering attorney's misconduct as one-time or aberrant. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[6]**

Evidence concerning respondent's education, experience and drug use which occurred well prior to his probation violations was not causally related to the misconduct, nor did it demonstrate why a lesser disciplinary sanction would adequately protect the public, the courts and the legal profession. Therefore, it did not constitute mitigating evidence. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[13]**

An attorney's inability to arrange for service of a subpoena, due to insufficient and inexperienced office staff, was not a mitigating factor, because attorneys are held responsible for the proper supervision of their staff. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[16]**

Medical volunteer work demonstrated community service and was properly relied on in mitigation, but artistic activities were not mitigating factors. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[15]**

800 Application of Standards

Note: The Standards were originally adopted in 1986, and revised non-substantively, to update cross-references, in 2001 and 2007. References to "1986 Standard" are to the version in effect from 1986 through 2013. The Standards were significantly reorganized, renumbered, and amplified effective January 1, 2014 (the "interim Standards"), and again effective July 1, 2015 (the "2015 Standards"). Due to the substantial reorganizations of the Standards in 2014 and 2015, some Standards are covered in the Digest in a different order than they appear in the 2015 Standards. For the convenience of the researcher, cross-references are included in appropriate locations in the Digest Topic Number list. In addition, a table showing the location in the Digest of each of the 2015 Standard numbers, and its equivalent in the interim Standards and the 1986 Standards, is included in the introductory materials at the start of the Digest.

801 General Issues re Application of Standards

801.10 Effective date/retroactive application of 1986 Standards

The analysis of gross negligence in cases decided before the adoption of the Standards for Attorney Sanctions for Professional Misconduct is not affected by the adoption of the standards, but the discipline imposed now takes into account guidelines provided by the standards, although they are not rigidly applied. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[8]**

The Standards for Attorney Sanctions for Professional Misconduct may be applied retroactively to criminal conduct which occurred before they were adopted. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[5]**

801.11 Effective date/retroactive application of interim Standards

Filing of 82 fraudulent bankruptcy petitions within period of just over three years demonstrated both multiple acts of misconduct and a pattern of misconduct, which were a single aggravating factor under former standard 1.2(b)(ii), but are now two separate aggravating factors under standards 1.5(b) and 1.5(c). *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[5 a,b]**

Although former standard 1.7(b) was amended and replaced by standard 1.8(b), disbarment was warranted under both former and new standards, where respondent had two instances of prior discipline, and failed to present compelling mitigation. Respondent committed his current misconduct while under actual suspension and on probation for prior disciplinary matters. His continued poor performance after multiple discipline, inability and unwillingness to conform to his ethical responsibilities, and lack of compelling mitigation warranted imposition of the presumptive discipline of disbarment under standard 1.8(b). *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[5 a-c]**

Where case was submitted to Review Department after amendments to standards became effective January 1, 2014, and amendments did not conflict with former standards, Review Department applied amended version. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330. **[6]**

Although case was submitted for ruling prior to effective date of 2014 revision of Standards, amended version of standard 1.2(c)(1), requiring showing of rehabilitation before resumption of practice after suspension, would apply to respondent when he became eligible to petition to resume practice. *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. **[1]**

Where respondent's case was submitted for ruling in 2013, former standards applied, rather than equivalent provisions of standards adopted effective January 1, 2014. However, new standards did not conflict with former ones. *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. **[7]**

801.12 Effective date/retroactive application of 2015 Standards

Where request for review was submitted for ruling after effective date of July 1, 2015 revision of Standards for Attorney Sanctions for Professional Misconduct, Review Department applied revised version of standards in considering appropriate discipline. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418 **[1]**

801.20 Purpose of standards (see also topic numbers 802.10, 802.30)

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

Where respondent committed acts of moral turpitude and dishonesty and engaged in a wide range of other misconduct without compelling mitigation and with substantial aggravation, disbarment was necessary to protect the public, courts, and legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[9]**

Recent Supreme Court decisions reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule 955. One of the primary reasons for the adoption of the Standards for Attorney Sanctions for Professional Misconduct was to achieve greater consistency in disciplinary sanctions for similar offenses. Any reason for deviating from the standards or established case law must be clearly stated. Accordingly, where respondent participated in the rule 955 proceeding, but did not present a convincing case of mitigation, diligence, and rectification of misconduct, and instead demonstrated a pattern of inattention to important duties, an inability to conform to professional norms, and a lack of concern for potential harm to his clients and the public, the public interest and the administration of justice would be served by respondent's disbarment. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[15]**

In the Matter of Lybbert (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297.

Despite the need to examine cases on an individual basis to determine appropriate discipline, it is also a goal of disciplinary proceedings that there be consistent recommendations as to discipline, a goal that has been achieved in large measure through the application of the Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[10]**

The Standards for Attorney Sanctions for Professional Misconduct must be viewed as a whole with the objective of achieving the primary purposes of disciplinary proceedings, namely, protection of the public, courts and legal profession; maintenance of high professional standards and preservation of public confidence in the legal profession. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[15]**

In assessing appropriate discipline, State Bar Court looks to provisions of applicable standard, in light of goals of disciplinary system set forth in standard 1.3 and guidance from Supreme Court; standards are guidelines, not mandatory sentencing provisions. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[16]**

801.30 Effect of standards as guidelines

Statutes regarding legal disciplinary system are not exclusive, but rather supplementary to California Supreme Court's disciplinary authority over members of California bar. Given Supreme Court's partial delegation of its disciplinary authority to State Bar Court, and its instruction that State Bar Court should follow disciplinary standards whenever possible, statute providing for actual suspension of up to three years for violations of Rules of Professional Conduct did not preclude State Bar Court from recommending disbarment for rules violation when otherwise justified by disciplinary standards. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. **[6]**

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

Even though an attorney's willful violation of his statutory duty to obey court orders issued in connection with his profession is stated grounds for disbarment or suspension, discipline within that range is not mandated. Thus, in light of the unusual circumstances surrounding respondent's violation of this duty, a private reproval was the appropriate level of discipline. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[4]**

In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

Any reasons for deviations from the standards or case law should be set forth clearly. A rigid application in rule 955 cases of the standard requiring that the degree of discipline should be greater than that imposed in any prior proceeding would result in a minimum actual suspension of 90 days in every rule 955 violation proceeding where there was prior discipline, since rule 955 obligations are not required for actual suspensions under 90 days. The standards should not be applied in such talismanic fashion, particularly where there is not a common thread or course of conduct through past and present misconduct to justify increased discipline. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[8]**

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

Where respondent inadvertently mishandled a small sum of trust funds and was unlikely to repeat her misconduct, no suspension was necessary. Although standard 2.2(b) requires at least three months actual suspension for a trust account violation, the standards are guidelines to be construed in light of decisional law. A private reproval was appropriate in light of the nature of the misconduct and the mitigating circumstances, including respondent's severe emotional difficulties, her having taken the disciplinary proceeding very seriously, and her having suffered great hardship as a consequence. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[14]**

The analysis of gross negligence in cases decided before the adoption of the Standards for Attorney Sanctions for Professional Misconduct is not affected by the adoption of the standards, but the discipline imposed now takes into account guidelines provided by the standards, although they are not rigidly applied. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[8]**

Where hearing judge's decision was issued prior to relevant Supreme Court and review department opinions, and did not discuss whether gross negligence resulting in misappropriation should be subjected to same suggested minimum sanction of one year actual suspension as is applied for intentional misappropriation, but hearing judge's recommendation of one-year minimum was justified by facts in record making suspension appropriate for public protection, review department concluded that hearing judge's discipline recommendation was based on an analysis of the record in light of the objectives of discipline rather than on a rigid application of the Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[8]**

In requiring an invariable minimum of one year's actual suspension, standard 2.2(a) is not faithful to the teachings of the Supreme Court's decisions. Negligent misappropriation quickly and voluntarily remedied may require no actual suspension or only a short suspension. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[9]**

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

To consider the proper discipline, the review department looks first to the Standards for Attorney Sanctions for Professional Misconduct as guidelines. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[11]**

The Standards for Attorney Sanctions for Professional Misconduct serve as guidelines in determining the appropriate degree of discipline to recommend. The review department must also consider whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[26]**

It is important to examine the Standards for Attorney Sanctions for Professional Misconduct as guidelines. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[6]**

The Standards for Attorney Sanctions for Professional Misconduct are guidelines; they do not need to be followed in talismanic fashion. Hearing judge in matter arising from perjury conviction properly analyzed relevant case law in order to arrive at appropriate sanction, rather than automatically applying standard 3.2, which provides that discipline for conviction of a crime involving moral turpitude shall be disbarment unless compelling circumstances clearly predominate. Supreme Court cases involving crimes of moral turpitude have considered the nature of the crime and the magnitude of its impact on the public and the integrity of the legal system. This factual analysis in determining the propriety of disbarment is similar to that used in matters involving entrusted funds or property. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[11]**

In determining appropriate discipline where the respondent had one prior imposition of discipline, the review department first considered the discipline that would normally be appropriate for the current misconduct, and then considered the prior discipline as a factor in aggravation, using as a guide the standard that the discipline in the second matter should exceed that imposed in the prior matter. The level of discipline was based on a balancing of all factors involved. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[17]**

Standards for Attorney Sanctions for Professional Misconduct serve as guidelines, and must be viewed with the objective of achieving the purposes of attorney discipline, which do not include punishment of the errant attorney, but rather are protection of the public, the profession, and the courts; maintenance of high professional standards; and preservation of public confidence in the legal profession. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[21]**

The Standards for Attorney Discipline are treated by the Supreme Court as guidelines for imposing discipline, which it is not bound to follow in a "talismanic fashion," but from which it will generally not depart unless there is a compelling reason for doing so. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[18]**

The Standards for Attorney Sanctions for Professional Misconduct are not to be applied in talismanic fashion and do not mandate a particular result. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[26]**

In determining the appropriate degree of discipline to recommend, the review department starts with the Standards for Attorney Sanctions for Professional Misconduct, which serve as guidelines. It also considers whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[4]**

The Standards for Attorney Sanctions for Professional Misconduct are guidelines, not inflexible mandates. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[10]**

The Standards for Attorney Sanctions for Professional Misconduct are guidelines for the State Bar Court and are not applied in "talismanic fashion" by the Supreme Court. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[10]**

In determining the appropriate sanction, the review department starts with the Standards for Attorney Sanctions for Professional Misconduct, which serve as guidelines and which do not mandate the discipline to be imposed. Each case must be resolved on its own particular facts and not by application of rigid standards. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[5]**

Standards operate as a guideline and do not require any outcome. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[13]**

Assessment of the appropriate degree of discipline starts with the Standards for Attorney Sanctions for Professional Misconduct, and in a criminal conviction matter, specifically with part C of those standards. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[4]**

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

Although the Supreme Court has commended the use of the Standards for Attorney Sanctions for Professional Conduct to the State Bar Court, the standards are guidelines. It is thus inconsistent with the purpose of the standards to urge that they mandate a particular result. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[4]**

In assessing appropriate discipline, review department starts with Standards for Attorney Sanctions for Professional Misconduct, which serve as guidelines, and also considers whether recommended discipline is consistent with or disproportionate to prior decisions of the Supreme Court based upon similar facts. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[14]**

An attorney's commission of a crime involving moral turpitude is always a matter of serious consequence but does not always result in disbarment; the sanction imposed is determined in each case depending on the nature of the crime and the circumstances presented by the record. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[4]**

In assessing appropriate discipline, State Bar Court looks to provisions of applicable standard, in light of goals of disciplinary system set forth in standard 1.3 and guidance from Supreme Court; standards are guidelines, not mandatory sentencing provisions. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[16]**

The Supreme Court has instructed the State Bar Court to use the Standards for Attorney Sanctions for Professional Misconduct as guidelines in determining discipline. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[19]**

801.35 Effect of 2015 change from "appropriate" to "presumed" discipline

801.40 Deviation from standards

801.41 Found to be justified

Where respondent's misconduct in inaccurately reporting her MCLE compliance was a one-time error, she had a long period of practice with no discipline, and an exemplary record of pro bono and community service, and she caused no harm to the public or the judicial system, and where, most significantly, she immediately accepted responsibility, rectified the situation, and implemented a corrective plan to avoid future problems, it was appropriate under these unique circumstances to deviate from the standard calling for disbarment or actual suspension for acts

of moral turpitude. Even a 30-day actual suspension was excessive; public reproval was adequate to serve the goals of attorney discipline. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330 **[5 a-c]**

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

Even though respondent was culpable of failing to comply with the conditions attached to his private reproval, the review department did not strictly apply the Standard for Attorney Sanctions for Professional Misconduct for such violations which calls for suspension. Instead, the review department imposed a public reproval because of respondent's extensive participation in the proceeding and because respondent acknowledged his obligation to comply with State Bar Court orders. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[5]**

Even though an attorney's willful violation of his statutory duty to obey court orders issued in connection with his profession is stated grounds for disbarment or suspension, discipline within that range is not mandated. Thus, in light of the unusual circumstances surrounding respondent's violation of this duty, a private reproval was the appropriate level of discipline. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[4]**

Where Supreme Court opinion in respondent's first disciplinary matter was filed after respondent committed misconduct involved in second disciplinary matter, but respondent was already involved in disciplinary process before he committed much of misconduct in second matter, respondent had opportunity to heed warning that disciplinary process should have provided him. However, timing of misconduct in various disciplinary proceedings is but one factor to consider, and review department did not apply standard providing for disbarment for third instance of misconduct, where other factors weighed against its strict application. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[11]**

Where respondent's prior and current misconduct were just a year apart and were of fundamentally different nature, and respondent's prior discipline had not been imposed until after his later misconduct and he could not have learned from it, and State Bar did not call for greater discipline than imposed in earlier matter, review department declined to apply standard calling for greater discipline in subsequent matter. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[12]**

Where an attorney disobeys a court order based on an unreasonable interpretation of the order or an untested belief that the order is not valid, or takes money that is not the attorney's based on an unreasonable view of the facts, public discipline is necessary to make clear to the bar, the courts and the public that attorneys face serious consequences for such misconduct. However, where respondent did not pose a threat to the public, and review department concluded that actual suspension was not required to reinforce respondent's understanding of his ethical obligations, no actual suspension was necessary. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[13]**

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

Any reasons for deviations from the standards or case law should be set forth clearly. A rigid application in rule 955 cases of the standard requiring that the degree of discipline should be greater than that imposed in any prior proceeding would result in a minimum actual suspension of 90 days in every rule 955 violation proceeding where there was prior discipline, since rule 955 obligations are not required for actual suspensions under 90 days. The standards should not be applied in such talismanic fashion, particularly where there is not a common thread or course of conduct through past and present misconduct to justify increased discipline. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[8]**

Where respondent was culpable of failing to set aside $942 of his legal fee in a trust account pending resolution of a dispute with his client; aggravating factor of bad faith arose from respondent's intent to serve his clients rather than from any venal purpose; aggravating factors were outweighed by mitigating factors including long period

of unblemished practice since misconduct, indicating unlikelihood of further misconduct; and prior similar cases indicated that it would be appropriate to depart from the 90-day minimum actual suspension for trust account violations, appropriate discipline was private reproval conditioned on passage of professional responsibility examination. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[22]**

Because of limitation on discipline available in probation revocation matter, disciplinary standard calling for disbarment in third disciplinary matter absent compelling mitigation did not apply. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[19]**

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

A literal application of standard 1.7(b) would call for disbarment of any attorney who is found culpable in a third disciplinary proceeding, unless compelling mitigating circumstances predominate. However, this standard must be applied in light of the nature and extent of the prior record. Where respondent's prior record of two reprovals involved inattention to the needs of clients, misconduct of a different nature than the drunk driving convictions involved in respondent's third proceeding, respondent's prior disciplinary record did not warrant disbarment, but did constitute a proper aggravating factor. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[8]**

An attorney on interim suspension following a criminal conviction has little control over the length of such suspension prior to final resolution of the case. Where an attorney's prior actual suspension had consisted largely of time already spent on interim suspension, and such a lengthy actual suspension would not ordinarily have been imposed for the misconduct involved in the prior matter, and where imposition of an even greater actual suspension in the attorney's subsequent matter would have resulted in discipline far in excess of that warranted by the facts and comparable case law, it would not be appropriate to adhere strictly to the standard directing imposition of greater discipline for a second offense. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[10]**

Although respondent's use and distribution of illegal drugs did not result from an initial, legal use of prescribed medications, which would have mitigated his later, reprehensible drug transactions, the great number of years which had passed since the attorney's misconduct, coupled with evidence of impressive and sustained rehabilitation, were sufficiently mitigating to conclude that disbarment would be excessive discipline. To underscore the gravity of the attorney's misconduct, which occurred after the attorney had completed law school and had applied unsuccessfully to the California bar, the review department recommended two years actual suspension, retroactive to the start of the attorney's interim suspension. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[3]**

Where respondent inadvertently mishandled a small sum of trust funds and was unlikely to repeat her misconduct, no suspension was necessary. Although standard 2.2(b) requires at least three months actual suspension for a trust account violation, the standards are guidelines to be construed in light of decisional law. A private reproval was appropriate in light of the nature of the misconduct and the mitigating circumstances, including respondent's severe emotional difficulties, her having taken the disciplinary proceeding very seriously, and her having suffered great hardship as a consequence. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[14]**

Where respondent committed serious misconduct shortly after admission to practice, including abandoning several clients and failing to perform legal services competently; four instances of failure to return unearned advance fees promptly; misleading two clients; misappropriating trust funds of a bankruptcy estate; and accepting employment without sufficient time, resources and ability to perform competently; but respondent presented mitigating evidence of emotional and psychological difficulties and rehabilitation, disbarment was not required, and protection of the public and profession was satisfied by five-year stayed suspension, three-year actual suspension, requirements to make restitution and show rehabilitation before returning to practice, and a period of supervised probation. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[1]**

Misappropriation can be committed in different degrees of culpability, deserving of different discipline. Even where the most compelling mitigating circumstances do not clearly predominate, extenuating circumstances relating to the facts of the misappropriation may render disbarment inappropriate. An attorney who acts deliberately and with deceit should receive more severe discipline than an attorney who acts negligently and without deception.

Disbarment would rarely, if ever, be appropriate for an attorney whose only misconduct was a single act of misappropriation unaccompanied by deceit or other aggravating factors. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[12]**

Disbarment was not appropriate in a misappropriation case where the misconduct resulted more from respondent's lack of understanding of an attorney's ethical duties rather than innate venality. However, because there was more serious misconduct and less mitigation than in other cases, and respondent had not recognized the seriousness of the misconduct, a three-year actual suspension, a showing of rehabilitation and fitness to practice before termination of the actual suspension, and strict probation conditions were required. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[13]**

Where enough mitigating circumstances had been sufficiently established, and were coupled with the lack of extreme seriousness of respondent's offense, the hearing judge correctly concluded that suspension rather than disbarment was the appropriate discipline for a conviction of possession of marijuana for sale, even though the circumstances of the conviction involved moral turpitude. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[7]**

Although non-final prior discipline recommendation for probation violation, still pending before Supreme Court, is record of prior discipline under rule 571, Trans. Rules Proc. of State Bar, review department does not apply rigidly, or without regard to facts of prior matters, disciplinary standard indicating disbarment as appropriate sanction for third disciplinary proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[22]**

The Standards for Attorney Sanctions for Professional Misconduct are guidelines; they do not need to be followed in talismanic fashion. Hearing judge in matter arising from perjury conviction properly analyzed relevant case law in order to arrive at appropriate sanction, rather than automatically applying standard 3.2, which provides that discipline for conviction of a crime involving moral turpitude shall be disbarment unless compelling circumstances clearly predominate. Supreme Court cases involving crimes of moral turpitude have considered the nature of the crime and the magnitude of its impact on the public and the integrity of the legal system. This factual analysis in determining the propriety of disbarment is similar to that used in matters involving entrusted funds or property. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[11]**

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

The Standards for Attorney Sanctions for Professional Misconduct are not to be rigidly applied, and an actual suspension of less than three months for commingling may be appropriate in the circumstances of a particular case. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[18]**

Disbarment would be excessive in case arising out of criminal conviction for filing false federal income tax return, even though offense involved moral turpitude, based on comparable Supreme Court cases and given respondent's compelling showing of mitigation, including absence of any prior or subsequent misconduct; extreme emotional difficulties arising from an amputation; respondent's acknowledgment of his misconduct and his candor and cooperation with the State Bar; a persuasive showing of respondent's good character and high esteem in the community; family problems existing at the time of the misconduct; and the fact that the misconduct did not involve the practice of law. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[8]**

In conviction referral matter in which interim suspension had been imposed and later vacated after seven months, review department declined to recommend total of one year actual suspension, even though possibly appropriate, because resulting additional four-month suspension would have been disruptive and punitive rather than achieving the purposes of disciplinary proceedings (protection of the public, courts and legal profession as well as rehabilitation in proper cases). *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[9]**

In order to properly fulfill the purposes of lawyer discipline, the review department must examine the nature and chronology of a respondent's record of discipline. Mere fact that attorney has three impositions of discipline, without further analysis, may not justify disbarment. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[7]**

Where no Supreme Court precedent would have justified disbarment for respondent's failure to perform services in two matters if both matters had been decided together, additional prior discipline for failure to pass Professional Responsibility Examination did not sufficiently add to severity of misconduct to justify imposing disbarment. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[9]**

Where respondent had no prior or subsequent discipline; respondent was not venal; respondent's misconduct was an aberration occurring over a short period of time and contributed to by respondent's poor business judgment at a time when he was under financial pressures; respondent accepted responsibility for his misconduct, taking objective steps to avoid further misconduct; and other mitigating factors existed, it was appropriate to recommend lesser sanction than minimum actual suspension indicated by applicable standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[16]**

Supreme Court has usually not dealt severely with misappropriations involving a relatively small amount for a relatively brief time when no intentional dishonesty was involved and the offense involved attorney's use of trust account as an operating account. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[18]**

801.45 Found not to be justified

Statutes regarding legal disciplinary system are not exclusive, but rather supplementary to California Supreme Court's disciplinary authority over members of California bar. Given Supreme Court's partial delegation of its disciplinary authority to State Bar Court, and its instruction that State Bar Court should follow disciplinary standards whenever possible, statute providing for actual suspension of up to three years for violations of Rules of Professional Conduct did not preclude State Bar Court from recommending disbarment for rules violation when otherwise justified by disciplinary standards. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418. **[6]**

Standards for attorney discipline should be followed whenever possible. Where applicable standard provided for suspension or reproval, hearing judge erred in resolving case by issuing admonition. Despite extensive mitigation, attorney judicial candidate's recklessly false allegation implicating opponent in bribery and fraud warranted public discipline, because it threatened to erode public confidence in the judiciary. Accordingly, public reproval was appropriate discipline. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[6]**

Where respondent's default was set aside for limited purpose of conducting discipline hearing, neither amended default rules nor discipline standards provided for presumptive discipline of disbarment. Even two-year actual suspension was excessive discipline for violation of probation conditions attached to prior public reproval. Rather, appropriate discipline, under standard 2.10 and case law, was 90-day actual suspension and lengthy probation with conditions. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[8 a-c]**

Although former standard 1.7(b) was amended and replaced by standard 1.8(b), disbarment was warranted under both former and new standards, where respondent had two instances of prior discipline, and failed to present compelling mitigation. Respondent committed his current misconduct while under actual suspension and on probation for prior disciplinary matters. His continued poor performance after multiple discipline, inability and unwillingness to conform to his ethical responsibilities, and lack of compelling mitigation warranted imposition of the presumptive discipline of disbarment under standard 1.8(b). *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[5 a-c]**

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349.

Where respondent was culpable of one instance each of collection of an illegal fee and intentional failure to perform competently, and of multiple instances each of violating his duty to uphold the law; reckless failure to perform competently; withdrawing from employment without protecting clients from foreseeable prejudice; and failure to pay trust funds on demand, and where most severe applicable standard proposed three-month minimum actual suspension for non-misappropriation trust fund offenses, and where respondent's mitigating evidence was not sufficient to justify deviating from applicable standard given respondent's record of numerous violations over

extended time period, review department increased hearing judge's recommended actual suspension to 90 days, as condition of three-year probation, with one-year stayed suspension as justified by case law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[29]**

Where respondent did not appear from record to be venal or dishonest, but overall nature of respondent's misconduct revealed somewhat indifferent attitude toward ethical obligations, especially those to administration of justice and persons other than current clients, some actual suspension was warranted in order to protect public by augmenting respondent's understanding of his duties. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[34]**

Not all instances of serious professional misconduct warrant disbarment, depending on mitigating circumstances. Theft crimes unrelated to the practice of law have resulted in less than disbarment. However, where respondent's offenses of grand theft and forgery were extremely grave and multiple examples of felonious and fraudulent misconduct, likely to impugn public confidence in the legal profession, and respondent's experience in sophisticated law practice, public office and private business should have dissuaded him from committing felonies, review department recommended disbarment notwithstanding respondent's evidence of stress caused by personal and financial problems. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[11]**

Where respondent's misconduct involved negligent law office management over an extended period of time, resulting in delay and disservice to a number of clients but no act of moral turpitude or serious misconduct in any individual matter, and respondent had since changed his office practices, a one-year actual suspension was excessive in the absence of serious aggravation. However, where no persuasive reason had been offered to go below the minimum three-month actual suspension called for by the standards, a one-year stayed suspension, two years probation, and a three-month actual suspension, with law office management requirements, constituted sufficient discipline. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[10]**

The Supreme Court has expressed concern that the State Bar Court should make clear the reasons for departure from the standards in any case where the recommended discipline differs therefrom. Where hearing judge did not articulate basis for recommending 18 months suspension instead of two-year minimum called for by applicable standard, respondent would have had to wait two years to reapply for admission if criminal conviction had occurred prior to admission to practice, and no reason appeared on record to depart from standard except to give credit for time spent on interim suspension, review department recommended actual suspension of two years. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[11]**

Favorable testimony by six character witnesses, four of whom were respondent's co-workers, was not sufficient to show that disbarment was excessive given the many aggravating circumstances surrounding respondent's misappropriation of a large sum of client trust funds. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[5]**

Disbarment was the appropriate sanction for an attorney's misappropriation of a very large sum of client funds over many years, which was surrounded by utter disregard of the attorney's fiduciary and trust account duties, and aggravated by incompetent representation of the client and prosecution of a lawsuit without the client's consent, demonstrating a lack of basic understanding of the fundamental responsibilities of an attorney. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[10]**

Departure from the disciplinary standards was not justified based on the novelty of the issues raised in the matter, when the misconduct involved was respondent's misrepresentation of his status as an attorney, an area in which the governing rules have been clearly established for many years. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[12]**

Misconduct committed by attorney who was grossly negligent, though not dishonest, in handling a significant sum of client trust funds in one matter, and who failed to communicate adequately with a client in another matter, warranted 90 days rather than 60 days of actual suspension as condition of 3-year probation accompanying 3-year stayed suspension. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[1]**

Where respondent had engaged in a pattern of misconduct involving 14 matters spanning six of his nine years of practice, and had misappropriated over $17,000 of client funds and caused the extinction of legal claims for eight

clients, and where respondent had engaged in further misconduct after he had recognized his case management difficulties, and had barely begun his rehabilitation, the fact that the parties did not stipulate that respondent engaged in acts of moral turpitude in any individual matter did not necessarily mean that his misconduct warranted less discipline than in comparable cases where disbarment was ordered. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[7]**

Strong mitigating factors in matter involving capping and other misconduct dramatically lessened need for strict discipline imposed by Supreme Court in similar matters, but did not eliminate need for measurable discipline to maintain integrity of and public confidence in legal profession. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[10]**

801.47 Necessity to explain

Any reasons for deviations from the standards or case law should be set forth clearly. A rigid application in rule 955 cases of the standard requiring that the degree of discipline should be greater than that imposed in any prior proceeding would result in a minimum actual suspension of 90 days in every rule 955 violation proceeding where there was prior discipline, since rule 955 obligations are not required for actual suspensions under 90 days. The standards should not be applied in such talismanic fashion, particularly where there is not a common thread or course of conduct through past and present misconduct to justify increased discipline. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[8]**

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

Recent Supreme Court decisions reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule 955. One of the primary reasons for the adoption of the Standards for Attorney Sanctions for Professional Misconduct was to achieve greater consistency in disciplinary sanctions for similar offenses. Any reason for deviating from the standards or established case law must be clearly stated. Accordingly, where respondent participated in the rule 955 proceeding, but did not present a convincing case of mitigation, diligence, and rectification of misconduct, and instead demonstrated a pattern of inattention to important duties, an inability to conform to professional norms, and a lack of concern for potential harm to his clients and the public, the public interest and the administration of justice would be served by respondent's disbarment. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[15]**

The Supreme Court has expressed concern that the State Bar Court should make clear the reasons for departure from the standards in any case where the recommended discipline differs therefrom. Where hearing judge did not articulate basis for recommending 18 months suspension instead of two-year minimum called for by applicable standard, respondent would have had to wait two years to reapply for admission if criminal conviction had occurred prior to admission to practice, and no reason appeared on record to depart from standard except to give credit for time spent on interim suspension, review department recommended actual suspension of two years. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[11]**

The hearing department should have made clear its reasons for recommending a lower level of discipline than that called for by an applicable standard. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[19]**

The Standards for Attorney Discipline are treated by the Supreme Court as guidelines for imposing discipline, which it is not bound to follow in a "talismanic fashion," but from which it will generally not depart unless there is a compelling reason for doing so. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[18]**

When the review department's decision departs from the discipline recommended by the standards, the reasons for the departure should be made clear, for the benefit of the Supreme Court and the parties. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[7]**

801.49 Generally/Other

Even though an attorney's willful violation of his statutory duty to obey court orders issued in connection with his profession is stated grounds for disbarment or suspension, discipline within that range is not mandated. Thus, in light of the unusual circumstances surrounding respondent's violation of this duty, a private reproval was the appropriate level of discipline. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[4]**

Where respondent had awakened to his responsibilities to the discipline system and participated in rule 955 proceeding, had produced evidence that he posed less risk to clients than suggested by his prior disciplinary record, gave proper notice in compliance with rule 955(a), and filed the required affidavit only 14 days late and before referral order was issued or formal disciplinary proceedings initiated, respondent's very brief failure to comply with rule 955 warranted a very modest sanction. However, even given the wide range of discipline available for a rule 955 violation, it would require an extraordinary case where no discipline of any form was merited. Considering the emphasis placed by the Supreme Court on strict compliance with rule 955, as well as considerations of attorney discipline, maintenance of the standards of the profession, and respondent's rehabilitation, some discipline was required. A 30-day suspension would serve to underline to respondent the seriousness of his duty to comply with all aspects of court orders. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[7]**

Violations of the ethical rule governing placement of client funds in a trust account have not always resulted in actual or even stayed suspensions. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[27]**

801.90 Other General Issues re Standards

In a proceeding under Business and Professions Code section 6049.1, once it had been conclusively established that respondent was culpable of professional misconduct in California, the remaining issue for consideration in California was the degree of discipline. Where the only evidence in the record consisted of the final record of discipline in Michigan, no portion of the underlying evidentiary record from the Michigan proceedings was placed in evidence, and the Michigan final record of discipline indicated that each of the findings of fact in Michigan was made under a preponderance of the evidence standard of proof, a purported showing of the facts and circumstances found in Michigan to surround the misconduct could not be weighed under the required California standard of clear and convincing evidence. Instead, the misconduct found in Michigan was weighed with only the aggravation and mitigation separately shown in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[4]**

There is clear distinction between credibility and candor. The determination of a witness's credibility (i.e., believability) is primarily within province of the hearing judge who saw and heard the witness testify, while the determination that a witness's testimony lacked candor (i.e., that the witness lied) must be found by clear and convincing evidence. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[10]**

Even though a witness's candor must ordinarily be shown by clear and convincing evidence, great weight is still give to the hearing judge's findings on candor. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[11]**

Even though short delays, even if resulting in client harm, standing alone are ordinarily not sufficient to warrant conclusion that a client suffered significant harmed within the context of standard providing that significant client harm is an aggravating circumstance, present case did not involve a short delay, but an inexcusable delay of more than five years during which respondent did not perform any substantive work on a client's workers' compensation case. Even though the delay did not cause the client to lose her cause of action, it had a substantial impact on her. After holding that a reasonable economic measure of harm to the client was the client's lost use of the value of her settlement proceeds for five years, the review department expressly declined to define the extent of the client's economic harm. Nonetheless, it held that the client's economic harm met the requirement of significant harm in standard providing that significant client harm is aggravating circumstance. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[12]**

In the hearing judge's discipline recommendation that respondent "be suspended from the practice of law for three years and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) [of the Standard for Attorney Sanctions for Professional Misconduct], that said suspension be stayed; and that he be placed on probation for four years subject to the following conditions: . . ," the provision that respondent's three-year suspension continue until he proves his rehabilitation, fitness, learning, and ability in accordance with standard 1.4(c)(ii) is stayed along with the recommended three-year suspension so that, if the State Bar files a probation revocation proceeding against respondent seeking to have all, or a part, of the three-year stayed suspension imposed on him, a standard 1.4(c)(ii) would be an available condition. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269. **[13]**

Standard recommending six-month minimum actual suspension for charging unconscionable fee applies only to cases involving unconscionable fees, not illegal fees. However, where respondent received fee which, though not unconscionable, was sizably above statutory limits due to respondent's abdication of his duties to his client and the court, it was difficult to justify less than minimum suspension proposed by such standards. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[20]**

Even if respondent's demand that client return settlement check demonstrated lack of candor or cooperation with client, review department would not consider it as separate aggravating circumstance where it had already been found to be a factor establishing bad faith, a different aggravating circumstance. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[15]**

Findings in aggravation, like findings of culpability, must be supported by clear and convincing evidence. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[3]**

Circumstances in mitigation and aggravation must be established by clear and convincing evidence. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[35]**

Standard 1.7(b) of the Standards for Attorney Sanctions for Professional Misconduct, which provides for disbarment of a respondent who has a record of two prior impositions of discipline, cannot be applied without regard to the other provisions of the standards, particularly standard 1.3, which describes the primary purpose of the standards as the protection of the public, the courts and the legal profession; the maintenance of high professional standards and the preservation of public confidence in the profession. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[6]**

The State Bar must prove aggravating factors by clear and convincing evidence. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[12]**

802 Part A (General Standards)

802.10 Standard 1.1 (Purposes and Scope of Standards) (see also topic numbers 801.20, 802.30)

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

802.20 Standard 1.2 (Definitions)

Note: For aggravation and mitigation, see topic numbers 500 et seq. and 600 et seq.

802.21 Prior record of discipline

The aggravating weight of prior discipline was diminished where the misconduct underlying the prior discipline occurred during the same time period as did the misconduct underlying the present matter. Under such circumstances, the totality of the charges brought in both cases was considered in order to determine the appropriate discipline. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[6]**

Prior record of discipline is always aggravating factor, regardless of when discipline was imposed, but aggravating force may be diminished if present misconduct occurred during same period as prior misconduct. Where respondent's present misconduct, which was similar to misconduct found in his prior discipline proceeding,

was committed after notice to show cause had been filed in prior proceeding, but before State Bar Court's decision was filed, filing of formal charges in prior proceeding gave respondent notice that State Bar considered his conduct ethically questionable. Therefore, respondent's prior record was aggravating evidence. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[17]**

Attorney discipline is an available sanction for violation of rule 11 of Federal Rules of Civil Procedure. Where respondent testified that he had been disciplined by federal court as result of rule 11 matter, and federal court had suspended respondent from practice before it as part of relief granted in ruling on rule 11 motion, federal court's action constituted discipline. However, State Bar must prove aggravating circumstances by clear and convincing evidence. Where record before review department did not reveal factual underpinnings of federal court discipline, and review department was therefore unable to examine nature and chronology of respondent's prior discipline to determine impact it should have on current discipline recommendation, review department gave no weight to respondent's federal discipline as factor in aggravation. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[11]**

While a suspension for failure to pass the Professional Responsibility Examination may be considered in determining appropriate discipline, it is not prior discipline under the Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[2]**

Where respondent challenged the use of a prior disciplinary matter as evidence in aggravation because he contended the matter had been time-barred, but respondent had defaulted in the earlier proceeding and the prior discipline had been ordered by the Supreme Court over three years earlier, only the Supreme Court could grant the requested relief. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[19]**

Where two separate disciplinary proceedings were consolidated on review, the first proceeding did not constitute prior discipline for the purpose of enhanced discipline in the consolidated matter. Nonetheless, where the misconduct involved in the second proceeding had continued during the period that the first proceeding was pending in hearing department, the fact that respondent engaged in additional misconduct while he was aware that his conduct was being scrutinized in a pending disciplinary proceeding was significant. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[18]**

Prior discipline includes discipline imposed for violation of probation. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[9]**

Suspension resulting from respondent's failure to pass professional responsibility examination as ordered by Supreme Court did not constitute prior discipline, but was relevant to determination of appropriate discipline for failure to comply with rule 955 as required by same Supreme Court order. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[12]**

Where examiner failed to introduce appropriate documentary evidence of respondent's prior discipline record, review department notified parties of intent to take judicial notice of specified documents from official State Bar Court records regarding such discipline, and took such notice after neither party objected. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[7]**

An attorney's administrative suspension for failure to pay bar dues does not constitute prior discipline for purposes of weighing the appropriate discipline in a subsequent disciplinary case, in that the prior suspension is administrative in nature and does not result from a finding of misconduct. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[36]**

Review department took judicial notice that respondent's prior discipline became final after subsequent matter was submitted on review. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[23]**

Where respondent had received a reproval for four separate instances of misconduct which had occurred seven years prior to the instant misconduct, the reproval was not too remote in time and was properly considered an aggravating circumstance. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[12]**

The payment of State Bar membership fees is only a prerequisite to practicing law. No statute or rule of professional conduct requires payment of the fees unless the attorney intends to practice law in this state. Failure to pay fees is not improper in and of itself. The impropriety occurs when the attorney continues to practice law

after suspension. Accordingly, an attorney's previous suspension for failure to pay membership fees is not a prior disciplinary record and is not an aggravating circumstance. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[24]**

A past revocation of probation is viewed as a prior disciplinary proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[5]**

In determining appropriate discipline for probation violations, respondent's original disciplinary matter, in which probation conditions were imposed, constituted a prior disciplinary record and was required to be treated as an aggravating circumstance. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[19]**

Although non-final prior discipline recommendation for probation violation, still pending before Supreme Court, is record of prior discipline under rule 571, Trans. Rules Proc. of State Bar, review department does not apply rigidly, or without regard to facts of prior matters, disciplinary standard indicating disbarment as appropriate sanction for third disciplinary proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[22]**

Where, at the time of the hearing, respondent's prior discipline record consisted only of another hearing department decision, and the examiner moved to augment the record on review with the review department minutes in the prior matter, the motion was construed by the review department as a motion to take judicial notice and was granted. Thereafter, the review department took judicial notice on its own motion of the Supreme Court's order in the prior matter. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[11]**

An attorney's suspension from the practice of law for nonpayment of State Bar fees is not a disciplinary suspension and is not considered a prior disciplinary record. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[12]**

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

A proceeding for involuntary inactive enrollment is not disciplinary in nature. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[3]**

An attorney's prior record of discipline is a record of the Supreme Court and also of the State Bar, and as such it is the proper subject of judicial notice. (Evid. Code, §§ 451 et seq.) Even when judicial notice is taken of such records, the documents composing them should be identified, introduced in evidence, and made part of the record in the proceeding. (Rule 571, Rules Proc. of State Bar; rules 1260-1262, Prov. Rules of Practice of State Bar Ct.) *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87. **[5]**

802.29 Other definitions

802.30 1986 Standard 1.3 (Purposes of Sanctions)(see also topic numbers 801.20, 802.10)

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

Although the record indicated that respondent was not likely to commit similar misconduct in the future, the discipline system also has a responsibility to preserve the integrity of the legal profession. That concern persuaded the review department that public discipline, including a period of suspension, was warranted for an attorney's conviction of assault with a firearm, with the enhancement that he discharged a firearm at an occupied motor vehicle which caused great bodily injury to the person of another. However, given the totality of the circumstances, including

the fact that respondent had already been interimly suspended for ten and one-half months as the result of his conviction, and comparable case law, the review department did not believe that a period of prospective actual suspension was necessary. Accordingly, it recommended a period of stayed suspension along with a period of probation with conditions. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[6]**

Disbarments, and not suspensions, have been the rule rather than the exception in cases of serious crimes involving moral turpitude. Although respondent presented substantial mitigation, it was not compelling in light of respondent's extremely serious misconduct over a several-year period. The protection of the public, courts, and legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession necessitated disbarment for respondent's extensive participation in criminal activities involving repeated acts of moral turpitude. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[9]**

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

Respondent's unilateral and ill-conceived interpretations of disciplinary orders demonstrated tendency toward interpreting important and significant court orders in such a way as to fit his needs, which might negatively impact future clients and thus raised concern about need to protect public. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[13]**

Where respondent seriously abused the judicial system for a dozen years despite heavy sanctions, showed no remorse, and refused to mend his ways, no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession. Because of respondent's total lack of repentance, a lengthy suspension coupled with probation terms was inappropriate; there was a great danger that respondent would fail to comply with any probation terms imposed. Respondent's repeated acts of moral turpitude demonstrated that he was no longer worthy of membership in the bar. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[14]**

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

Where respondent did not appear from record to be venal or dishonest, but overall nature of respondent's misconduct revealed somewhat indifferent attitude toward ethical obligations, especially those to administration of justice and persons other than current clients, some actual suspension was warranted in order to protect public by augmenting respondent's understanding of his duties. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[34]**

Primary aims of attorney disciplinary probation are protection of public and rehabilitation of attorney. Greatest amount of discipline for violating probation conditions is merited for breaches of probation conditions significantly related to misconduct for which probation was given, especially when circumstances raise serious concern about public protection or show probationer's failure to undertake rehabilitative steps. Where misconduct for which respondent was placed on probation included practicing law in violation of court order, and respondent's current misconduct also involved violating numerous court orders and was aggravated by failure to participate in disciplinary proceeding, and where respondent's probation violations involved two of very first steps required by probation conditions, these factors indicated that respondent had a persistent problem with conforming his conduct to requirements of law, raised serious concerns for need to protect public, and showed that respondent had failed to even begin to take steps to rehabilitate himself. Accordingly, imposition of entire period of stayed suspension was appropriate discipline for respondent's violation of probation. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[12]**

Doing equity is not the principal purpose of restitution in disciplinary proceedings; rather, it is to force disciplined attorneys to confront the consequences of their misconduct in a concrete way, thus serving goals of rehabilitation and public protection. It would not be consistent with purposes of attorney discipline to decline to order an attorney to make restitution of funds which were clearly wrongfully taken, simply on basis of speculation that victim of misconduct might thereby be unjustly enriched. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[14]**

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

Respondent's bitterness and disaffection over his prior disciplinary suspension might explain some misconduct toward his clients thereafter, but it could not excuse his misconduct, especially since the suspension and its terms were designed to seek respondent's rehabilitation. Also, respondent's evidence of rehabilitation was depreciated by his inability to comply with his probation conditions, which was relatively recent and occurred after respondent had time to become familiar with his responsibilities. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[21]**

A stipulated disciplinary order does not constitute precedent, but does represent a determination by the Office of the Chief Trial Counsel and the hearing judge that the degree of discipline ordered satisfies the need to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[11]**

The respondent in a disciplinary proceeding has a right to a fair hearing. The State Bar's interest in protecting the public and maintaining integrity and public confidence in the legal profession would not be served by disciplining an attorney who is mentally incompetent to the degree that she or he cannot assist in a defense against disciplinary charges. Therefore, if an attorney is unable to assist in his or her own defense, due process requires that the disciplinary proceeding be abated. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[7]**

The primary goal of disciplinary probation is the protection of the public and rehabilitation of the attorney. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[3]**

In attorney disciplinary matters, a period of stayed suspension subject to probation conditions is applied primarily as an additional measure to protect the public, courts and legal profession. However, where one-year actual suspension, coupled with requirement that attorney demonstrate rehabilitation, present fitness to practice and present learning in the law before being relieved of his actual suspension, would protect public, courts and profession, review department concluded that stayed suspension and probation were not necessary. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[6]**

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

Discipline is imposed to protect the public, enforce professional standards and maintain public confidence in the legal profession, not to punish. Pursuant to these principles, the Supreme Court and State Bar Court are most concerned when it appears an attorney is likely to repeat very serious misconduct, and the misconduct is not excused by personal stress or dramatic misfortune, and the attorney has failed to make restitution to clients when the attorney had the means to do so. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[8]**

Under the Standards for Attorney Sanctions for Professional Misconduct, the presumptively appropriate discipline for conviction of a crime involving moral turpitude is disbarment. However, where compelling mitigating circumstances predominate, a lesser sanction may be imposed, and the minimum of a two-year actual suspension suggested by the standards has not been applied by the Supreme Court. In such circumstances, the review department's duty is to determine the appropriate sanction in light of the purposes of attorney discipline: protection of the public, preservation of public confidence in the legal profession and maintenance of high professional standards. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[14]**

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

Evidence of psychological problems was not compelling mitigation where attorney's expert witness testified that he needed further treatment before he could be considered rehabilitated; primary function of attorney discipline is to fulfill proper professional standards regardless of cause for attorney's failure to do so. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[10]**

In determining appropriate discipline, all relevant factors must be considered, including the purposes of imposing discipline, which include: protection of the public, courts, and legal profession; maintenance of high professional standards; and maintenance of integrity of and public confidence in the legal profession. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[12]**

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

The factors to be considered in weighing the recommended discipline in probation revocation matters should include the aims of attorney discipline: protection of the public and rehabilitation of the attorney. The greatest discipline should be imposed where there is a breach of a condition significantly related to the underlying misconduct, particularly when the circumstances raise concerns about the need for public protection or the attorney's failure to undertake rehabilitation. Less discipline is required where a less significant probation condition is at issue under circumstances which do not call into question public protection or the attorney's rehabilitation. The length of stayed suspension which could be imposed as a sanction, and the length of the actual suspension earlier imposed, should also be considered. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[24]**

Protection of the public, its confidence in the legal profession, and the maintenance of high professional standards are the greatest concerns of the State Bar Court. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[10]**

The Supreme Court has been consistent in measuring discipline against the purposes of attorney discipline, which are the protection of the public, courts and legal profession, maintenance of integrity of the profession and high professional standards and preservation of public confidence in the legal profession. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[14]**

First offense deceit has not resulted in disbarment in Supreme Court cases. No act of concealment or dishonesty is more reprehensible than attempts to mislead a court; nonetheless, disbarment for such misconduct may be too drastic and unnecessary to achieve the goals of attorney discipline. Where respondent presented evidence of general good character, discipline of five years stayed suspension, five years probation, and two years actual suspension, with standard 1.4(c)(ii) requirement, was adequate. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[20]**

Review department's overriding concern is same as that of Supreme Court: preservation of public confidence in profession and maintenance of high professional standards. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[5]**

Standards for Attorney Sanctions for Professional Misconduct serve as guidelines, and must be viewed with the objective of achieving the purposes of attorney discipline, which do not include punishment of the errant attorney, but rather are protection of the public, the profession, and the courts; maintenance of high professional standards; and preservation of public confidence in the legal profession. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[21]**

The review department's overriding concern is the same as that of the Supreme Court: the protection of the public, preservation of public confidence in the profession and the maintenance of high professional standards. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[2]**

The review department's overriding concern is the same as that of the Supreme Court: the preservation of public confidence in the profession and the maintenance of high professional standards. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[3]**

The goals of the State Bar's probation program are: (1) public protection; (2) rehabilitation of the respondent; (3) maintaining integrity of the legal profession; (4) enforcement of restitution orders; (5) aiding future enforcement and (6) partially alleviating discipline. These goals are to be realized by use of probation conditions which are innovative, individualized, rehabilitative and flexible and which are implemented using the efforts of volunteer probation monitor referees. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[6]**

The fundamental purposes of attorney discipline are protection of the public and legal community and the maintenance of high professional standards and public confidence in the legal system. Rehabilitation of the attorney is also a permissible goal of discipline as long as the rehabilitative sanction does not conflict with the primary aims of attorney discipline. Unlike the criminal justice system, punishment is not one of the objectives of attorney discipline. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[7]**

In conviction referral matter in which interim suspension had been imposed and later vacated after seven months, review department declined to recommend total of one year actual suspension, even though possibly appropriate, because resulting additional four-month suspension would have been disruptive and punitive rather than achieving the purposes of disciplinary proceedings (protection of the public, courts and legal profession as well as rehabilitation in proper cases). *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[9]**

Where attorney found culpable of practicing while suspended no longer posed threat of harm to public, 30-day actual suspension was nonetheless appropriate to protect integrity of profession and courts. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[15]**

In the Matter of Buckley (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201.

Strong mitigating factors in matter involving capping and other misconduct dramatically lessened need for strict discipline imposed by Supreme Court in similar matters, but did not eliminate need for measurable discipline to maintain integrity of and public confidence in legal profession. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[10]**

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

Standard 1.7(b) of the Standards for Attorney Sanctions for Professional Misconduct, which provides for disbarment of a respondent who has a record of two prior impositions of discipline, cannot be applied without regard to the other provisions of the standards, particularly standard 1.3, which describes the primary purpose of the standards as the protection of the public, the courts and the legal profession; the maintenance of high professional standards and the preservation of public confidence in the profession. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[6]**

The overriding concern of the review department is the preservation of public confidence in the legal profession and the maintenance of high professional standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[4]**

The Standards for Attorney Sanctions for Professional Misconduct must be viewed as a whole with the objective of achieving the primary purposes of disciplinary proceedings, namely, protection of the public, courts and legal profession; maintenance of high professional standards and preservation of public confidence in the legal profession. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[15]**

In assessing appropriate discipline, State Bar Court looks to provisions of applicable standard, in light of goals of disciplinary system set forth in standard 1.3 and guidance from Supreme Court; standards are guidelines, not mandatory sentencing provisions. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[16]**

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

Review department recommends professional discipline not to punish, but to protect the public, courts and legal profession, to preserve public confidence in the profession and to maintain professional standards. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[10]**

The review department's overriding concern is the same as the Supreme Court's: the protection of the public, courts and legal profession, the preservation of public confidence in the profession and the maintenance of high professional standards. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. **[3]**

The Supreme Court's principal concern in the area of attorney discipline is protection of the public and preservation of confidence in the legal profession, interests served by maintaining the highest possible professional standards for attorneys. That same concern is therefore the principal concern of the review department. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[3]**

802.40 Standard 1.3 (1986 Standard 1.4) (Degrees of Sanction Available)

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

Sections 6068(a) and 6103 were not intended to refer to the Rules of Professional Conduct or to make disbarment available for violations of such rules. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[5]**

Under section 6077, the discipline which may be recommended by the State Bar for a wilful violation of the Rules of Professional Conduct is limited to a maximum of three years suspension. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[6]**

Section 6077 does not bind the Supreme Court, in the exercise of its inherent power, should it decide that greater discipline than three years suspension for violation of a Rule of Professional Conduct is needed to protect the public in a particular case; the Supreme Court is not limited by the Legislature in exercising its disciplinary authority. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[7]**

Section 6078 authorizes the State Bar Court to hold a hearing on charged violations of law and to recommend disbarment in those cases warranting disbarment, but section 6077 declares that a Rule of Professional Conduct violation does not warrant discipline in excess of three years suspension. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[8]**

Section 6103's authorization of discipline, including disbarment, is limited by its terms to occasions when an attorney violates the oath and duties defined in the Business and Professions Code or violates a court order. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[9]**

For an egregious rule violation, the State Bar may seek suspension of at least two years and application of standard 1.4(c)(ii); an attorney who can satisfy the showing required by standards 1.4(c)(ii) poses no continuing threat to the public warranting disbarment. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[11]**

In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

802.50 Standard 1.4 (1986 Standard 1.5) (Conditions attached to Sanctions)

Note: For issues regarding specific conditions attached to sanctions, see topic number 170 et seq.

Note: For **Standard 1.5** (Aggravation), see topic numbers 500 et seq.: for **Standard 1.6** (Mitigation), see topic numbers 700 et seq.

The goals of the State Bar's probation program are: (1) public protection; (2) rehabilitation of the respondent; (3) maintaining integrity of the legal profession; (4) enforcement of restitution orders; (5) aiding future enforcement and (6) partially alleviating discipline. These goals are to be realized by use of probation conditions which are innovative, individualized, rehabilitative and flexible and which are implemented using the efforts of volunteer probation monitor referees. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[6]**

802.60 Standard 1.7 (1986 Standard 1.6) (Determination of Appropriate Sanction)

802.61 (a) Most severe applicable sanction to be used

Where respondent's most serious ethical violations resulted from his affiliation and fee-sharing with a non-lawyer entity, Review Department applied discipline standard most applicable to that misconduct, rather than standard applicable to respondent's failure to perform legal services in multiple matters. Case law in matters involving similar misconduct was inapplicable in light of respondent's compelling mitigation, including long practice without a prior record, candor and cooperation, good character, pro bono work and community service, and remorse and recognition of wrongdoing. Given that respondent's misconduct was not likely to recur, totality of circumstances warranted imposing actual suspension for 60 days and until respondent completed restitution. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320 **[8 a,b]**

Where multiple discipline standards applied to respondent's misconduct, Review Department focused on standards calling for most severe discipline. Where respondent was found culpable of 24 counts of misconduct, involving nine different statute and rule violations, spanning four years, and involving four client matters, in two

of which respondent misappropriated significant funds through gross negligence, and respondent habitually disregarded his duties as an attorney and lacked recognition and remorse, high risk that respondent would engage in additional misconduct warranted disbarment. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308. **[9a-d]**

Where attorney committed multiple acts involving moral turpitude, displayed a 10-year pattern of misconduct, significantly harmed the administration of justice and clients and showed no remorse, the appropriate discipline recommendation was disbarment. *In the Matter of Reiss*(Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[10]**

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

Where respondent's misconduct involved negligent law office management over an extended period of time, resulting in delay and disservice to a number of clients but no act of moral turpitude or serious misconduct in any individual matter, and respondent had since changed his office practices, a one-year actual suspension was excessive in the absence of serious aggravation. However, where no persuasive reason had been offered to go below the minimum three-month actual suspension called for by the standards, a one-year stayed suspension, two years probation, and a three-month actual suspension, with law office management requirements, constituted sufficient discipline. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[10]**

Where two or more acts of professional misconduct are found, the discipline should be the most severe of the several applicable sanctions, not the sum of the applicable standards. Accordingly, it was not appropriate to recommend 18-month actual suspension based on conclusion that one-year actual suspension was appropriate for misappropriation and six-month actual suspension was appropriate for writing insufficiently funded checks. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[20]**

Where respondent repeatedly misused his trust account as a personal account, twice failed to return unearned advanced costs promptly on request, and failed to perform services competently in one matter, the gravest aspect of the misconduct was that relating to respondent's violation of the rule governing trust accounts and client funds, and this misconduct warranted at least a three-month actual suspension. Where such misconduct was aggravated by prior discipline for neglect of four client matters, and aggravating circumstances predominated over mitigating circumstances, it was appropriate to recommend a three-year stayed suspension, six months actual suspension, and five years of monitored probation for the protection of the public. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[10]**

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

Fact that, in addition to unintentionally misappropriating client's funds, attorney had committed act of moral turpitude by concealing personal assets in trust account to avoid tax levy might, but would not necessarily, indicate greater discipline to be in order, based on Supreme Court precedent. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[19]**

802.62 (b) (1986 (b)(i)) Effect of aggravation on appropriate sanction

Where respondent, an experienced patent and trademark practitioner prior to his earlier disciplinary suspension, resumed representing trademark clients after his reinstatement to practice in California, without carefully determining his eligibility to do so under federal regulations, respondent exhibited a cavalier attitude towards applicable regulations. This gave rise to concern about protection of the public from future misconduct,

where respondent's prior misconduct also involved placing self-interest ahead of client interest or respect for and adherence to law, and respondent still did not seem to recognize error and seriousness of his behavior. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418 **[4 a,b]**

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

A recommendation as to the degree of discipline properly results from a balanced consideration of all factors, requiring the State Bar Court to weigh mitigating and aggravating factors. Where respondent had committed serious and wide-ranging misconduct, his sincere expression of remorse and his favorable character references could not be weighed heavily, and had been given greater weight by the hearing judge than warranted by the record. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[17]**

Where respondent took up to two years to pay outstanding medical liens after he discovered them, such delay was the most significant factor in justifying a sanction of one year's actual suspension. Respondent's preoccupation with remedying other unspecified problems in his caseload did not justify his delay in remedying these negligent misappropriations. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[7]**

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In determining the appropriate sanction, the court must balance the aggravating circumstances with the mitigating circumstances and also consider whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[20]**

802.63 (c) (1986 (b)(ii)) Effect of mitigation on appropriate sanction

Where respondent's misconduct in inaccurately reporting her MCLE compliance was a one-time error, she had a long period of practice with no discipline, and an exemplary record of pro bono and community service, and she caused no harm to the public or the judicial system, and where, most significantly, she immediately accepted responsibility, rectified the situation, and implemented a corrective plan to avoid future problems, it was appropriate under these unique circumstances to deviate from the standard calling for disbarment or actual suspension for acts of moral turpitude. Even a 30-day actual suspension was excessive; public reproval was adequate to serve the goals of attorney discipline. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330 **[5 a-c]**

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

A recommendation as to the degree of discipline properly results from a balanced consideration of all factors, requiring the State Bar Court to weigh mitigating and aggravating factors. Where respondent had committed serious and wide-ranging misconduct, his sincere expression of remorse and his favorable character references could not be weighed heavily, and had been given greater weight by the hearing judge than warranted by the record. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[17]**

Evidence that an attorney has taken steps to deal with an alcohol problem is mitigating evidence that may properly be taken into account in determining the degree and nature of discipline, but does not eliminate the initial misconduct as an appropriate basis for discipline. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[11]**

Where compelling mitigation is present, a case which involves a misdemeanor conviction that otherwise would be an appropriate basis for discipline may result in dismissal in the interests of justice. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[12]**

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In determining the appropriate sanction, the court must balance the aggravating circumstances with the mitigating circumstances and also consider whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[20]**

802.64 Limits on effect of mitigating circumstances (1986 Standard 1.6(c))

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

Mitigating evidence of family pressures and misfortunes, good character, therapy, community service, and compliance with probation duties, similar to evidence which had been found sufficiently mitigating to avert an attorney's disbarment for prior misconduct, was not sufficient to justify a recommendation short of disbarment in a subsequent matter in view of the attorney's additional, serious misconduct and the need for protection of the public. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[6]**

Where respondent, while acting as the executor of a deceased client's estate, embezzled more than $500,000 from such estate, the magnitude of the theft would result in disbarment regardless of alleged mitigating circumstances. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[4]**

802.69 Generally/Other

Conclusion that violations of statutes requiring written fee agreements and specified disclosures are not disciplinable offenses does not preclude consideration of attorney's failure to comply with such statutes as aggravating circumstance. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[12]**

Once violation of ethical duties is found, hearing judge should not disregard culpability finding, but must examine surrounding circumstances and may consider either good or bad faith of respondent in mitigation or aggravation. Where respondent was found culpable of wilful failure to return illegal fees on demand, such culpability should have been considered in making discipline recommendation despite respondent's good faith belief in entitlement to funds, which was properly considered as mitigating factor. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[13]**

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

Where respondent's failure to supervise his personal injury practice and fulfill trust fund responsibilities was so remiss as to be reckless, and his mismanagement of his trust account included repeated failure to provide competent legal services by promptly paying medical liens, respondent violated rule regarding reckless or repeated failure to perform competently. However, where misconduct forming basis for such violation also underlay charge of moral turpitude supporting identical or greater discipline, review department gave violation of competence rule no additional weight in determining discipline. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[2]**

Where respondent did not appear from record to be venal or dishonest, but overall nature of respondent's misconduct revealed somewhat indifferent attitude toward ethical obligations, especially those to administration of justice and persons other than current clients, some actual suspension was warranted in order to protect public by augmenting respondent's understanding of his duties. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[34]**

When judges are asked to approve stipulations, they cannot rely solely on State Bar's acquiescence in proposed discipline, but must exercise their independent judgment in carrying out their obligation to examine stipulation, admitted facts, and proposed discipline for fairness to parties and for extent to which public will be adequately protected thereby. (Trans. Rules Proc. of State Bar, rule 407(a).) *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[9]**

Once a trust account balance has fallen below the appropriate amount, an inference of misappropriation may be drawn, and the burden shifts to the attorney to show that misappropriation did not occur. Where there were numerous instances over several years in which funds were depleted or nearly depleted from respondent's trust account; respondent delayed in making repayment until the client complained to the State Bar or was sued, and respondent's explanations lacked credibility, the evidence supported the conclusion that respondent's repeated acts of misappropriation were due to dishonesty rather than negligence. The distinction between negligent and dishonest misappropriation can be very significant in determining appropriate discipline. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[11]**

An attorney's admitted cocaine dependency is an appropriate factor to consider in determining the appropriate discipline for public protection. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[17]**

In determining appropriate discipline to recommend for respondent found culpable of violating statute requiring respect for courts based on respondent's violation of Supreme Court order requiring him to give notice of his prior disciplinary suspension under rule 955, review department noted that respondent's failure to give timely and complete notice of suspension, and his filing of an affidavit which was untimely and inaccurate, would have warranted a recommendation of disbarment, absent strong mitigating circumstances, in a referral proceeding for violation of rule 955. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[15]**

A recommendation as to the degree of discipline properly results from a balanced consideration of all factors, requiring the State Bar Court to weigh mitigating and aggravating factors. Where respondent had committed serious and wide-ranging misconduct, his sincere expression of remorse and his favorable character references could not be weighed heavily, and had been given greater weight by the hearing judge than warranted by the record. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[17]**

Normally, the requirement that a disciplined attorney show rehabilitation, fitness to practice, and learning in the law prior to returning to practice is imposed where the attorney's actual suspension is two years or greater. However, where period of time that attorney was enrolled inactive on account of failure to answer notice to show cause, coupled with one-year actual suspension recommended by review department, resulted in attorney being continuously ineligible to practice law for greater than two years, it was appropriate to recommend compliance with such requirement. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[5]**

In attorney disciplinary matters, a period of stayed suspension subject to probation conditions is applied primarily as an additional measure to protect the public, courts and legal profession. However, where one-year actual suspension, coupled with requirement that attorney demonstrate rehabilitation, present fitness to practice and present learning in the law before being relieved of his actual suspension, would protect public, courts and profession, review department concluded that stayed suspension and probation were not necessary. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[6]**

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

Respondent's inconsistent responses to State Bar investigators precluded a finding in mitigation that respondent was cooperative with the State Bar. However, respondent's behavior while acting as his own counsel during the disciplinary proceeding, which was consistent with an honest, if mistaken, belief in his own innocence, did not demonstrate an intent to hinder or mislead the court. A respondent is not required to acquiesce in the findings and conclusions of the State Bar Court, but the respondent's attitude toward the disciplinary process and amenability in conforming to the Rules of Professional Conduct are proper issues for the court's review, particularly in determining appropriate discipline. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[14]**

In determining appropriate discipline, all relevant factors must be considered, including the purposes of imposing discipline, which include: protection of the public, courts, and legal profession; maintenance of high professional standards; and maintenance of integrity of and public confidence in the legal profession. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[12]**

Where attorney had committed extremely serious misconduct over long period of time, and questions remained concerning attorney's rehabilitation, requiring standard 1.4(c)(ii) showing in lieu of disbarment would not be sufficient to protect the public and maintain the integrity of the profession. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[15]**

The number or fact of prior disciplinary proceedings cannot, without more analysis, foretell result of subsequent discipline proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[20]**

In cases involving attorney discipline for serious offenses, the Supreme Court has: (1) stated that serious offenses call for severe discipline and warrant disbarment in the absence of clear or compelling mitigation; (2) recited similar language but evaluated the type of misconduct as a lesser offense; or (3) emphasized that there is no fixed formula as to discipline, and that appropriate discipline can only be arrived at by a balanced consideration of relevant factors, on a case-by-case basis. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[13]**

Disbarment will not be ordered where there is no evidence that a sanction short of disbarment is inadequate to deter future misconduct and protect the public. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[15]**

The Supreme Court has expressed concern with assuring that the record in disciplinary proceedings reflects the correct evidence and finding of prior discipline or lack thereof. Accordingly, where only one of respondent's two prior disciplinary proceedings was made a part of the record and weighed by the hearing judge, it was necessary for the review department to remand the matter to the hearing judge to take evidence on the other prior discipline and consider its effect on the recommended discipline. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[5]**

As a matter of policy, not all attorneys who fail to participate in disciplinary proceedings should be precluded from receiving discipline containing probation conditions. Defaulting attorneys do present a problem for the hearing department in that the cause of their misconduct is not always evident on the record, thus making it difficult to determine which probation conditions or duties would further the goals of discipline. Nonetheless, the view that an attorney's default is prima facie evidence that the attorney is not amenable to probation runs contrary to the duty to consider each case on its own merits to determine appropriate discipline, and also precludes the use of probation monitoring as an effective means of public protection. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[8]**

In determining recommended discipline, matters should be considered on a case-by-case basis, balancing the relevant factors, including the facts, gravity of misconduct and mitigating and aggravating evidence, and considering them in light of the objectives of attorney discipline. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[9]**

Despite the need to examine cases on an individual basis to determine appropriate discipline, it is also a goal of disciplinary proceedings that there be consistent recommendations as to discipline, a goal that has been achieved in large measure through the application of the Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[10]**

Probation is not mandated in all cases where an actual suspension is imposed. When a lengthy period of actual suspension is recommended, imposing the provisions of standard 1.4(c)(ii) in lieu of a probation grant may serve adequately to protect the public and test the attorney's rehabilitation. Probation may not be indicated by virtue of the nature of the misconduct, the passage of time since the misconduct or clear evidence of the attorney's rehabilitation. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[11]**

In determining the appropriate sanction, the review department starts with the Standards for Attorney Sanctions for Professional Misconduct, which serve as guidelines and which do not mandate the discipline to be imposed. Each case must be resolved on its own particular facts and not by application of rigid standards. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[5]**

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

An attorney's commission of a crime involving moral turpitude is always a matter of serious consequence but does not always result in disbarment; the sanction imposed is determined in each case depending on the nature of the crime and the circumstances presented by the record. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[4]**

In assessing appropriate discipline, State Bar Court looks to provisions of applicable standard, in light of goals of disciplinary system set forth in standard 1.3 and guidance from Supreme Court; standards are guidelines, not mandatory sentencing provisions. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[16]**

804 Standard 1.8 (1986 Standard 1.7) (Effect of Prior Discipline)

Although former standard 1.7(b) was amended and replaced by standard 1.8(b), consideration of the factors enumerated by the new standard compels the same discipline as recommended by the hearing judge. Respondent committed his current misconduct while under actual suspension and on probation for prior disciplinary matters. His continued poor performance after multiple discipline, inability and unwillingness to conform to his ethical

responsibilities, and lack of compelling mitigation warrant imposition of the presumptive discipline of disbarment under standard 1.8(b). *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[3a, b]**

805 (a) Current discipline should be greater than prior

Although respondent's misconduct was limited in nature, it was tempered only by limited character evidence and cooperation and aggravated by dishonesty and concealment and a record of serious prior misconduct. This totality of circumstances warranted progressive discipline as directed by standard 1.7(a). *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151. **[6]**

805.10 Applied

Where respondent began engaging in unauthorized practice of federal trademark law immediately after his prior California suspension ended, and prior discipline had involved serious offense justifying three-year actual suspension, disciplinary standard providing for more severe sanctions in subsequent disciplinary matters made disbarment recommendation appropriate for present offense. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418 **[5]**

Where respondent failed to perform services, communicate with client, and refund unearned fee; no pattern of misconduct was shown; respondent did not act with dishonesty or harm client, and respondent had a prior record of one instance of discipline that was neither remote nor minimal, hearing judge's recommendation of one year actual suspension was too severe; six-month actual suspension, coupled with restitution requirement, was sufficient. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263 **[8]**

Review Department applied standard 1.7(a) where respondent's prior misconduct rested on the serious offense of willful misappropriation, the prior misconduct occurred four years before the current misconduct, both matters involved deceit, respondent was defending the charges in the prior at the time he was committing misconduct as a juror, and respondent continued to serve his actual suspension for the prior. *In the Matter of Fahy* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141. **[6 a, b]**

In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

Respondent was found culpable of ten disciplinable acts of moral turpitude (seven acts of misrepresentation, one act of improperly retaining for his own benefit funds out of a medical provider's lien reduction, and one act of attempting to obtain a greater fee than that to which he was entitled by failing to disclose to his client costs he recovered), eight instances of improper solicitation of clients, and two instances of failing to properly account to his client. There were substantial aggravating factors, including a prior record of discipline, but no mitigating circumstances. The review department recommended that respondent be suspended from the practice of law for a period of five years, that execution be stayed, and that respondent be placed on probation for a period of five years on conditions including three years actual suspension and until respondent pays restitution and until he provides proof of his rehabilitation, fitness to practice, and learning and ability in the general law. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[9]**

In the Matter of Posthuma (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.

Where an attorney has previously been disciplined for misappropriation, the attorney is eligible for disbarment if found culpable of misappropriation in a second matter. Where respondent's total misconduct in two separate disciplinary cases involved ten client matters, spanned all but three years of his practice, and harmed or jeopardized numerous clients, and respondent had an ongoing substance abuse problem and had not complied with his probation in the first matter, his aggregate misconduct clearly required imposition of the harshest discipline, and there was no basis for a recommendation of suspension rather than disbarment. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[13]**

Where respondent's misconduct in both first and second disciplinary matters involved similar lack of diligence causing delay in closing a simple probate estate, discipline in second matter ordinarily would warrant only slightly greater discipline than in first matter. However, where respondent had failed to understand or appreciate misconduct, causing concern about handling future cases, and in light of absence of mitigating factors and presence of several aggravating factors, significantly greater discipline than in first matter was appropriate in

second matter, and review department recommended two-year stayed suspension, three years probation, and six months actual suspension. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[17]**

Maximum available discipline in probation revocation matter was appropriate where respondent's priors, which included a prior probation violation, combined with misconduct in current case, showed both a persistent problem with drugs and alcohol and a persistent problem with conforming conduct to requirements of law and court orders. Policy underlying disciplinary standard calling for disbarment after two priors, and standard calling for increasing severity of discipline in successive matters, also militated toward imposing severe discipline given respondent's extensive prior record. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[20]**

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

Where reproval would ordinarily have been appropriate for misconduct involving minor rule violations, but respondent had a prior public reproval and appeared to need to reorganize law practice, appropriate discipline was six months stayed suspension with probation conditions including trust accounting and completion of a law office management class. *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128. **[26]**

Although respondent's prior misconduct was similar to the misconduct in a second matter, the aggravating force of respondent's prior disciplinary record was somewhat diluted where the misconduct in the second matter occurred before the notice to show cause in the prior matter was served, because it did not reflect a failure on respondent's part to learn from the prior misconduct. Nevertheless, the prior was a factor in aggravation, and it was appropriate for the discipline in the second matter to be greater than in the previous matter. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[24]**

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

Where respondent's prior discipline arose from serious misconduct, and his subsequent breach of probation conditions arose after that prior discipline, it was appropriate to impose more actual suspension in probation revocation matter than in earlier disciplinary proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[21]**

In determining appropriate discipline where the respondent had one prior imposition of discipline, the review department first considered the discipline that would normally be appropriate for the current misconduct, and then considered the prior discipline as a factor in aggravation, using as a guide the standard that the discipline in the second matter should exceed that imposed in the prior matter. The level of discipline was based on a balancing of all factors involved. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[17]**

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

Where respondent was convicted of misdemeanor sex offense not involving moral turpitude and not related to practice of law, respondent's record of two prior private reprovals made it appropriate to impose public reproval rather than private reproval that would otherwise have been warranted, but due to lack of common thread among matters and their collective lack of severity, it would have been manifestly unjust to recommend suspension. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[5]**

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

805.50 Declined to apply

805.51 Prior discipline remote in time and/or minor

Where last acts of misconduct in prior discipline matter occurred approximately 17 years before first acts of misconduct in second matter, and prior misconduct itself was minimal in nature and involved misconduct for which respondent was found not culpable in second matter, prior misconduct did not merit significant weight in aggravation, and it would be manifestly unjust to impose greater discipline in second matter than in prior proceeding solely because of prior discipline. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[12]**

A private reproval more than 20 years earlier, for improperly stopping payment on a $500 check to another law firm, was too remote in time to merit significant weight on the issue of degree of discipline. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[7]**

805.59 Other reason

Where respondent's prior and current misconduct were just a year apart and were of fundamentally different nature, and respondent's prior discipline had not been imposed until after his later misconduct and he could not have learned from it, and State Bar did not call for greater discipline than imposed in earlier matter, review department declined to apply standard calling for greater discipline in subsequent matter. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[12]**

Any reasons for deviations from the standards or case law should be set forth clearly. A rigid application in rule 955 cases of the standard requiring that the degree of discipline should be greater than that imposed in any prior proceeding would result in a minimum actual suspension of 90 days in every rule 955 violation proceeding where there was prior discipline, since rule 955 obligations are not required for actual suspensions under 90 days. The standards should not be applied in such talismanic fashion, particularly where there is not a common thread or course of conduct through past and present misconduct to justify increased discipline. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[8]**

Where respondent had filed his required rule 955 affidavit prior to the initiation of rule 955 proceedings by referral order, had met the notice requirements of the rule timely, had taken responsibility for his own errors, and, because of other discipline, might remain on actual suspension for over two years, a six-month actual suspension for respondent's untimely filing of his rule 955 affidavit would be excessive. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[9]**

An attorney on interim suspension following a criminal conviction has little control over the length of such suspension prior to final resolution of the case. Where an attorney's prior actual suspension had consisted largely of time already spent on interim suspension, and such a lengthy actual suspension would not ordinarily have been imposed for the misconduct involved in the prior matter, and where imposition of an even greater actual suspension in the attorney's subsequent matter would have resulted in discipline far in excess of that warranted by the facts and comparable case law, it would not be appropriate to adhere strictly to the standard directing imposition of greater discipline for a second offense. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[10]**

Guideline that discipline for second offense should in most instances be more severe than that imposed for first offense was not appropriate where offenses were contemporaneous. *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. **[13]**

806 (b) Disbarment after two priors

Although former standard 1.7(b) was amended and replaced by standard 1.8(b), consideration of the factors enumerated by the new standard compels the same discipline as recommended by the hearing judge. Respondent committed his current misconduct while under actual suspension and on probation for prior disciplinary matters. His continued poor performance after multiple discipline, inability and unwillingness to conform to his ethical responsibilities, and lack of compelling mitigation warrant imposition of the presumptive discipline of disbarment under standard 1.8(b). *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[3a, b]**

806.10 Applied

Although former standard 1.7(b) was amended and replaced by standard 1.8(b), disbarment was warranted under both former and new standards, where respondent had two instances of prior discipline, and failed to present compelling mitigation. Respondent committed his current misconduct while under actual suspension and on probation for prior disciplinary matters. His continued poor performance after multiple discipline, inability and unwillingness to conform to his ethical responsibilities, and lack of compelling mitigation warranted imposition of the presumptive discipline of disbarment under standard 1.8(b). *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338. **[5 a-c]**

Respondent with three prior disciplines presented no compelling mitigation or other reason to depart from disbarment as provided by standard 1.7(b). The prior record of discipline revealed a disturbing repetitive theme

of failing to comply with ethical obligations over the course of 15 years. Respondent's misuse of his California license to thwart the regulations of other states placed the public at risk of considerable harm due to ongoing issues of competency, where he had previously failed to supervise employees who embezzled client funds, failed to remove his disbarred partner's name from the firm CTA, and did not meet his obligations to file several probation reports or make restitution. *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250 **[9]**

Disbarment was appropriate where respondent was convicted of conspiracy to obstruct justice, a serious offense of moral turpitude, he did not report this conviction to the State Bar, and he did not prove compelling mitigation. If this conviction had marred an otherwise discipline-free record, disbarment would not necessarily be warranted, but respondent's prior record of discipline reveals his criminal misconduct was not an isolated incident, and also triggered analysis under standard 1.7(b). *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189 **[4a,b]**

Common threads or patterns of misconduct are not requirements for disbarment under standard 1.7(b), but are simply possible issues to consider along with several other factors. As the standard provides, the critical issue is whether compelling mitigating circumstances predominate to warrant an exception to the severe penalty of disbarment. Even absent compelling mitigation, the Supreme Court has not always ordered disbarment; rather, all facts and circumstances of a case must be considered to determine the discipline to impose. *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189 **[5 a,b]**

Disbarment was warranted and necessary where attorney failed to meet professional obligations for over two decades in four disciplinary cases. In the first three cases, respondent performed incompetently, and in fourth case, which occurred between his first and second discipline, he was convicted of a crime of moral turpitude that he never reported. Disbarment was recommended under standards 3.2. and 1.7(b), because overall, respondent demonstrated pervasive carelessness towards compliance with ethical rules, and appeared unwilling or unable to conform his behavior to the rules of professional conduct. *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189 **[6]**

When there is a repetition of offenses for which an attorney has previously been disciplined that demonstrates a pattern of professional misconduct, the Supreme Court and this court have found disbarment appropriate under Standards for Attorney Sanctions for Professional Misconduct, standard 1.7(b). *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966. **[4]**

Where respondent had four prior disciplinary proceedings, his involvement with the disciplinary system had spanned every decade over nearly 30 years, and all of his prior and current misconduct reflected an inability to fully appreciate the fiduciary nature of his relationship with clients, there was a grave risk that additional harm would result to clients. In view of the substance and nature of respondent's disciplinary history as well as the facts and circumstances of the current misconduct, the review department recommended disbarment. *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829. **[4a–e]**

The aggravating effect of prior discipline may be diminished if misconduct underlying prior discipline occurred contemporaneously with misconduct currently under consideration. However, where at time respondent committed current misconduct, he was either involved in disciplinary process or was actually on disciplinary probation, this indicated that respondent's prior discipline had very little impact on his behavior, and demonstrated respondent's inability to conform his conduct to ethical norms. In such circumstances, greater showing required in reinstatement would better protect public than showing required to return to practice after suspension under standard 1.4(c)(ii). Accordingly, application of standard calling for disbarment for third imposition of discipline was appropriate. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[15]**

In the Matter of Pierce (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382.

806.50 Declined to apply

806.51 Compelling mitigation

Respondent's medical problems over the years were severe and extensive. The compelling circumstances clearly predominate and compel a look beyond a strict application of standard 1.7(b). Viewed holistically, respondent's extreme physical disabilities lessen the moral culpability of his misconduct. Thus, the public will be

adequately protected by a lengthy suspension that will continue until respondent proves his rehabilitation, fitness, and ability to practice. *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239 **[5 a,b]**

Disbarment based on presence of multiple prior disciplinary matters is appropriate upon demonstration of common thread among disciplinary matters, pattern of misconduct, or increasing severity, but was not appropriate in matter where those factors were not present and compelling mitigating circumstances clearly predominated. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[14]**

Where attorney found culpable of practicing while suspended no longer posed threat of harm to public, 30-day actual suspension was nonetheless appropriate to protect integrity of profession and courts. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[15]**

806.52 Priors remote and/or minor

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

Misdemeanor convictions of sex offenses which are not serious and are unrelated to the practice of law have generally resulted in only private reproval absent aggravating factors. Where respondent was convicted of such a misdemeanor, disbarment would have been manifestly disproportionate to his cumulative misconduct, notwithstanding his record of two prior private reprovals. Respondent's misconduct was less serious than wilful failure to file tax returns or driving under the influence, and did not warrant the same degree of discipline. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[1]**

806.59 Other reason

The Supreme Court has not automatically applied standard 1.7(b) even in the absence of compelling mitigation. We must examine an attorney's prior discipline cases along with present misconduct to determine the appropriate aggravating weight. Disbarring the attorney under standard 1.7(b) would be unjust because his prior misconduct overlapped, he was not a recidivist offender who failed to learn from past disciplines and his present misconduct was not more serious than his prior ethical misconduct. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[11 a-d]**

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

Notwithstanding the standard providing for disbarment when a respondent has two prior records of discipline unless there is compelling mitigation, disbarment was not recommended even though respondent had two prior records because the nature and extent of those prior records lacked sufficient severity to warrant disbarment. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[7]**

Where Supreme Court opinion in respondent's first disciplinary matter was filed after respondent committed misconduct involved in second disciplinary matter, but respondent was already involved in disciplinary process before he committed much of misconduct in second matter, respondent had opportunity to heed warning that disciplinary process should have provided him. However, timing of misconduct in various disciplinary proceedings is but one factor to consider, and review department did not apply standard providing for disbarment for third instance of misconduct, where other factors weighed against its strict application. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[11]**

Where respondent's two prior discipline cases occurred during the same four-month period when respondent's practice disintegrated, the two matters were considered as essentially a single matter in determining appropriate discipline. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[1]**

Because of limitation on discipline available in probation revocation matter, disciplinary standard calling for disbarment in third disciplinary matter absent compelling mitigation did not apply. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[19]**

A literal application of standard 1.7(b) would call for disbarment of any attorney who is found culpable in a third disciplinary proceeding, unless compelling mitigating circumstances predominate. However, this standard must be applied in light of the nature and extent of the prior record. Where respondent's prior record of two reprovals involved inattention to the needs of clients, misconduct of a different nature than the drunk driving convictions

involved in respondent's third proceeding, respondent's prior disciplinary record did not warrant disbarment, but did constitute a proper aggravating factor. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[8]**

The Standards for Attorney Sanctions for Professional Misconduct provide that the appropriate discipline for culpability for professional misconduct where the member has a record of two prior impositions of discipline is disbarment unless the most compelling circumstances clearly predominate. Application of this standard was not appropriate where the attorney's criminal convictions and prior discipline, which were caused by an extensive history of drug and alcohol abuse, did not directly involve clients or the practice of law, and did not cause specific harm to the public or courts, and where the attorney had taken steps to address the underlying substance abuse problem, and had already been under suspension for five years as a result of previous discipline. Continued probation monitoring with substance abuse conditions, and a requirement that the attorney demonstrate rehabilitation and fitness to practice, would ensure that the substance abuse was controlled prior to the attorney's resuming the practice of law. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[9]**

The number or fact of prior disciplinary proceedings cannot, without more analysis, foretell result of subsequent discipline proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[20]**

Although non-final prior discipline recommendation for probation violation, still pending before Supreme Court, is record of prior discipline under rule 571, Trans. Rules Proc. of State Bar, review department does not apply rigidly, or without regard to facts of prior matters, disciplinary standard indicating disbarment as appropriate sanction for third disciplinary proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[22]**

Where it was unclear whether or not the former review department had considered respondent's delayed restitution in its assessment of the appropriate discipline in a prior probation revocation matter still pending before the Supreme Court, no significant aggravating weight was accorded that prior probation matter as prior discipline. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[23]**

The Supreme Court has expressed concern with assuring that the record in disciplinary proceedings reflects the correct evidence and finding of prior discipline or lack thereof. Accordingly, where only one of respondent's two prior disciplinary proceedings was made a part of the record and weighed by the hearing judge, it was necessary for the review department to remand the matter to the hearing judge to take evidence on the other prior discipline and consider its effect on the recommended discipline. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[5]**

Standard 1.7(b) of the Standards for Attorney Sanctions for Professional Misconduct, which provides for disbarment of a respondent who has a record of two prior impositions of discipline, cannot be applied without regard to the other provisions of the standards, particularly standard 1.3, which describes the primary purpose of the standards as the protection of the public, the courts and the legal profession; the maintenance of high professional standards and the preservation of public confidence in the profession. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[6]**

In order to properly fulfill the purposes of lawyer discipline, the review department must examine the nature and chronology of a respondent's record of discipline. Mere fact that attorney has three impositions of discipline, without further analysis, may not justify disbarment. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[7]**

Where no Supreme Court precedent would have justified disbarment for respondent's failure to perform services in two matters if both matters had been decided together, additional prior discipline for failure to pass Professional Responsibility Examination did not sufficiently add to severity of misconduct to justify imposing disbarment. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[9]**

807 (c) Prior record not required to impose severe discipline

Absent strong mitigating circumstances, a violation of rule 955 of the California Rules of Court warrants disbarment. Thus, where serious and extensive aggravating circumstances outweighed strongly very modest

mitigating circumstances, disbarment was appropriate despite respondent's lack of any prior disciplinary record. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[10]**

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

Where respondent's misconduct involved eight instances of abandonment or failure to provide services, three instances of failure to return unearned fees, lack of communication with three clients, failure to pay court-ordered sanctions in two cases, misappropriation of a small amount of advanced costs, improper securing of a large loan from a client, and failure to cooperate with the State Bar investigation, and respondent did not fully participate in the disciplinary proceedings, then despite respondent's lengthy unblemished record and public sector service, the appropriate discipline included a lengthy period of actual suspension and probation, and a requirement that respondent prove rehabilitation, fitness to practice, and learning and ability in the law prior to returning to active practice. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[19]**

A single act of very serious misconduct can and has resulted in disbarment even absent a prior disciplinary record; where a respondent's culpability is egregious and inexplicable, disbarment is appropriate even for a single misappropriation. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[12]**

810 Part B (Sanctions for specific misconduct; "Original Proceedings" in 1986 Standards)

811 1986 Standard 2.1 (Scope of Part B)

Note: For **Standard 2.1** (Misappropriation) in 2015 and **Interim Standards,** see topic number 822.

811.10 Introductory paragraph: Adjustment of presumed sanctions based on aggravation and mitigation

820 1986 Standard 2.2 (Entrusted Funds or Property)

Note: For cases decided after January 1, 2014, see topic number 822 et seq for misappropriation, and topic number 824 et seq. for commingling and trust account violations.

822 Standard 2.1 (1986 Standard 2.2(a)) Sanctions for misappropriation

Where respondent misappropriated $50,000 of $79,875.89 insurance settlement funds he held in his trust account for his corporate client by disbursing $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors; where respondent violated his fiduciary duty to remaining three directors by disbursing the $50,000 to president without their knowledge or consent; where respondent knowingly and intentionally misappropriated remaining $29,875.89 of settlement funds for his own use and benefit by withdrawing them from his trust account as attorney's fees without the knowledge and consent of remaining three directors; where respondent violated rule of professional conduct requiring disputed funds to be held in trust by withdrawing $29,875.89 in fees from his trust account when his right to collect fees was disputed; where respondent repeatedly refused to account for proceeds of insurance settlement check in accordance with requests of chairman of corporations board of directors; where there was extensive aggravation, including concealment, overreaching, and failure to make restitution, with mitigation for strong good character testimony, extensive community service, no prior record of discipline, and lack of additional misconduct in more than five years; and where misconduct involved only a single client matter; and even though standard for attorney sanctions for professional misconduct for willful misappropriation called for and Supreme Court has repeatedly held that usual discipline for willfully misappropriation of client funds is disbarment, appropriate discipline recommendation was not disbarment, but four years' stayed suspension, four years' probation on conditions, which included two years' actual suspension continuing until respondent pays restitution of $29,875.89 with interest. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[9 a-d]**

822.10 Applied - disbarment (Standard 2.1(a))

Attorney who misappropriated entrusted funds bore heavy burden to overcome standard 2.2(a)'s disbarment presumption. Respondent's misappropriation of $112,293 over three years placed him on the most serious end of the discipline spectrum for misappropriation. Respondent treated his CTA like an open-ended line of credit, and his 65 withdrawals in three years for personal matters show his conduct was not aberrational. While his extensive community and pro bono service, cooperation with the State Bar, good character, and 12-years of practice without discipline were substantial mitigation, he did not prove two important rehabilitative factors—recognition of wrongdoing and recovery from the emotional problems he claims led to his wrongdoing. Thus, future personal struggles could trigger similar serious misconduct. Because respondent's overall mitigation was not the most compelling, nor did it clearly predominate, disbarment was warranted. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273 **[8 a-c]**

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349.

Disbarment was the appropriate discipline where respondent recklessly failed to control his law practice, personally committed other acts of moral turpitude and dishonesty, violated a number of ethical rules, displayed lack of candor at trial, and failed to establish any significant mitigation. *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709. **[2]**

Misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, and generally warrants disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. Where respondent did not meet that burden, disbarment was recommended. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511. **[1]**

Where respondent committed acts of moral turpitude and dishonesty and engaged in a wide range of other misconduct without compelling mitigation and with substantial aggravation, disbarment was necessary to protect the public, courts, and legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[9]**

Disbarment was recommended where respondent's culpability arose from a record exceptional in displaying respondent's repeated, deliberate overreaching of her clients for personal gain, and her repeated dishonesty, where respondent also demonstrated complete lack of recognition of the most basic duties of attorneys in this state, and where respondent's misconduct arose just four years after her admission. In each of the three most serious matters, respondent became an advocate against her client, unabashedly disregarding her clients' instructions in order to maximize her fees, and she threw aside a lawyer's fundamental duty of honesty during her protracted, stubborn pursuit of personal gain. The review department concluded that only disbarment could give the level of protection the public and the courts deserve. *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390. **[4]**

Where respondent's wilful misappropriation of client trust funds was accompanied by aggravating factors which clearly predominated over mitigation, and where hearing judge recommended disbarment based on consideration of respondent's demeanor and related issues, review department concurred that disbarment was appropriate. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[8]**

Once a trust account balance has fallen below the appropriate amount, an inference of misappropriation may be drawn, and the burden shifts to the attorney to show that misappropriation did not occur. Where there were numerous instances over several years in which funds were depleted or nearly depleted from respondent's trust account; respondent delayed in making repayment until the client complained to the State Bar or was sued, and respondent's explanations lacked credibility, the evidence supported the conclusion that respondent's repeated acts of misappropriation were due to dishonesty rather than negligence. The distinction between negligent and dishonest misappropriation can be very significant in determining appropriate discipline. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[11]**

Where an attorney has previously been disciplined for misappropriation, the attorney is eligible for disbarment if found culpable of misappropriation in a second matter. Where respondent's total misconduct in two separate disciplinary cases involved ten client matters, spanned all but three years of his practice, and harmed or jeopardized numerous clients, and respondent had an ongoing substance abuse problem and had not complied with his

probation in the first matter, his aggregate misconduct clearly required imposition of the harshest discipline, and there was no basis for a recommendation of suspension rather than disbarment. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[13]**

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

Favorable testimony by six character witnesses, four of whom were respondent's co-workers, was not sufficient to show that disbarment was excessive given the many aggravating circumstances surrounding respondent's misappropriation of a large sum of client trust funds. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[5]**

Disbarment was the appropriate sanction for an attorney's misappropriation of a very large sum of client funds over many years, which was surrounded by utter disregard of the attorney's fiduciary and trust account duties, and aggravated by incompetent representation of the client and prosecution of a lawsuit without the client's consent, demonstrating a lack of basic understanding of the fundamental responsibilities of an attorney. *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96. **[10]**

Where respondent had engaged in a pattern of misconduct involving 14 matters spanning six of his nine years of practice, and had misappropriated over $17,000 of client funds and caused the extinction of legal claims for eight clients, and where respondent had engaged in further misconduct after he had recognized his case management difficulties, and had barely begun his rehabilitation, the fact that the parties did not stipulate that respondent engaged in acts of moral turpitude in any individual matter did not necessarily mean that his misconduct warranted less discipline than in comparable cases where disbarment was ordered. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[7]**

Discipline is imposed to protect the public, enforce professional standards and maintain public confidence in the legal profession, not to punish. Pursuant to these principles, the Supreme Court and State Bar Court are most concerned when it appears an attorney is likely to repeat very serious misconduct, and the misconduct is not excused by personal stress or dramatic misfortune, and the attorney has failed to make restitution to clients when the attorney had the means to do so. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[8]**

Both under Supreme Court case law and under the standards, an attorney's misappropriation of client funds, being a gross or grievous breach of morality, warrants disbarment in the absence of clearly extenuating circumstances, or unless the amount taken was insignificant or the most compelling mitigating circumstances clearly predominate. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[4]**

Where attorney committed serious offenses including misappropriation of large sum from client and subsequent deceit of client's agent, issue before State Bar Court was whether mitigating circumstances clearly outweighed or predominated in order to warrant recommendation of less than disbarment. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[8]**

Suspension rather than disbarment might be appropriate for isolated misappropriation that is unlikely to be repeated, but was not appropriate where misappropriation was accompanied by lengthy practice of deceit on client's agent and lack of forthrightness during State Bar investigation. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[11]**

Disbarment was called for in light of attorney's misappropriation of extremely large sum, extensive and prolonged deceit, lack of extraordinary mitigation, lack of forthrightness in dealing with misconduct, and lack of sufficient evidence of rehabilitation to assure public that offense would not recur. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[13]**

Where attorney had committed extremely serious misconduct over long period of time, and questions remained concerning attorney's rehabilitation, requiring standard 1.4(c)(ii) showing in lieu of disbarment would not be sufficient to protect the public and maintain the integrity of the profession. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[15]**

A single act of very serious misconduct can and has resulted in disbarment even absent a prior disciplinary record; where a respondent's culpability is egregious and inexplicable, disbarment is appropriate even for a single misappropriation. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[12]**

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

822.30 Applied - actual suspension in lieu of disbarment (Standard 2.1(a))

822.31 Insignificant amount of funds (Standard 2.1(b))

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

Where respondent's misconduct involved eight instances of abandonment or failure to provide services, three instances of failure to return unearned fees, lack of communication with three clients, failure to pay court-ordered sanctions in two cases, misappropriation of a small amount of advanced costs, improper securing of a large loan from a client, and failure to cooperate with the State Bar investigation, and respondent did not fully participate in the disciplinary proceedings, then despite respondent's lengthy unblemished record and public sector service, the appropriate discipline included a lengthy period of actual suspension and probation, and a requirement that respondent prove rehabilitation, fitness to practice, and learning and ability in the law prior to returning to active practice. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[19]**

822.32 Negligent rather than purposeful (1986 Standard 2.2(b))

Note: Topic number 822.32 retained sokely for cases decided prior to January 1, 2014. For cases decided after January 1, 2014, see topic number 822.35 for gross negligence, and topic number 822.36 for neither intentional misconduct nor gross negligence.

Where respondent took up to two years to pay outstanding medical liens after he discovered them, such delay was the most significant factor in justifying a sanction of one year's actual suspension. Respondent's preoccupation with remedying other unspecified problems in his caseload did not justify his delay in remedying these negligent misappropriations. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[7]**

Where hearing judge's decision was issued prior to relevant Supreme Court and review department opinions, and did not discuss whether gross negligence resulting in misappropriation should be subjected to same suggested minimum sanction of one year actual suspension as is applied for intentional misappropriation, but hearing judge's recommendation of one-year minimum was justified by facts in record making suspension appropriate for public protection, review department concluded that hearing judge's discipline recommendation was based on an analysis of the record in light of the objectives of discipline rather than on a rigid application of the Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[8]**

In requiring an invariable minimum of one year's actual suspension, standard 2.2(a) is not faithful to the teachings of the Supreme Court's decisions. Negligent misappropriation quickly and voluntarily remedied may require no actual suspension or only a short suspension. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[9]**

Where respondent's gross negligence resulted in several incidents of misappropriation over a number of years, and where the record established both compelling mitigating factors and substantial aggravating factors, including prolonged delay in making restitution, discipline including one year's actual suspension was appropriate. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[11]**

822.33 Good faith belief in right to funds

822.34 Sufficiently compelling mitigation (Standard 2.1(a))

The appropriate discipline for wilful misappropriation is disbarment in the absence of extenuating circumstances. However, extenuating circumstances sufficient to warrant less than disbarment have been found both in the attorney's background, demonstrating that the misconduct was aberrational and hence unlikely to recur, and in the facts relating to the misappropriation, recognizing that more severe discipline is warranted for intentional theft as opposed to negligent acts unaccompanied by evil intent. Where respondent's extensive misconduct, which included multiple acts of gross negligence in handling client funds as well as misappropriation and improper business transactions with clients, occurred during a three-year period after a 28-year blemish-free record, and was surrounded by circumstances indicating that the misconduct was aberrational, a one-year actual suspension and three years stayed suspension and probation were adequate discipline. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[21]**

Where respondent's gross negligence resulted in several incidents of misappropriation over a number of years, and where the record established both compelling mitigating factors and substantial aggravating factors, including prolonged delay in making restitution, discipline including one year's actual suspension was appropriate. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[11]**

Some cases of misappropriation have resulted in lengthy suspensions rather than disbarment where restitution was made. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[16]**

822.35 Applied - actual suspension for gross negligence (Standard 2.1(b))

Where multiple discipline standards applied to respondent's misconduct, Review Department focused on standards calling for most severe discipline. Where respondent was found culpable of 24 counts of misconduct, involving nine different statute and rule violations, spanning four years, and involving four client matters, in two of which respondent misappropriated significant funds through gross negligence, and respondent habitually disregarded his duties as an attorney and lacked recognition and remorse, high risk that respondent would engage in additional misconduct warranted disbarment. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308. [**9a-d**]

822.36 Applied - suspension or reproval if neither intentional misconduct nor gross negligence (Standard 2.1(c))

822.39 Applied - Other reason

Where respondent had been inattentive to a client's legal needs and had wrongfully retained the client's personal property, but respondent had only committed misconduct in two matters in 23 years of practice, disbarment was not appropriate under guiding Supreme Court opinions. Instead, review department recommended five years stayed suspension, five years probation, restitution, and actual suspension for two years and until respondent proved her rehabilitation, fitness to practice, and legal ability. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[10]**

Not all serious trust fund misappropriation cases warrant disbarment. Where respondent had a 21-year record of practice without prior discipline and respondent's misconduct took place within a relatively narrow time frame, standard 1.4(c)(ii) hearing, with three-year actual suspension and five-year stayed suspension and probation, would be adequate to protect public, despite gravity of respondent's misconduct and lack of evidence regarding its cause. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[8]**

Where respondent committed serious misconduct shortly after admission to practice, including abandoning several clients and failing to perform legal services competently; four instances of failure to return unearned advance fees promptly; misleading two clients; misappropriating trust funds of a bankruptcy estate; and accepting employment without sufficient time, resources and ability to perform competently; but respondent presented mitigating evidence of emotional and psychological difficulties and rehabilitation, disbarment was not required, and protection of the public and profession was satisfied by five-year stayed suspension, three-year actual suspension, requirements to make restitution and show rehabilitation before returning to practice, and a period of supervised probation. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[1]**

Misappropriation of client funds is a particularly serious ethical violation, which breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the legal profession. Misappropriation generally warrants disbarment of the attorney involved unless clearly extenuating circumstances are present. In assessing the appropriate discipline to recommend for a respondent who had misappropriated a large amount of client funds and also abandoned the client, the review department focused on the misappropriation, the most serious aspect of the misconduct. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[6]**

Misappropriation can be committed in different degrees of culpability, deserving of different discipline. Even where the most compelling mitigating circumstances do not clearly predominate, extenuating circumstances relating to the facts of the misappropriation may render disbarment inappropriate. An attorney who acts deliberately and with deceit should receive more severe discipline than an attorney who acts negligently and without deception. Disbarment would rarely, if ever, be appropriate for an attorney whose only misconduct was a single act of misappropriation unaccompanied by deceit or other aggravating factors. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[12]**

Disbarment was not appropriate in a misappropriation case where the misconduct resulted more from respondent's lack of understanding of an attorney's ethical duties rather than innate venality. However, because there was more serious misconduct and less mitigation than in other cases, and respondent had not recognized the seriousness of the misconduct, a three-year actual suspension, a showing of rehabilitation and fitness to practice before termination of the actual suspension, and strict probation conditions were required. *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652. **[13]**

Pursuant to Supreme Court precedent, only the most serious instances of repeated misconduct and multiple instances of misappropriation have warranted actual suspension, much less disbarment; a year of actual suspension, if not less, has been more commonly the discipline imposed in cases involving but a single instance of misappropriation. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[11]**

A one-year actual suspension was appropriate where respondent had committed a single act of misappropriation and had fully participated in the disciplinary proceedings, and there was no strong mitigating evidence justifying departing from the standards by recommending a shorter suspension. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[13]**

Even though only one matter was involved, respondent's misconduct was serious; misappropriation of advanced costs alone could result in recommendation of at least one year of actual suspension, and abdication of trust account responsibilities could warrant three month actual suspension. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[11]**

822.50 Declined to apply - sanction less than presumed discipline imposed

822.51 No misappropriation found

Violations of trust account rules which do not involve a misappropriation found to constitute an act of moral turpitude are not treated, for the purpose of determining appropriate discipline, as misappropriations within the contemplation of standard 2.2(a), Standards for Attorney Sanctions for Professional Misconduct, for which disbarment is the presumed sanction. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[16]**

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

822.52 Insignificant amount of funds

Standard 2.2(a) calls for disbarment when attorney willfully misappropriates entrusted funds unless amount is insignificantly small or the most compelling mitigating circumstances clearly predominate. The first exception to standard 2.2(a) applies. Respondent misappropriated by his gross neglect, a relatively small amount of funds, which he repaid fairly quickly and before State Bar's involvement. *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239 **[4]**

Where respondent had no prior or subsequent discipline; respondent was not venal; respondent's misconduct was an aberration occurring over a short period of time and contributed to by respondent's poor business judgment at a time when he was under financial pressures; respondent accepted responsibility for his misconduct, taking objective steps to avoid further misconduct; and other mitigating factors existed, it was appropriate to recommend lesser sanction than minimum actual suspension indicated by applicable standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[16]**

822.53 Negligent rather than purposeful

Note: Topic number 822.53 retained solely for cases decided prior to January 1, 2014. For cases decided after January 1, 2014, see topic number 822.35 for gross negligence, and topic number 822.36 for neither intentional misconduct nor gross negligence.

Where attorney is found culpable of intentional or dishonest withholding of funds due to client, issue on degree of discipline is whether mitigating circumstances outweigh general rule of disbarment for such offenses. Cases of misconduct involving funds improperly withheld for reasons other than dishonesty have typically resulted in varying degrees of actual suspension even when attorney had no prior discipline record. Where respondent, through gross neglect, withheld sizable amount of funds due to disabled client, had prior record of discipline for similar misconduct, and persisted in defending his collection of fees in excess of statutory limits despite adverse appellate decisions in suits against him by clients, concern for respondent's lack of insight into his misconduct and possible continued disregard for duty to clients of utmost good faith and fair dealing warranted six months actual suspension. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[23]**

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

If a misappropriation of entrusted funds results from an attorney's laxity in supervising office staff, and not from an intent to defraud, and remedial steps are instituted by the attorney upon discovery of the situation, further underscoring the lack of fraudulent intent, far less discipline than disbarment is appropriate. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[17]**

While gross negligence is not a defense to a charge of misappropriation, the absence of evidence of intentional misappropriation is a substantial factor in mitigation. *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. **[19]**

Where respondent had no prior or subsequent discipline; respondent was not venal; respondent's misconduct was an aberration occurring over a short period of time and contributed to by respondent's poor business judgment at a time when he was under financial pressures; respondent accepted responsibility for his misconduct, taking objective steps to avoid further misconduct; and other mitigating factors existed, it was appropriate to recommend lesser sanction than minimum actual suspension indicated by applicable standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[16]**

Supreme Court has usually not dealt severely with misappropriations involving a relatively small amount for a relatively brief time when no intentional dishonesty was involved and the offense involved attorney's use of trust account as an operating account. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[18]**

822.54 Good faith belief in right to funds

Where attorney is found culpable of intentional or dishonest withholding of funds due to client, issue on degree of discipline is whether mitigating circumstances outweigh general rule of disbarment for such offenses. Cases of misconduct involving funds improperly withheld for reasons other than dishonesty have typically resulted in varying degrees of actual suspension even when attorney had no prior discipline record. Where respondent, through gross neglect, withheld sizable amount of funds due to disabled client, had prior record of discipline for similar misconduct, and persisted in defending his collection of fees in excess of statutory limits despite adverse appellate decisions in suits against him by clients, concern for respondent's lack of insight into his misconduct and possible continued disregard for duty to clients of utmost good faith and fair dealing warranted six months actual suspension. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[23]**

822.55 Compelling mitigation

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

Where respondent had no prior or subsequent discipline; respondent was not venal; respondent's misconduct was an aberration occurring over a short period of time and contributed to by respondent's poor business judgment at a time when he was under financial pressures; respondent accepted responsibility for his misconduct, taking objective steps to avoid further misconduct; and other mitigating factors existed, it was appropriate to recommend lesser sanction than minimum actual suspension indicated by applicable standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[16]**

822.59 Other reason

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

The Standards for Attorney Sanctions for Professional Misconduct are guidelines; they do not need to be followed in talismanic fashion. Hearing judge in matter arising from perjury conviction properly analyzed relevant case law in order to arrive at appropriate sanction, rather than automatically applying standard 3.2, which provides that discipline for conviction of a crime involving moral turpitude shall be disbarment unless compelling circumstances clearly predominate. Supreme Court cases involving crimes of moral turpitude have considered the nature of the crime and the magnitude of its impact on the public and the integrity of the legal system. This factual analysis in determining the propriety of disbarment is similar to that used in matters involving entrusted funds or property. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[11]**

Where respondent had no prior or subsequent discipline; respondent was not venal; respondent's misconduct was an aberration occurring over a short period of time and contributed to by respondent's poor business judgment at a time when he was under financial pressures; respondent accepted responsibility for his misconduct, taking objective steps to avoid further misconduct; and other mitigating factors existed, it was appropriate to recommend lesser sanction than minimum actual suspension indicated by applicable standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[16]**

824 Standard 2.2(a) (1986 Standard 2.2(b)) Commingling/Trust Account Violation - 3 months actual suspension

824.10 Applied

Respondent's misconduct, which involved the misuse of his client trust accounts, the failure to perform services competently in one matter, and extremely serious violations of his obligation of fidelity to clients (involving abandonment of a client and, in an uncharged incident, of arguing against the interest of his client in seeking to be relieved as attorney of record) warrants a discipline recommendation of 18 months stayed suspension, three years probation, and six months actual suspension and until respondent satisfactorily completes certain educational courses. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[9]**

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

Where attorney is found culpable of intentional or dishonest withholding of funds due to client, issue on degree of discipline is whether mitigating circumstances outweigh general rule of disbarment for such offenses. Cases of misconduct involving funds improperly withheld for reasons other than dishonesty have typically resulted in varying degrees of actual suspension even when attorney had no prior discipline record. Where respondent, through gross neglect, withheld sizable amount of funds due to disabled client, had prior record of discipline for similar misconduct, and persisted in defending his collection of fees in excess of statutory limits despite adverse appellate decisions in suits against him by clients, concern for respondent's lack of insight into his misconduct and possible continued disregard for duty to clients of utmost good faith and fair dealing warranted six months actual suspension. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[23]**

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

Where respondent's mishandling of trust funds was not intentional, but respondent abdicated responsibility to supervise personal injury cases and recklessly disregarded trust account obligations, thereby committing acts of moral turpitude; where respondent also repeatedly failed to provide legal services competently and did not notify a client of receipt of a settlement; and where record did not show that problems resulting from respondent's disregard of his trust account obligations had ended or that respondent had established sound office management plan, appropriate discipline included three years probation with trust account audit and law office management requirements, three years stayed suspension, and actual suspension for eighteen months and until restitution was completed. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[15]**

Where respondent was culpable of one instance each of collection of an illegal fee and intentional failure to perform competently, and of multiple instances each of violating his duty to uphold the law; reckless failure to perform competently; withdrawing from employment without protecting clients from foreseeable prejudice; and failure to pay trust funds on demand, and where most severe applicable standard proposed three-month minimum actual suspension for non-misappropriation trust fund offenses, and where respondent's mitigating evidence was not sufficient to justify deviating from applicable standard given respondent's record of numerous violations over extended time period, review department increased hearing judge's recommended actual suspension to 90 days, as condition of three-year probation, with one-year stayed suspension as justified by case law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[29]**

Where respondent's misconduct involved negligent law office management over an extended period of time, resulting in delay and disservice to a number of clients but no act of moral turpitude or serious misconduct in any individual matter, and respondent had since changed his office practices, a one-year actual suspension was excessive in the absence of serious aggravation. However, where no persuasive reason had been offered to go below the minimum three-month actual suspension called for by the standards, a one-year stayed suspension, two years probation, and a three-month actual suspension, with law office management requirements, constituted sufficient discipline. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[10]**

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

Misconduct committed by attorney who was grossly negligent, though not dishonest, in handling a significant sum of client trust funds in one matter, and who failed to communicate adequately with a client in another matter, warranted 90 days rather than 60 days of actual suspension as condition of 3-year probation accompanying 3-year stayed suspension. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[1]**

Where respondent repeatedly misused his trust account as a personal account, twice failed to return unearned advanced costs promptly on request, and failed to perform services competently in one matter, the gravest aspect of the misconduct was that relating to respondent's violation of the rule governing trust accounts and client funds, and this misconduct warranted at least a three-month actual suspension. Where such misconduct was aggravated by prior discipline for neglect of four client matters, and aggravating circumstances predominated over mitigating circumstances, it was appropriate to recommend a three-year stayed suspension, six months actual suspension, and five years of monitored probation for the protection of the public. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[10]**

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

Even though only one matter was involved, respondent's misconduct was serious; misappropriation of advanced costs alone could result in recommendation of at least one year of actual suspension, and abdication of trust account responsibilities could warrant three month actual suspension. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[11]**

824.20 Declined to apply - greater sanction imposed

824.21 Coupled with other misconduct

824.22 Other aggravating factors

824.29 Other reason

824.50 Declined to apply - lesser sanction imposed

824.51 No applicable misconduct found

824.52 Negligent rather than purposeful

Where respondent negligently committed a minor trust account violation, made voluntary restitution prior to any complaint to the State Bar, presented extensive character evidence, and was on the verge of retiring from a very respectable 40-year career, respondent was appropriately the subject of a private reproval. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[6]**

824.53 Purely technical violation

Where respondent inadvertently mishandled a small sum of trust funds and was unlikely to repeat her misconduct, no suspension was necessary. Although standard 2.2(b) requires at least three months actual suspension for a trust account violation, the standards are guidelines to be construed in light of decisional law. A private reproval was appropriate in light of the nature of the misconduct and the mitigating circumstances, including respondent's severe emotional difficulties, her having taken the disciplinary proceeding very seriously, and her having suffered great hardship as a consequence. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[14]**

Where respondent had no prior or subsequent discipline; respondent was not venal; respondent's misconduct was an aberration occurring over a short period of time and contributed to by respondent's poor business judgment at a time when he was under financial pressures; respondent accepted responsibility for his misconduct, taking objective steps to avoid further misconduct; and other mitigating factors existed, it was appropriate to recommend lesser sanction than minimum actual suspension indicated by applicable standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[16]**

824.54 Compelling mitigation

Where an attorney disobeys a court order based on an unreasonable interpretation of the order or an untested belief that the order is not valid, or takes money that is not the attorney's based on an unreasonable view of the facts, public discipline is necessary to make clear to the bar, the courts and the public that attorneys face serious consequences for such misconduct. However, where respondent did not pose a threat to the public, and review department concluded that actual suspension was not required to reinforce respondent's understanding of his ethical obligations, no actual suspension was necessary. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[13]**

Where respondent violated rules regarding accounting for client funds, obtaining adverse interests in client property, and representing clients with conflicting interests, and respondent's misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client at the hospital and misleading a court, and by respondent's failure to recognize his ethical accountability to clients, respondent's misconduct would have warranted substantial discipline absent his long service at the bar and for his community, and 60-day actual suspension was appropriate. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[11]**

Where respondent inadvertently mishandled a small sum of trust funds and was unlikely to repeat her misconduct, no suspension was necessary. Although standard 2.2(b) requires at least three months actual suspension for a trust account violation, the standards are guidelines to be construed in light of decisional law. A private reproval was appropriate in light of the nature of the misconduct and the mitigating circumstances, including respondent's severe emotional difficulties, her having taken the disciplinary proceeding very seriously, and her having suffered great hardship as a consequence. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[14]**

Where respondent negligently committed a minor trust account violation, made voluntary restitution prior to any complaint to the State Bar, presented extensive character evidence, and was on the verge of retiring from a very respectable 40-year career, respondent was appropriately the subject of a private reproval. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732. **[6]**

Premature withdrawal of trust funds in a marital dissolution to pay community debts, without misrepresentations or financial loss to the opposing party or opposing counsel, combined with impressive character testimony, would warrant discipline in the neighborhood of 30 days actual suspension, not lengthy suspension or disbarment. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[11]**

An attorney's lengthy delay in notifying his client of receipt of a check in partial settlement of her case, and his failure to render a timely and appropriate accounting upon his withdrawal, which was aggravated by unilateral payment to himself of his fees, merited more than a public reproval. The attorney's handling of trust account records was required to be reviewed by an accountant for some period of time to ensure protection of other clients. However, in view of mitigating circumstances, subsequent corrective measures, and lack of harm to the client or her doctor, no actual suspension was necessary to protect the public. The Review Department recommended two months' stayed suspension, with one year's probation, periodic auditing of the attorney's trust account, and a professional responsibility examination. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[28]**

The Standards for Attorney Sanctions for Professional Misconduct are not to be rigidly applied, and an actual suspension of less than three months for commingling may be appropriate in the circumstances of a particular case. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[18]**

Where respondent had no prior or subsequent discipline; respondent was not venal; respondent's misconduct was an aberration occurring over a short period of time and contributed to by respondent's poor business judgment at a time when he was under financial pressures; respondent accepted responsibility for his misconduct, taking objective steps to avoid further misconduct; and other mitigating factors existed, it was appropriate to recommend lesser sanction than minimum actual suspension indicated by applicable standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[16]**

824.59 Other reason

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

Where respondent was culpable of failing to set aside $942 of his legal fee in a trust account pending resolution of a dispute with his client; aggravating factor of bad faith arose from respondent's intent to serve his clients rather than from any venal purpose; aggravating factors were outweighed by mitigating factors including long period of unblemished practice since misconduct, indicating unlikelihood of further misconduct; and prior similar cases indicated that it would be appropriate to depart from the 90-day minimum actual suspension for trust account violations, appropriate discipline was private reproval conditioned on passage of professional responsibility examination. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[22]**

Although standard 2.2(a) calls for 90 days minimum suspension for commingling, the Supreme Court has declined to impose suspension if the commingling results from a good faith fee dispute. Where respondent's trust fund violation was no more serious than trust fund violations in a prior Supreme Court case in which a public reproval was imposed, and where respondent presented far greater evidence in mitigation than the attorneys in that case, the appropriate discipline was a private reproval on condition of taking and passing the Professional Responsibility Examination. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[22]**

Violations of the ethical rule governing placement of client funds in a trust account have not always resulted in actual or even stayed suspensions. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[27]**

Where respondent had no prior or subsequent discipline; respondent was not venal; respondent's misconduct was an aberration occurring over a short period of time and contributed to by respondent's poor business judgment at a time when he was under financial pressures; respondent accepted responsibility for his misconduct, taking objective steps to avoid further misconduct; and other mitigating factors existed, it was appropriate to recommend lesser sanction than minimum actual suspension indicated by applicable standards. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[16]**

825 Standard 2.2(b) (Other violation involving mishandling of client funds or property - suspension or reproval)

825.10 Applied - suspension

825.20 Applied - reproval

825.50 Declined to apply

825.51 Greater sanction imposed

825.52 Lesser sanction imposed

825.59 Other issues re Standard 2.2(b)

Note: For **Standard 2.3** (illegal or unconscionable fee), see topic number 870 et seq. For **Standard 2.4** (business transaction with or adverse pecuniary interest to client) see topic number 880 et seq.

826 Standard 2.5 (Representation of adverse interests - actual suspension

826.10 Applied - actual suspension

826.11 Failure to obtain informed written consent of client(s)

826.12 Significant harm to client(s)

826.13 Breach of duty to maintain confidentiality

826.19 Other factors

826.50 Declined to apply - disbarment

826.51 Coupled with other misconduct

826.52 Other aggravating factors

826.59 Other reason

826.70 Declined to apply - lesser or no discipline

826.71 No adverse representation found

826.72 Informed written consent obtained

826.73 No significant harm to client(s)

826.74 No breach of duty to maintain confidentiality

826.79 Other reason

827 Standard 2.6 (Breach of Confidentiality - suspension or reproval)

827.10 Applied - suspension

827.11 Intentional revealing of client confidences

827.12 Coupled with other misconduct

827.13 Other aggravating factors

827.19 Other reasons

827.20 Applied - reproval

827.21 Recklessness or gross negligence

827.22 Harm not significant

827.23 Mitigating factors

827.29 Other reason

827.50 Declined to apply - greater discipline

827.51 Intentional revealing of client confidences

827.52 Coupled with other misconduct

827.53 Other aggravating factors

827.59 Other reasons

827.90 Declined to apply - no discipline

827.91 No applicable misconduct found

827.92 No significant harm to client(s)

827.93 Mitigating factors

827.99 Other reason

Note: For **Standard 2.7** (interim **Standard 2.5**) (performance, communication, or withdrawal violations), see topic number 840 et seq.

828 Standard 2.8 (Fee Splitting with Non-Lawyers - actual suspension)

828.10 Applied - actual suspension

828.11 Extent of interference with attorney-client relationship

828.12 Failure to perform legal services for client

828.19 Other factors

828.50 Declined to apply - disbarment

828.51 Extent of interference with attorney-client relationship

828.52 Failure to perform legal services for client

828.53 Coupled with other misconduct

828.54 Other aggravating factors

828.59 Other reason

828.70 Declined to apply - lesser or no discipline

828.71 No applicable misconduct found

828.79 Other reason

829 Standard 2.9 (Frivolous Litigation)

829.10 Applied - actual suspension

829.11 Significant harm to individual

829.12 Significant harm to administration of justice

829.19 Other factors

829.50 Applied - disbarment

829.51 Significant harm to individual

829.52 Significant harm to administration of justice

829.53 Pattern of misconduct

829.54 Coupled with other misconduct

829.55 Other aggravating factors

829.59 Other reason

829.60 Applied - Stayed suspension or reproval

829.61 Harm not significant

829.62 Mitigating factors

829.69 Other reason

829.70 Declined to apply - no discipline

829.72 No applicable misconduct found

829.79 Other reason

Note: For **Standard 2.10 (interim Standard 2.6)** (unauthorized practice of law while suspended or inactive), see topic number 910 et seq.

830 Standard 2.11 (interim Standard 2.7, 1986 Standard 2.3) (Moral Turpitude, Fraud, etc.)

Even though respondent was not acting as an attorney in the case but as a citizen, his change of vote for the defense to break a jury deadlock so he could return his attention to his law practice caused significant harm to the administration of justice. *In the Matter of Fahy* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141 **[5]**

831 Applied - Disbarment

831.10 Extent of harm to victim great

Disbarment was the only discipline adequate to protect the public, the courts, and the legal profession, where respondent used his legal knowledge to repeatedly abuse the court system through relentless lawsuits, his conduct was significantly aggravated by a lengthy pattern of wrongdoing, significant harm to others, disregard for the court process, and a total lack of insight into his harmful behavior, and he failed to establish any mitigation. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[10]**

Where attorney committed multiple acts involving moral turpitude, displayed a 10-year pattern of misconduct, significantly harmed the administration of justice and clients and showed no remorse, the appropriate discipline recommendation was disbarment. *In the Matter of Reiss*(Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 **[10]**

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

A lengthy suspension with a standard 1.4(c)(ii) showing was not adequate discipline, where respondent committed extensive misdeeds which became commonplace in respondent's practice, caused harm to a number of clients, and failed to rectify the harm. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[9]**

831.15 Adjudicator as victim

Where attorney committed multiple acts involving moral turpitude, displayed a 10-year pattern of misconduct, significantly harmed the administration of justice and clients and showed no remorse, the appropriate discipline recommendation was disbarment. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206. **[10]**

831.20 Magnitude of misconduct great

Where most severe sanction applicable to respondent's misconduct was disbarment or actual suspension for moral turpitude (interim Standard 2.7), and respondent's intentional filing of fraudulent bankruptcy petitions continued over three-year period, respondent's pattern of misconduct involving recurring type of dishonesty warranted disbarment. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[11]**

Disbarment was the only discipline adequate to protect the public, the courts, and the legal profession, where respondent used his legal knowledge to repeatedly abuse the court system through relentless lawsuits, his conduct was significantly aggravated by a lengthy pattern of wrongdoing, significant harm to others, disregard for the court process, and a total lack of insight into his harmful behavior, and he failed to establish any mitigation. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[10]**

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

Disbarment was the appropriate discipline where respondent recklessly failed to control his law practice, personally committed other acts of moral turpitude and dishonesty, violated a number of ethical rules, displayed lack of candor at trial, and failed to establish any significant mitigation. *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709. **[2]**

Even though none of respondent's individual acts of misconduct involved dishonesty, concealment, or mishandling of client funds and even though respondent had no prior record of discipline over a lengthy practice, respondent's disbarment was warranted as consistent with past case law and the standards for attorney discipline for respondent's panoply of protracted failure to communicate with clients, incompetent practice, and failure to supervise subordinate staff affecting many different clients over a 10-year period. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[11]**

Where respondent committed acts of moral turpitude and dishonesty and engaged in a wide range of other misconduct without compelling mitigation and with substantial aggravation, disbarment was necessary to protect the public, courts, and legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession. *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495. **[9]**

Where respondent seriously abused the judicial system for a dozen years despite heavy sanctions, showed no remorse, and refused to mend his ways, no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession. Because of respondent's total lack of repentance, a lengthy suspension coupled with probation terms was inappropriate; there was a great danger that respondent would fail to comply with any probation terms imposed. Respondent's repeated acts of moral turpitude demonstrated that he was no longer worthy of membership in the bar. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[14]**

Attorney's deceit of client's agent on 11 separate occasions over a considerable period was an aggravating factor, and militated strongly against considering attorney's misconduct as one-time or aberrant. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[6]**

831.30 Related to practice of law

Where most severe sanction applicable to respondent's misconduct was disbarment or actual suspension for moral turpitude (interim Standard 2.7), and respondent's intentional filing of fraudulent bankruptcy petitions

continued over three-year period, respondent's pattern of misconduct involving recurring type of dishonesty warranted disbarment. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[11]**

Where attorney committed multiple acts involving moral turpitude, displayed a 10-year pattern of misconduct, significantly harmed the administration of justice and clients and showed no remorse, the appropriate discipline recommendation was disbarment. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206. **[10]**

Disbarment was the appropriate discipline where respondent recklessly failed to control his law practice, personally committed other acts of moral turpitude and dishonesty, violated a number of ethical rules, displayed lack of candor at trial, and failed to establish any significant mitigation. *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709. **[2]**

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

Where attorney committed serious offenses including misappropriation of large sum from client and subsequent deceit of client's agent, issue before State Bar Court was whether mitigating circumstances clearly outweighed or predominated in order to warrant recommendation of less than disbarment. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[8]**

831.35 Impact on administration of justice

Where most severe sanction applicable to respondent's misconduct was disbarment or actual suspension for moral turpitude (interim Standard 2.7), and respondent's intentional filing of fraudulent bankruptcy petitions continued over three-year period, respondent's pattern of misconduct involving recurring type of dishonesty warranted disbarment. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr.. **[11]**

831.40 Coupled with other misconduct

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

Disbarment was the appropriate discipline where respondent recklessly failed to control his law practice, personally committed other acts of moral turpitude and dishonesty, violated a number of ethical rules, displayed lack of candor at trial, and failed to establish any significant mitigation. *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709. **[2]**

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

An attorney's acts of deceit are very serious, and under the standards warrant suspension or disbarment. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[5]**

Where attorney committed serious offenses including misappropriation of large sum from client and subsequent deceit of client's agent, issue before State Bar Court was whether mitigating circumstances clearly outweighed or predominated in order to warrant recommendation of less than disbarment. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[8]**

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

831.50 Presence of other aggravation

Disbarment was the only discipline adequate to protect the public, the courts, and the legal profession, where respondent used his legal knowledge to repeatedly abuse the court system through relentless lawsuits, his conduct was significantly aggravated by a lengthy pattern of wrongdoing, significant harm to others, disregard for the court

process, and a total lack of insight into his harmful behavior, and he failed to establish any mitigation. *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360. **[10]**

Where multiple discipline standards applied to respondent's misconduct, Review Department focused on standards calling for most severe discipline. Where respondent was found culpable of 24 counts of misconduct, involving nine different statute and rule violations, spanning four years, and involving four client matters, in two of which respondent misappropriated significant funds through gross negligence, and respondent habitually disregarded his duties as an attorney and lacked recognition and remorse, high risk that respondent would engage in additional misconduct warranted disbarment. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308. **[9a-d]**

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

Attorney's deceit of client's agent on 11 separate occasions over a considerable period was an aggravating factor, and militated strongly against considering attorney's misconduct as one-time or aberrant. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[6]**

Where attorney committed serious offenses including misappropriation of large sum from client and subsequent deceit of client's agent, issue before State Bar Court was whether mitigating circumstances clearly outweighed or predominated in order to warrant recommendation of less than disbarment. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[8]**

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

831.90 Other reason

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9.

Repeated fraudulent billing, involving moral turpitude, is a matter from which the public deserves substantial protection. When this misconduct is combined with the additional misconduct of not promptly paying over proceeds to a client and not retaining disputed fees in a trust account, and with respondent's inability or unwillingness to accept the judicial process, it places the public, the courts, and the profession at risk. Nothing less than disbarment was appropriate to control this risk *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. **[6]**.

Disbarment was the appropriate discipline where respondent recklessly failed to control his law practice, personally committed other acts of moral turpitude and dishonesty, violated a number of ethical rules, displayed lack of candor at trial, and failed to establish any significant mitigation. *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709. **[2]**

Disbarment was recommended where respondent's culpability arose from a record exceptional in displaying respondent's repeated, deliberate overreaching of her clients for personal gain, and her repeated dishonesty, where respondent also demonstrated complete lack of recognition of the most basic duties of attorneys in this state, and where respondent's misconduct arose just four years after her admission. In each of the three most serious matters, respondent became an advocate against her client, unabashedly disregarding her clients' instructions in order to maximize her fees, and she threw aside a lawyer's fundamental duty of honesty during her protracted, stubborn pursuit of personal gain. The review department concluded that only disbarment could give the level of protection the public and the courts deserve. *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390. **[4]**

Where respondent had engaged in a pattern of misconduct involving 14 matters spanning six of his nine years of practice, and had misappropriated over $17,000 of client funds and caused the extinction of legal claims for eight clients, and where respondent had engaged in further misconduct after he had recognized his case management difficulties, and had barely begun his rehabilitation, the fact that the parties did not stipulate that respondent engaged in acts of moral turpitude in any individual matter did not necessarily mean that his misconduct warranted

less discipline than in comparable cases where disbarment was ordered. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[7]**

833 Applied - Suspension

833.10 Extent of harm to victim small

Attorneys placed on disciplinary suspension must be careful not to hold themselves out as being able to practice when they are not and must not mislead employers regarding their prior status. An attorney's statements in a resume or job interview should be as trustworthy as that professional's representation to a court or client. Where respondent did not seem to understand the seriousness of his ethical duties in this regard, and had a prior record of discipline, a period of actual suspension was necessary for the protection of the public. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[13]**

Where respondent misrepresented his educational background in his resume, these actions were dishonest, and some period of actual suspension was warranted. Where respondent's misconduct extended over a three-year period, and was aggravated by his misrepresentations in discovery responses in the disciplinary proceeding, and where respondent had personal problems but they did not fully explain his misconduct, a 60-day actual suspension, with one year of probation, was appropriate to recognize the seriousness of the misconduct, the mitigating circumstances, and the sanction imposed in previous cases. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[5]**

833.20 Magnitude of misconduct small

Fact that, in addition to unintentionally misappropriating client's funds, attorney had committed act of moral turpitude by concealing personal assets in trust account to avoid tax levy might, but would not necessarily, indicate greater discipline to be in order, based on Supreme Court precedent. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[19]**

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

833.30 Not related to practice of law

Where attorney engaged in acts of dishonesty and moral turpitude by repeatedly incurring credit card debts totaling $19,327 without intending to repay them, the magnitude of attorney's misconduct was substantial, but did not involve or relate to his practice of law. Appropriate discipline was two years' stayed suspension, two years' probation, sixty days' actual suspension. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[14]**

Although respondent's acts of dishonesty did not occur during the actual practice of law, but rather while respondent was seeking employment as a lawyer, respondent's willingness to use false and misleading means in the employment process was a matter of serious concern. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[6]**

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

833.40 Presence of other mitigation

Where attorney committed multiple acts involving moral turpitude, failed to obey the laws or court orders and where the misconduct was aggravated by multiple acts and harm to the administration of justice but mitigated by character evidence, cooperation, and pro bono service, the appropriate discipline recommendation was a 4-year actual suspension. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[12]**

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

Where respondent almost completely abdicated to a non-lawyer his professional duties with respect to a personal injury practice; failed to take prompt, realistic action to stop the non-lawyer's capping practices, and had not presented clear evidence regarding rehabilitation and necessary changes in his practice, then despite mitigating factors including respondent's cooperation with law enforcement and State Bar and satisfaction of medical liens out of his own funds, appropriate discipline for protection of public was three-year stayed suspension with three years probation and actual

suspension for two years and until proof of rehabilitation, fitness to practice, and learning in the general law. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[7]**

The appropriate discipline for wilful misappropriation is disbarment in the absence of extenuating circumstances. However, extenuating circumstances sufficient to warrant less than disbarment have been found both in the attorney's background, demonstrating that the misconduct was aberrational and hence unlikely to recur, and in the facts relating to the misappropriation, recognizing that more severe discipline is warranted for intentional theft as opposed to negligent acts unaccompanied by evil intent. Where respondent's extensive misconduct, which included multiple acts of gross negligence in handling client funds as well as misappropriation and improper business transactions with clients, occurred during a three-year period after a 28-year blemish-free record, and was surrounded by circumstances indicating that the misconduct was aberrational, a one-year actual suspension and three years stayed suspension and probation were adequate discipline. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[21]**

First offense deceit has not resulted in disbarment in Supreme Court cases. No act of concealment or dishonesty is more reprehensible than attempts to mislead a court; nonetheless, disbarment for such misconduct may be too drastic and unnecessary to achieve the goals of attorney discipline. Where respondent presented evidence of general good character, discipline of five years stayed suspension, five years probation, and two years actual suspension, with standard 1.4(c)(ii) requirement, was adequate. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[20]**

Where respondent misrepresented his educational background in his resume, these actions were dishonest, and some period of actual suspension was warranted. Where respondent's misconduct extended over a three-year period, and was aggravated by his misrepresentations in discovery responses in the disciplinary proceeding, and where respondent had personal problems but they did not fully explain his misconduct, a 60-day actual suspension, with one year of probation, was appropriate to recognize the seriousness of the misconduct, the mitigating circumstances, and the sanction imposed in previous cases. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[5]**

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

Lengthy suspension was called for based on multiple acts of fraud, dishonesty and concealment, even though attorney did not recognize at the time that his behavior was wrongful. However, attorney's immediate restitution, clear remorse, and cooperative behavior after he realized his conduct was wrong, and his good conduct thereafter, justified imposing substantial suspension in lieu of disbarment. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[19]**

833.90 Other reason

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

Where attorney engaged in acts of dishonesty and moral turpitude by repeatedly incurring credit card debts totaling $19,327 without intending to repay them, the magnitude of attorney's misconduct was substantial, but did not involve or relate to his practice of law. Appropriate discipline was two years' stayed suspension, two years' probation, sixty days' actual suspension. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[14]**

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

Respondent's misconduct, which involved the misuse of his client trust accounts, the failure to perform services competently in one matter, and extremely serious violations of his obligation of fidelity to clients (involving abandonment of a client and, in an uncharged incident, of arguing against the interest of his client in seeking to

be relieved as attorney of record) warrants a discipline recommendation of 18 months stayed suspension, three years probation, and six months actual suspension and until respondent satisfactorily completes certain educational courses. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[9]**

Respondent was found culpable of ten disciplinable acts of moral turpitude (seven acts of misrepresentation, one act of improperly retaining for his own benefit funds out of a medical provider's lien reduction, and one act of attempting to obtain a greater fee than that to which he was entitled by failing to disclose to his client costs he recovered), eight instances of improper solicitation of clients, and two instances of failing to properly account to his client. There were substantial aggravating factors, including a prior record of discipline, but no mitigating circumstances. The review department recommended that respondent be suspended from the practice of law for a period of five years, that execution be stayed, and that respondent be placed on probation for a period of five years on conditions including three years actual suspension and until respondent pays restitution and until he provides proof of his rehabilitation, fitness to practice, and learning and ability in the general law. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[9]**

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

Where respondent's mishandling of trust funds was not intentional, but respondent abdicated responsibility to supervise personal injury cases and recklessly disregarded trust account obligations, thereby committing acts of moral turpitude; where respondent also repeatedly failed to provide legal services competently and did not notify a client of receipt of a settlement; and where record did not show that problems resulting from respondent's disregard of his trust account obligations had ended or that respondent had established sound office management plan, appropriate discipline included three years probation with trust account audit and law office management requirements, three years stayed suspension, and actual suspension for eighteen months and until restitution was completed. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[15]**

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

Where respondent had been inattentive to a client's legal needs and had wrongfully retained the client's personal property, but respondent had only committed misconduct in two matters in 23 years of practice, disbarment was not appropriate under guiding Supreme Court opinions. Instead, review department recommended five years stayed suspension, five years probation, restitution, and actual suspension for two years and until respondent proved her rehabilitation, fitness to practice, and legal ability. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[10]**

Attorneys placed on disciplinary suspension must be careful not to hold themselves out as being able to practice when they are not and must not mislead employers regarding their prior status. An attorney's statements in a resume or job interview should be as trustworthy as that professional's representation to a court or client. Where respondent did not seem to understand the seriousness of his ethical duties in this regard, and had a prior record of discipline, a period of actual suspension was necessary for the protection of the public. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[13]**

Where respondent committed serious misconduct shortly after admission to practice, including abandoning several clients and failing to perform legal services competently; four instances of failure to return unearned advance fees promptly; misleading two clients; misappropriating trust funds of a bankruptcy estate; and accepting employment without sufficient time, resources and ability to perform competently; but respondent presented mitigating evidence of emotional and psychological difficulties and rehabilitation, disbarment was not required, and protection of the public and profession was satisfied by five-year stayed suspension, three-year actual suspension, requirements to make restitution and show rehabilitation before returning to practice, and a period of supervised probation. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[1]**

Disbarment will not be ordered where there is no evidence that a sanction short of disbarment is inadequate to deter future misconduct and protect the public. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[15]**

First offense deceit has not resulted in disbarment in Supreme Court cases. No act of concealment or dishonesty is more reprehensible than attempts to mislead a court; nonetheless, disbarment for such misconduct may be too drastic and unnecessary to achieve the goals of attorney discipline. Where respondent presented evidence of general good character, discipline of five years stayed suspension, five years probation, and two years actual suspension, with standard 1.4(c)(ii) requirement, was adequate. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[20]**

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

Attorney's repeated, protracted deceit of clients, which had effect of forestalling them from discovering true status of their matters, was perhaps even more serious than harm caused by attorney's inattention to client duties. An attorney's practice of deceit is inimical to the high ethical standards of honesty and integrity required of members of the legal profession and to the promotion of confidence in the trustworthiness of members of the profession. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[4]**

Where respondent's misconduct occurred over a period of time, included extensive deceit practiced on clients, and caused harm and expense to clients, and where respondent failed to participate in State Bar proceedings and there was no significant mitigation, appropriate recommended discipline for abandonment and deception of three clients plus failure to cooperate with State Bar investigation was three years stayed suspension, three years probation, and one year of actual suspension. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[6]**

835 Declined to apply

835.10 No applicable misconduct found

Review department's review of record is independent, and it may draw its own conclusions from record whether or not a party has requested it to do so. Where hearing judge's conclusion that respondent had committed act of moral turpitude was difficult to reconcile with judge's conclusion as to appropriate discipline, it was appropriate for review department to give particular scrutiny to culpability conclusion as well as degree of discipline, even though respondent had not requested review of moral turpitude conclusion. *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1. **[8]**

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

835.20 Extent of harm to victim

835.30 Magnitude of misconduct small

835.40 Not related to practice of law

835.50 Compelling mitigation

Where respondent's misconduct in inaccurately reporting her MCLE compliance was a one-time error, she had a long period of practice with no discipline, and an exemplary record of pro bono and community service, and she caused no harm to the public or the judicial system, and where, most significantly, she immediately accepted responsibility, rectified the situation, and implemented a corrective plan to avoid future problems, it was appropriate under these unique circumstances to deviate from the standard calling for disbarment or actual suspension for acts of moral turpitude. Even a 30-day actual suspension was excessive; public reproval was adequate to serve the goals of attorney discipline. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330 **[5 a-c]**

835.90 Other reason

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

Note: For **Standard 2.12** (interim Standard 2.8), see topic number 920 et seq.; for **Standard 2.13** (interim **Standard 2.9**), see topic number 930 et seq.

840 Standard 2.7 (interim Standard 2.5, 1986 Standard 2.4) (Performance, communication, or withdrawal violations)

842 (a) Habitual disregard of client interests ("Pattern of wilful abandonment" in 1986 Standards)—disbarment

842.10 Applied

Where multiple discipline standards applied to respondent's misconduct, Review Department focused on standards calling for most severe discipline. Where respondent was found culpable of 24 counts of misconduct, involving nine different statute and rule violations, spanning four years, and involving four client matters, in two of which respondent misappropriated significant funds through gross negligence, and respondent habitually disregarded his duties as an attorney and lacked recognition and remorse, high risk that respondent would engage in additional misconduct warranted disbarment. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308. **[9a-d]**

Even though an attorney's individual acts did not involve moral turpitude, the attorney's pattern of misconduct amounted to moral turpitude; habitual disregard of client interests, even where grossly negligent or careless rather than wilful or dishonest, constitutes moral turpitude and justifies disbarment. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[1]**

Where respondent had engaged in a pattern of misconduct involving 14 matters spanning six of his nine years of practice, and had misappropriated over $17,000 of client funds and caused the extinction of legal claims for eight clients, and where respondent had engaged in further misconduct after he had recognized his case management difficulties, and had barely begun his rehabilitation, the fact that the parties did not stipulate that respondent engaged in acts of moral turpitude in any individual matter did not necessarily mean that his misconduct warranted less discipline than in comparable cases where disbarment was ordered. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[7]**

A lengthy suspension with a standard 1.4(c)(ii) showing was not adequate discipline, where respondent committed extensive misdeeds which became commonplace in respondent's practice, caused harm to a number of clients, and failed to rectify the harm. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[9]**

842.50 Declined to apply

842.51 No habitual disregard (formerly No pattern) found

Abandonment of three clients did not constitute a pattern of abandonment, but did constitute multiple acts of severe disregard of clients' interests. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[3]**

842.52 Compelling mitigation

In cases involving a pattern of misconduct not primarily intentional in nature, and in which the attorney has no prior record of discipline, suspension and not disbarment is most likely to be deemed adequate to protect the public when a tragic event or similar set of circumstances contributed to and explained the attorney's misconduct, and when evidence of subsequent rehabilitation gives the court confidence that the pattern of misconduct is not likely to be repeated. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[6]**

842.59 Other reason

844 (b) Multiple matters but no habitual disregard ("No pattern/failure to communicate" in 1986 Standards)

844.10 Applied - actual suspension

844.11 Extent of misconduct great

Where attorney operated a high-volume loan modification practice with little or no involvement and violated loan modification laws, aided and abetted the unauthorized practice of law, failed to competently perform, failed to promptly return client files and failed topromptly pay client funds and where the misconduct was aggravated by multiple acts and client harm but mitigated by no prior disciplinary record, cooperation, good character and remorse, the appropriate discipline was a two year actual suspension to continue until payment of restitution and satisfaction of standard 1.2(c)(1). *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. **[6a-c]**

Where respondent's misconduct involved eight instances of abandonment or failure to provide services, three instances of failure to return unearned fees, lack of communication with three clients, failure to pay court-ordered sanctions in two cases, misappropriation of a small amount of advanced costs, improper securing of a large loan from a client, and failure to cooperate with the State Bar investigation, and respondent did not fully participate in the disciplinary proceedings, then despite respondent's lengthy unblemished record and public sector service, the appropriate discipline included a lengthy period of actual suspension and probation, and a requirement that respondent prove rehabilitation, fitness to practice, and learning and ability in the law prior to returning to active practice. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[19]**

Attorney's failure to perform legal services as agreed, and abandonment of three clients, constituted very serious misconduct. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[2]**

Abandonment of three clients did not constitute a pattern of abandonment, but did constitute multiple acts of severe disregard of clients' interests. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[3]**

Where respondent's misconduct occurred over a period of time, included extensive deceit practiced on clients, and caused harm and expense to clients, and where respondent failed to participate in State Bar proceedings and there was no significant mitigation, appropriate recommended discipline for abandonment and deception of three clients plus failure to cooperate with State Bar investigation was three years stayed suspension, three years probation, and one year of actual suspension. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[6]**

844.12 Harm to client great

Where attorney operated a high-volume loan modification practice with little or no involvement and violated loan modification laws, aided and abetted the unauthorized practice of law, failed to competently perform, failed to promptly return client files and failed topromptly pay client funds and where the misconduct was aggravated by multiple acts and client harm but mitigated by no prior disciplinary record, cooperation, good character and remorse, the appropriate discipline was a two year actual suspension to continue until payment of restitution and satisfaction of standard 1.2(c)(1). *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. **[6a-c]**

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In matters involving abandonment of a single client by an attorney with no prior record of discipline, discipline imposed by Supreme Court has ranged from no actual suspension to 90 days of actual suspension. Where respondent's misconduct was serious, harmed client, and included trust account violation as well as abandonment and failure to communicate, but respondent presented impressive mitigating evidence, including services to disadvantaged clients and to minority community, and respondent expressed sincere aspiration not to be involved in disciplinary proceedings again, review department recommended actual suspension of 30 days, with stayed suspension of six months and one year of probation. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[9]**

Where respondent's misconduct occurred over a period of time, included extensive deceit practiced on clients, and caused harm and expense to clients, and where respondent failed to participate in State Bar proceedings and there was no significant mitigation, appropriate recommended discipline for abandonment and deception of three clients plus failure to cooperate with State Bar investigation was three years stayed suspension, three years probation, and one year of actual suspension. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[6]**

844.13 Coupled with other misconduct

Where respondent's most serious ethical violations resulted from his affiliation and fee-sharing with a non-lawyer entity, Review Department applied discipline standard most applicable to that misconduct, rather than standard applicable to respondent's failure to perform legal services in multiple matters. Case law in matters involving similar misconduct was inapplicable in light of respondent's compelling mitigation, including long practice without a prior record, candor and cooperation, good character, pro bono work and community service, and remorse and recognition of wrongdoing. Given that respondent's misconduct was not likely to recur, totality of circumstances warranted imposing actual suspension for 60 days and until respondent completed restitution. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320 **[8 a,b]**

Where attorney operated a high-volume loan modification practice with little or no involvement and violated loan modification laws, aided and abetted the unauthorized practice of law, failed to competently perform, failed to promptly return client files and failed topromptly pay client funds and where the misconduct was aggravated by multiple acts and client harm but mitigated by no prior disciplinary record, cooperation, good character and remorse, the appropriate discipline was a two year actual suspension to continue until payment of restitution and satisfaction of standard 1.2(c)(1). *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. **[6a-c]**

Where respondent failed to perform services, communicate with client, and refund unearned fee; no pattern of misconduct was shown; respondent did not act with dishonesty or harm client, and respondent had a prior record of one instance of discipline that was neither remote nor minimal, hearing judge's recommendation of one year actual suspension was too severe; six-month actual suspension, coupled with restitution requirement, was sufficient. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263 **[8]**

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

Respondent's misconduct, which involved the misuse of his client trust accounts, the failure to perform services competently in one matter, and extremely serious violations of his obligation of fidelity to clients (involving abandonment of a client and, in an uncharged incident, of arguing against the interest of his client in seeking to be relieved as attorney of record) warrants a discipline recommendation of 18 months stayed suspension, three years probation, and six months actual suspension and until respondent satisfactorily completes certain educational courses. *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871. **[9]**

The review department recommended a one-year stayed suspension and three-year probation, conditioned on a sixty-day actual suspension, where an attorney had recklessly failed to provide competent legal services in four matters, had failed to communicate properly with a client in one matter, had failed to forward a client's file promptly upon request in one matter, and had significantly harmed two clients, but where the attorney had practiced law without discipline for over 21 years, had recognized his misconduct, had reshaped his office procedures, and had demonstrated full candor and acknowledgment of responsibility for his misconduct before the State Bar Court. *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608. **[4]**

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

Where respondent's mishandling of trust funds was not intentional, but respondent abdicated responsibility to supervise personal injury cases and recklessly disregarded trust account obligations, thereby committing acts of moral turpitude; where respondent also repeatedly failed to provide legal services competently and did not notify a client of receipt of a settlement; and where record did not show that problems resulting from respondent's disregard of his trust account obligations had ended or that respondent had established sound office management plan, appropriate discipline included three years probation with trust account audit and law office management

requirements, three years stayed suspension, and actual suspension for eighteen months and until restitution was completed. *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. **[15]**

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

Where respondent's misconduct involved negligent law office management over an extended period of time, resulting in delay and disservice to a number of clients but no act of moral turpitude or serious misconduct in any individual matter, and respondent had since changed his office practices, a one-year actual suspension was excessive in the absence of serious aggravation. However, where no persuasive reason had been offered to go below the minimum three-month actual suspension called for by the standards, a one-year stayed suspension, two years probation, and a three-month actual suspension, with law office management requirements, constituted sufficient discipline. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[10]**

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

Where respondent had been inattentive to a client's legal needs and had wrongfully retained the client's personal property, but respondent had only committed misconduct in two matters in 23 years of practice, disbarment was not appropriate under guiding Supreme Court opinions. Instead, review department recommended five years stayed suspension, five years probation, restitution, and actual suspension for two years and until respondent proved her rehabilitation, fitness to practice, and legal ability. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[10]**

In matters involving abandonment of a single client by an attorney with no prior record of discipline, discipline imposed by Supreme Court has ranged from no actual suspension to 90 days of actual suspension. Where respondent's misconduct was serious, harmed client, and included trust account violation as well as abandonment and failure to communicate, but respondent presented impressive mitigating evidence, including services to disadvantaged clients and to minority community, and respondent expressed sincere aspiration not to be involved in disciplinary proceedings again, review department recommended actual suspension of 30 days, with stayed suspension of six months and one year of probation. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196. **[9]**

Where respondent repeatedly misused his trust account as a personal account, twice failed to return unearned advanced costs promptly on request, and failed to perform services competently in one matter, the gravest aspect of the misconduct was that relating to respondent's violation of the rule governing trust accounts and client funds, and this misconduct warranted at least a three-month actual suspension. Where such misconduct was aggravated by prior discipline for neglect of four client matters, and aggravating circumstances predominated over mitigating circumstances, it was appropriate to recommend a three-year stayed suspension, six months actual suspension, and five years of monitored probation for the protection of the public. *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. **[10]**

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

Where respondent's misconduct occurred over a period of time, included extensive deceit practiced on clients, and caused harm and expense to clients, and where respondent failed to participate in State Bar proceedings and there was no significant mitigation, appropriate recommended discipline for abandonment and deception of three clients plus failure to cooperate with State Bar investigation was three years stayed suspension, three years probation, and one year of actual suspension. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[6]**

844.14 Other aggravating factors

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

The review department recommended a one-year stayed suspension and three-year probation, conditioned on a sixty-day actual suspension, where an attorney had recklessly failed to provide competent legal services in four matters, had failed to communicate properly with a client in one matter, had failed to forward a client's file promptly upon request in one matter, and had significantly harmed two clients, but where the attorney had practiced

law without discipline for over 21 years, had recognized his misconduct, had reshaped his office procedures, and had demonstrated full candor and acknowledgment of responsibility for his misconduct before the State Bar Court. *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608. **[4]**

Where respondent's misconduct involved eight instances of abandonment or failure to provide services, three instances of failure to return unearned fees, lack of communication with three clients, failure to pay court-ordered sanctions in two cases, misappropriation of a small amount of advanced costs, improper securing of a large loan from a client, and failure to cooperate with the State Bar investigation, and respondent did not fully participate in the disciplinary proceedings, then despite respondent's lengthy unblemished record and public sector service, the appropriate discipline included a lengthy period of actual suspension and probation, and a requirement that respondent prove rehabilitation, fitness to practice, and learning and ability in the law prior to returning to active practice. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[19]**

Where respondent's misconduct in both first and second disciplinary matters involved similar lack of diligence causing delay in closing a simple probate estate, discipline in second matter ordinarily would warrant only slightly greater discipline than in first matter. However, where respondent had failed to understand or appreciate misconduct, causing concern about handling future cases, and in light of absence of mitigating factors and presence of several aggravating factors, significantly greater discipline than in first matter was appropriate in second matter, and review department recommended two-year stayed suspension, three years probation, and six months actual suspension. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366. **[17]**

Where respondent abandoned two clients; had been previously disciplined for a third abandonment occurring at roughly the same time; failed to return the unearned portion of an advance fee; failed to cooperate with the State Bar; harmed clients; and evidenced a lack of understanding of professional obligations, but had a record of pro bono work and a long discipline-free record prior to the first misconduct, two years stayed suspension, two years probation, and actual suspension for nine months were necessary to ensure the protection of the public and the maintenance of high professional standards. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. **[31]**

844.19 Other reason

The review department recommended a one-year stayed suspension and three-year probation, conditioned on a sixty-day actual suspension, where an attorney had recklessly failed to provide competent legal services in four matters, had failed to communicate properly with a client in one matter, had failed to forward a client's file promptly upon request in one matter, and had significantly harmed two clients, but where the attorney had practiced law without discipline for over 21 years, had recognized his misconduct, had reshaped his office procedures, and had demonstrated full candor and acknowledgment of responsibility for his misconduct before the State Bar Court. *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608. **[4]**

844.30 Declined to apply - reproval

844.31 Extent of misconduct small

Private reproval was appropriate discipline for isolated and relatively minor incident of failure to perform services competently which occurred early in respondent's career and was followed by respondent's candor and cooperation, improvement in office procedures, and voluntary participation in State Bar's ethics course. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175. **[2]**

844.32 Harm to client small

844.33 Other mitigating factors

Private reproval was appropriate discipline for isolated and relatively minor incident of failure to perform services competently which occurred early in respondent's career and was followed by respondent's candor and cooperation, improvement in office procedures, and voluntary participation in State Bar's ethics course. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175. **[2]**

844.39 Other reason

844.50 Declined to apply - disbarment

844.51 Coupled with other misconduct

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

844.52 Other aggravating factors

Where multiple discipline standards applied to respondent's misconduct, Review Department focused on standards calling for most severe discipline. Where respondent was found culpable of 24 counts of misconduct, involving nine different statute and rule violations, spanning four years, and involving four client matters, in two of which respondent misappropriated significant funds through gross negligence, and respondent habitually disregarded his duties as an attorney and lacked recognition and remorse, high risk that respondent would engage in additional misconduct warranted disbarment. *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308. **[9a-d]**

844.59 Other reason

844.70 Declined to apply - no discipline

844.71 No applicable misconduct found

844.79 Other reason

Where respondent successfully performed services for which he was retained, and his sole culpability was for single act of failing to inform client of respondent's entirely proper exercise of judgment not to pursue damages, and both harm to client and extent of misconduct were minimal, appropriate discipline would have been private reproval. However, in light of attorney's many years of practice without prior disciplinary record, and other extenuating circumstances, discipline would be punitive and would not further purposes of attorney discipline. Since finding of culpability precluded dismissal, admonition was an appropriate disposition. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[20]**

846 (c) Violations limited in scope or time - suspension or reproval

846.10 Applied - suspension

846.11 Extent of misconduct great

846.12 Harm to client great

846.13 Coupled with other misconduct

846.14 Other aggravating factors

846.19 Other reason

846.30 Applied - reproval

846.31 Extent of misconduct small

846.32 Harm to client small

846.33 Other mitigating factors

846.39 Other reason

846.50 Declined to apply - greater discipline

846.51 Extent of misconduct great

846.52 Harm to client great

846.53 Coupled with other misconduct

846.54 Other aggravating factors

846.59 Other reason

846.70 Declined to apply - no discipline

846.71 No applicable misconduct found

846.79 Other reason

850 Standard 2.17(a) (interim Standard 2.13(a), 1986 Standard 2.5) (Bus & Prof. Code section 6131, former prosecutor representing defendant - disbarment)

851 Applied

855 Declined to apply

855.10 No applicable misconduct found

855.20 Compelling mitigation

855.90 Other reason

860 Standard 2.17(b) (interim Standard 2.13(b), 1986 Standard 2.6) (Misdemeanor conviction under Bus. & Prof. Code Sections 6128, 6129, or 6153)

Note: The original 1986 **Standard 2.6** applied to a broad range of misconduct. Cases found under topic number 860 et seq. that were decided prior to 2014 may involve types of misconduct not covered under current **Standard 2.17(b)** or interim **Standard 2.13(b)**.

861 Applied - disbarment

861.10 Gravity of offense severe

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

Where respondent seriously abused the judicial system for a dozen years despite heavy sanctions, showed no remorse, and refused to mend his ways, no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession. Because of respondent's total lack of repentance, a lengthy suspension coupled with probation terms was inappropriate; there was a great danger that respondent would fail to comply with any probation terms imposed. Respondent's repeated acts of moral turpitude demonstrated that he was no longer worthy of membership in the bar. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. [14]

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

In determining appropriate discipline to recommend for respondent found culpable of violating statute requiring respect for courts based on respondent's violation of Supreme Court order requiring him to give notice of his prior disciplinary suspension under rule 955, review department noted that respondent's failure to give timely and complete notice of suspension, and his filing of an affidavit which was untimely and inaccurate, would have

warranted a recommendation of disbarment, absent strong mitigating circumstances, in a referral proceeding for violation of rule 955. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[15]**

861.20 Harm to victim great

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

There is no reason to require suspended attorneys to comply with the rules requiring competent representation and prohibiting prejudicial withdrawal even while they are precluded from practicing because suspended. A full range of discipline is available to protect the public, courts and profession for unauthorized practice alone. Recklessness or incompetence in the unauthorized practice of law, or a precipitous withdrawal, would cause harm to the client and would constitute an aggravating factor which justifies greater discipline than would have been appropriate if no harm had occurred. In order to minimize harm to clients, suspended attorneys should take all steps to avoid foreseeable prejudice, short of practicing law. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[8]**

861.30 Coupled with other misconduct

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

Disbarment was appropriate where respondent engaged in a pattern of misconduct which no tragic event or set of circumstances explained and where respondent was likely to continue or repeat the misconduct. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[10 a,b]**

Where respondent not only wilfully violated order requiring him to give notice of prior disciplinary suspension, but also misappropriated client funds by unilaterally taking cost advances as attorney fees; grossly neglected his trust fund responsibilities; misled a judge; failed to perform services competently; improperly threatened to bring criminal or administrative charges; practiced law while suspended; failed to participate in State Bar investigations, and breached his earlier disciplinary probation, then despite respondent's remorse, proper public protection would be realized by requiring respondent to demonstrate sustained evidence of rehabilitation in a reinstatement proceeding, with its higher standard of proof than the preponderance of the evidence. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[16]**

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

861.40 Other aggravating factors

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

Disbarment was appropriate where respondent engaged in a pattern of misconduct which no tragic event or set of circumstances explained and where respondent was likely to continue or repeat the misconduct. *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547. **[10 a,b]**

Recent Supreme Court decisions reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule 955. One of the primary reasons for the adoption of the Standards for Attorney Sanctions for Professional Misconduct was to achieve greater consistency in disciplinary sanctions for similar offenses. Any reason for deviating from the standards or established case law must be clearly stated. Accordingly, where respondent participated in the rule 955 proceeding, but did not present a convincing case of mitigation, diligence, and rectification of misconduct, and instead demonstrated a pattern of inattention to important duties, an inability to conform to professional norms, and a lack of concern for potential harm to his clients and the public, the public interest and the administration of justice would be served by respondent's disbarment. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[15]**

Practicing law while suspended has resulted in a range of discipline from suspension to disbarment, depending on the circumstances of the misconduct, including the nature of any companion charges and the existence and gravity of prior disciplinary proceedings. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[27]**

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

861.90 Other reason

In the Matter of Moriarty (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.

863 Applied - suspension

863.10 Gravity of offense not severe

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

Where respondent's misconduct involved negligent law office management over an extended period of time, resulting in delay and disservice to a number of clients but no act of moral turpitude or serious misconduct in any individual matter, and respondent had since changed his office practices, a one-year actual suspension was excessive in the absence of serious aggravation. However, where no persuasive reason had been offered to go below the minimum three-month actual suspension called for by the standards, a one-year stayed suspension, two years probation, and a three-month actual suspension, with law office management requirements, constituted sufficient discipline. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[10]**

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

Where attorney found culpable of practicing while suspended no longer posed threat of harm to public, 30-day actual suspension was nonetheless appropriate to protect integrity of profession and courts. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[15]**

863.20 Harm to victim small

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

Where attorney found culpable of practicing while suspended no longer posed threat of harm to public, 30-day actual suspension was nonetheless appropriate to protect integrity of profession and courts. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[15]**

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

863.30 Other mitigating factors

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

A respondent's substantial compliance with rule 955 is mitigating evidence which can influence the determination whether to impose discipline less than disbarment, the generally imposed sanction for a wilful violation of the rule. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[6]**

Where respondent had awakened to his responsibilities to the discipline system and participated in rule 955 proceeding, had produced evidence that he posed less risk to clients than suggested by his prior disciplinary record, gave proper notice in compliance with rule 955(a), and filed the required affidavit only 14 days late and before referral order was issued or formal disciplinary proceedings initiated, respondent's very brief failure to comply with rule 955 warranted a very modest sanction. However, even given the wide range of discipline available for a rule 955 violation, it would require an extraordinary case where no discipline of any form was merited. Considering the emphasis placed by the Supreme Court on strict compliance with rule 955, as well as considerations of attorney discipline, maintenance of the standards of the profession, and respondent's rehabilitation, some discipline was required. A 30-day suspension would serve to underline to respondent the seriousness of his duty to comply with all aspects of court orders. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[7]**

Wilful breach of a Supreme Court order is by definition deserving of strong disciplinary measures, and the sanction generally imposed for wilful violation of rule 955 is disbarment. When disbarment has not been imposed, the attorneys involved had complied with the notification requirement, orally or in writing, to all their clients, participated in the disciplinary process, and presented substantial mitigating evidence regarding the noncompliance and their present good character. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[16]**

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

Where attorney found culpable of practicing while suspended no longer posed threat of harm to public, 30-day actual suspension was nonetheless appropriate to protect integrity of profession and courts. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. **[15]**

Strong mitigating factors in matter involving capping and other misconduct dramatically lessened need for strict discipline imposed by Supreme Court in similar matters, but did not eliminate need for measurable discipline to maintain integrity of and public confidence in legal profession. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[10]**

863.90 Other reason

In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

Misconduct committed by attorney who was grossly negligent, though not dishonest, in handling a significant sum of client trust funds in one matter, and who failed to communicate adequately with a client in another matter, warranted 90 days rather than 60 days of actual suspension as condition of 3-year probation accompanying 3-year stayed suspension. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[1]**

865 Declined to apply

865.10 No applicable misconduct found

865.20 Gravity of offense not severe

A private reproval is reasonable for failing to report and to pay a judicial sanctions order given respondent's lack of prior discipline and the narrow violations involved. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[8]**

Even though an attorney's willful violation of his statutory duty to obey court orders issued in connection with his profession is stated grounds for disbarment or suspension, discipline within that range is not mandated. Thus, in light of the unusual circumstances surrounding respondent's violation of this duty, a private reproval was the appropriate level of discipline. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[4]**

865.30 Harm to victim small

865.40 Other mitigating factors

A private reproval is reasonable for failing to report and to pay a judicial sanctions order given respondent's lack of prior discipline and the narrow violations involved. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. **[8]**

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870 Standard 2.3(a) (1986 Standard 2.7) (Unconscionable Fee - 6 Months actual suspension)

871 Applied

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

Standard recommending six-month minimum actual suspension for charging unconscionable fee applies only to cases involving unconscionable fees, not illegal fees. However, where respondent received fee which, though not unconscionable, was sizably above statutory limits due to respondent's abdication of his duties to his client and the court, it was difficult to justify less than minimum suspension proposed by such standards. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[20]**

Where attorney is found culpable of intentional or dishonest withholding of funds due to client, issue on degree of discipline is whether mitigating circumstances outweigh general rule of disbarment for such offenses. Cases of misconduct involving funds improperly withheld for reasons other than dishonesty have typically resulted in varying degrees of actual suspension even when attorney had no prior discipline record. Where respondent, through gross neglect, withheld sizable amount of funds due to disabled client, had prior record of discipline for similar misconduct, and persisted in defending his collection of fees in excess of statutory limits despite adverse appellate decisions in suits against him by clients, concern for respondent's lack of insight into his misconduct and possible continued disregard for duty to clients of utmost good faith and fair dealing warranted six months actual suspension. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. **[23]**

Where respondents seriously disregarded their fiduciary duty to clients, including leaving it to non-lawyer contractors to explain complex retainer agreement without allowing clients to review it over time or discuss it with respondents, and where such retainer agreement, though purporting to be for contingent fees, contained unconscionable provision for minimum fee upon discharge, and where respondents' acts in seeking to enforce such provision damaged clients, respondents' conduct warranted greater actual suspension than 15 months recommended by hearing judge. Respondents' involvement in client solicitation alone warranted one-year actual suspension; their remaining offenses deserved an additional six months. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[14]**

875 Declined to apply

875.10 No applicable misconduct found

Standard recommending six-month minimum actual suspension for charging unconscionable fee did not apply in matter in which respondent collected fee that was illegal but not unconscionable. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[33]**

875.20 Compelling mitigation

875.90 Other reasons

877 Standard 2.3(b) (Illegal Fee - suspension or reproval)

877.10 Applied - suspension

877.20 Applied - reproval

877.50 Declined to apply

877.51 No applicable misconduct found

877.52 Compelling mitigation

877.59 Other reasons

880 Standard 2.4 (1986 Standard 2.8) (Business Transaction with Client)

881 Applied - suspension

881.10 Misconduct and/or harm not minimal

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

Where respondent not only made a bad loan to a client without complying with the rule governing business transactions with clients, but also thereafter exhibited profound misjudgment which prompted lengthy litigation against an existing client, and which harmed the administration of justice, two-month actual suspension was appropriate discipline despite respondent's initial motive to aid the client and despite his long legal career and the high personal and financial cost he had already paid for his poor judgment. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[16]**

881.20 Coupled with other misconduct

Where respondent not only made a bad loan to a client without complying with the rule governing business transactions with clients, but also thereafter exhibited profound misjudgment which prompted lengthy litigation against an existing client, and which harmed the administration of justice, two-month actual suspension was appropriate discipline despite respondent's initial motive to aid the client and despite his long legal career and the high personal and financial cost he had already paid for his poor judgment. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735. **[16]**

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

881.30 Other aggravating factors

Improper business transactions with clients have resulted in discipline ranging from reproval to suspension. Where, despite respondent's asserted intent to advance interests of beneficiaries of trust of which respondent was trustee, respondent realized significant benefits from improper loans from trust to himself, and where respondent also was grossly negligent in handling his duties as trustee, in view of the seriousness of respondent's misconduct, and comparable case law, the review department recommended three years stayed suspension, three years probation, and 60 days actual suspension. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[7]**

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

881.90 Other reason

883 Applied - reproval

883.10 Misconduct and/or harm minimal

883.20 Negligent misconduct

883.30 Other mitigating factors

883.90 Other reasons

885 Declined to apply - disbarment

885.10 Coupled with other misconduct

885.20 Other aggravating factors

885.90 Other reason

887 Declined to apply - no discipline

887.10 No applicable misconduct found

887.20 Misconduct not wilful

887.30 Misconduct and/or harm minimal

887.40 Negligent misconduct

887.50 Other mitigating factors

887.90 Other reason

890 Standard 2.14 (interim Standard 2.10, 1986 Standard 2.9) (Violation of Discipline Conditions - Actual Suspension)

891 Applied

Where respondent's default was set aside for limited purpose of conducting discipline hearing, neither amended default rules nor discipline standards provided for presumptive discipline of disbarment. Even two-year actual suspension was excessive discipline for violation of probation conditions attached to prior public reproval. Rather, appropriate discipline, under standard 2.10 and case law, was 90-day actual suspension and lengthy probation with conditions. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[8 a-c]**

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

895 Declined to apply - disbarment

895.10 Coupled with other misconduct

895.20 Other aggravating factors

895.90 Other reason

897 Declined to apply - less or no discipline

897.10 No violation found

897.20 Violation not wilful

897.30 Compelling mitigation

897.90 Other reason

Even though respondent was culpable of failing to comply with the conditions attached to his private reproval, the review department did not strictly apply the Standard for Attorney Sanctions for Professional Misconduct for such violations which calls for suspension. Instead, the review department imposed a public reproval because of respondent's extensive participation in the proceeding and because respondent acknowledged his obligation to comply with State Bar Court orders. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[5]**

Note: For **Standard 2.15** (interim **Standard 2.11**), see topic number 1552 et seq.; for **Standard 2.16** (interim **Standard 2.12**), see topic number 1554 et seq.

900 Standards 2.18, 2.19 (interim Standards 2.14, 2.15, 1986 Standard 2.10) (Violations Not Specified Above)

901 Applied - suspension

901.05 Violation of Business and Professions Code

Where attorney operated a high-volume loan modification practice with little or no involvement and violated loan modification laws, aided and abetted the unauthorized practice of law, failed to competently perform, failed to promptly return client files and failed topromptly pay client funds and where the misconduct was aggravated

by multiple acts and client harm but mitigated by no prior disciplinary record, cooperation, good character and remorse, the appropriate discipline was a two year actual suspension to continue until payment of restitution and satisfaction of standard 1.2(c)(1). *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. **[6a-c]**

Review department recommended attorney who harmed several vulnerable clients over a six-month period and who had knowledge of plain language of statute and State Bar ethics alert prohibiting collection of certain fees in mortgage loan modification matters should receive discipline including a six-month actual suspension and until he makes restitution for all the fees he illegally collected. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 **[13]**

901.10 Gravity of offense severe

Where attorney operated a high-volume loan modification practice with little or no involvement and violated loan modification laws, aided and abetted the unauthorized practice of law, failed to competently perform, failed to promptly return client files and failed topromptly pay client funds and where the misconduct was aggravated by multiple acts and client harm but mitigated by no prior disciplinary record, cooperation, good character and remorse, the appropriate discipline was a two year actual suspension to continue until payment of restitution and satisfaction of standard 1.2(c)(1). *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. **[6a-c]**

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In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

Where respondent almost completely abdicated to a non-lawyer his professional duties with respect to a personal injury practice; failed to take prompt, realistic action to stop the non-lawyer's capping practices, and had not presented clear evidence regarding rehabilitation and necessary changes in his practice, then despite mitigating factors including respondent's cooperation with law enforcement and State Bar and satisfaction of medical liens out of his own funds, appropriate discipline for protection of public was three-year stayed suspension with three years probation and actual suspension for two years and until proof of rehabilitation, fitness to practice, and learning in the general law. *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. **[7]**

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

901.20 Harm to victim great

Where attorney operated a high-volume loan modification practice with little or no involvement and violated loan modification laws, aided and abetted the unauthorized practice of law, failed to competently perform, failed to promptly return client files and failed topromptly pay client funds and where the misconduct was aggravated by multiple acts and client harm but mitigated by no prior disciplinary record, cooperation, good character and remorse, the appropriate discipline was a two year actual suspension to continue until payment of restitution and satisfaction of standard 1.2(c)(1). *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. **[6a-c]**

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In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

901.30 Coupled with other misconduct

Where respondent failed to perform services, communicate with client, and refund unearned fee; no pattern of misconduct was shown; respondent did not act with dishonesty or harm client, and respondent had a prior record of one instance of discipline that was neither remote nor minimal, hearing judge's recommendation of one year actual suspension was too severe; six-month actual suspension, coupled with restitution requirement, was sufficient. *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263 **[8]**

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

Where respondent's misconduct involved negligent law office management over an extended period of time, resulting in delay and disservice to a number of clients but no act of moral turpitude or serious misconduct in any individual matter, and respondent had since changed his office practices, a one-year actual suspension was excessive in the absence of serious aggravation. However, where no persuasive reason had been offered to go below the minimum three-month actual suspension called for by the standards, a one-year stayed suspension, two years probation, and a three-month actual suspension, with law office management requirements, constituted sufficient discipline. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[10]**

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

901.40 Other aggravating factors

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

901.90 Other reason

Where respondent's most serious ethical violations resulted from his affiliation and fee-sharing with a non-lawyer entity, Review Department applied discipline standard most applicable to that misconduct, rather than standard applicable to respondent's failure to perform legal services in multiple matters. Case law in matters involving similar misconduct was inapplicable in light of respondent's compelling mitigation, including long practice without a prior record, candor and cooperation, good character, pro bono work and community service, and remorse and recognition of wrongdoing. Given that respondent's misconduct was not likely to recur, totality of circumstances warranted imposing actual suspension for 60 days and until respondent completed restitution. *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320 **[8 a,b]**

For a single misdemeanor crime not involving moral turpitude and unrelated to practice of law, a short actual suspension is appropriate. Where attorney committed misdemeanor violation of Penal Code section 273a, subdivision (b) (child endangerment) and where the misconduct was aggravated by two prior records of discipline but mitigated by cooperation, remorse and pro bono service, the appropriate discipline recommendation was a 120-day actual suspension. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[12]**

903 Applied - reproval

903.05 Violation of Rules of Professional Conduct only

Standards for attorney discipline should be followed whenever possible. Where applicable standard provided for suspension or reproval, hearing judge erred in resolving case by issuing admonition. Despite extensive mitigation, attorney judicial candidate's recklessly false allegation implicating opponent in bribery and fraud warranted public discipline, because it threatened to erode public confidence in the judiciary. Accordingly, public reproval was appropriate discipline. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[6]**

903.10 Gravity of offense not severe

903.20 Harm to victim small

903.30 Other mitigating factors

Standards for attorney discipline should be followed whenever possible. Where applicable standard provided for suspension or reproval, hearing judge erred in resolving case by issuing admonition. Despite extensive mitigation, attorney judicial candidate's recklessly false allegation implicating opponent in bribery and fraud warranted public discipline, because it threatened to erode public confidence in the judiciary. Accordingly, public reproval was appropriate discipline. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. [6]

903.90 Other reason

905 Applied - disbarment

905.05 Violation of Business and Professions Code

905.10 Coupled with other misconduct

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

905.20 Other aggravating factors

905.90 Other reason

907 Declined to apply - no discipline

907.10 No applicable misconduct found

907.20 Rule violation not wilful

907.30 Other mitigating factors

907.90 Other reason

910 Standard 2.10 (interim Standard 2.6) (Unauthorized Practice of Law)

Note: Prior to 2014, unauthorized practice of law was included in the misconduct covered by 1986 **Standard 2.6**. Relevant cases may be found under topic number 860 et seq.

911 (a) Practice while on disciplinary suspension or involuntary inactive enrollment under section 6007(b)-(e)—Disbarment or actual suspension

911.10 Applied—disbarment

911.13 Applied—actual suspension

911.15 Declined to apply—lesser or no discipline

913 (b) Practice while inactive or on suspension for non-disciplinary reasons—Suspension or reproval

913.10 Applied—suspension

913.11 Applied—reproval

913.15 Declined to apply—disbarment

913.17 Declined to apply—no discipline

915 Applied to other forms of unauthorized practice (e.g., in another jurisdiction)

915.10 Disbarment

Where respondent began engaging in unauthorized practice of federal trademark law immediately after his prior California suspension ended, and prior discipline had involved serious offense justifying three-year actual suspension, disciplinary standard providing for more severe sanctions in subsequent disciplinary matters made disbarment recommendation appropriate for present offense. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418 **[5]**

Where respondent, an experienced patent and trademark practitioner prior to his earlier disciplinary suspension, resumed representing trademark clients after his reinstatement to practice in California, without carefully determining his eligibility to do so under federal regulations, respondent exhibited a cavalier attitude towards applicable regulations. This gave rise to concern about protection of the public from future misconduct, where respondent's prior misconduct also involved placing self-interest ahead of client interest or respect for and adherence to law, and respondent still did not seem to recognize error and seriousness of his behavior. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418 **[4 a,b]**

915.13 Suspension

915.15 Lesser or no discipline

920 Standard 2.12 (interim Standard 2.8) (Violation of Duties in Bus. & Prof. Code § 6068)

Note: Prior to 2014, violation of the duties listed in section 6068 was included in the misconduct covered by 1986 **Standard 2.6**. Relevant cases may be found under topic number 860 et seq.

921 Standard 2.12(a) (interim Standard 2.8(a)) (violation of court order, oath, or § 6068(a) through (h) – disbarment or actual suspension)

921.10 Applied – disbarment

921.11 Violation of court order

921.12 Violation of attorney's oath

921.13 Violation of Bus. & Prof. Code § 6068(a) through (h)

921.14 Coupled with other misconduct

921.15 Other aggravating factors

921.19 Other reason

921.20 Applied – actual suspension

921.21 Violation of court order

921.22 Violation of attorney's oath

921.23 Violation of Bus. & Prof. Code § 6068(a) through (h)

921.24 Mitigating factors

921.29 Other reason

921.50 Declined to apply – lesser or no discipline

921.51 No applicable misconduct found

934.41 Aggravating factors

934.42 Coupled with other misconduct

934.49 Other reason

934.50 Declined to apply – no discipline

934.51 No applicable misconduct found

934.59 Other reason

1000 Discipline Imposed in Disciplinary Matters Generally

1010 Disbarment

In the Matter of Wittenberg (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418

In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391.

In the Matter of Kinney (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360.

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308

In the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273

In the Matter of Lenard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Fahy (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 141

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

Where respondent failed to obey a court order to comply with rule 9.20 by untimely filing an affidavit of compliance, where there was minimal mitigation for good character, community service, and cooperation with the State Bar, and where there was aggravation due to three prior incidents of discipline, the appropriate disciplinary recommendation was disbarment. *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131 [6]

Where respondent disobeyed court orders, failed to report judicial sanctions, engaged in the unauthorized practice of law, failed to comply with probation conditions, and committed multiple acts of wrongdoing, surrounded by bad faith, dishonesty, and concealment, where respondent demonstrated indifference toward rectification or acknowledgment of wrongdoing and had four prior incidents of discipline involving similar misconduct, and where there was no mitigation, the appropriate disciplinary recommendation was disbarment. *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966. **[5]**

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829.

Even though many years have passed since respondent's first discipline case, it was apparent that the discipline that was administered to him over the course of the many years, which included the ultimate sanction of disbarment, did not succeed in imparting to him an understanding of the duties of an attorney to his clients and to the public. Six years after being reinstated to the practice of law following his disbarment, respondent again engaged in serious wrongdoing that caused considerable harm to his clients. He repeatedly failed to file necessary documents for his clients, failed to appear at numerous scheduled hearings, failed to comply with several court orders, failed to return his clients' files and money, avoided his clients' attempts to communicate with him, and then, when he did speak to his clients, misled them as to the status of their affairs. Further, respondent failed to cooperate with the State Bar and failed to participate in the State Bar Court disciplinary proceedings. Under the circumstances, the risk of respondent repeating his misconduct would be considerable if he was merely, once again, suspended from the practice of law. The purpose of a disciplinary proceeding is not punitive but to inquire into the fitness of an attorney to continue in that capacity for the protection of the public, the courts and the legal

profession. The combined record of respondent's past and present misconduct amply demonstrated his unfitness to continue to practice. *In the Matter of Tenner* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688.**[2 a-d]**

Respondent was culpable of a total of 16 charged counts of misconduct in nine client matters and a trust account matter, which included 9 counts of failing to perform legal services competently, 1 count of failing to return a client's file promptly upon request at the termination of employment, 2 counts of failing to return unearned fees promptly at the termination of employment, 2 counts of failing to respond promptly to reasonable status inquiries from clients or failing to notify clients of significant developments in their cases, 1 count of commingling, and 1 count of committing an act of moral turpitude by issuing checks on an account which respondent knew or should have known had insufficient funds to cover them. Moreover, respondent had been previously disciplined once for the same type of misconduct; yet it appeared that he did not learn from his prior discipline. In addition, respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct and significantly harmed clients. These violations taken together show a clear disrespect for respondent's clients. In view of all of the circumstances of this case, the review department concluded that the public and the courts deserve the greater protection of a formal reinstatement proceeding before respondent is again entitled to practice law in this state.*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.**[6 a-e]**

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

In the Matter of Jenkins (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.157.

This case presents serious acts of dishonesty which served to defraud two sellers of valuable real estate. Respondent's many ethical violations featured harm to victims and the honest administration of justice. Offenses concerning the administration of justice have been considered as very serious by the Supreme Court. Disbarment is not reserved just for attorneys with prior disciplinary records. A most significant factor is respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing. This factor makes disbarment appropriate despite the fact that respondent presented some mitigating evidence. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.70.**[5]**

Respondent is culpable of 25 separate ethical violations of either the Rules of Professional Conduct or the State Bar Act, involving 8 separate clients. Included in those violations are four acts involving moral turpitude. In addition, there are multiple acts of serious aggravation, including acts that seriously harmed the administration of justice, the public and the profession. The total absence of any recognition by respondent of her misconduct convinced the review department that there was little hope that respondent would conform her method of practicing law to the professional standards of this state. The magnitude of respondent's misconduct and her lack of recognition of that misconduct combined to require that the review department recommend that respondent be disbarred to protect the courts, the public and the profession of this state. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.**[17 a-e]**

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

Respondent's wide range of misconduct spanned over six-year period and involved incompetent actions in dealing with medical liens; mismanagement of client trust account; concealment from and overreaching of disabled client by unilaterally taking $9,000 in attorney's fees; repeated disobedience of court orders; using means inconsistent with truth in seeking to maintain civil action and wrongfully attacking opposing counsel; and falsification of six proofs of service in civil action. The gravamen of this case is not only respondent's wide-ranging misconduct in six matters over a lengthy period of time without any substantial mitigation, but is importantly found in his offenses to the honest administration of justice. Past decisions involving even one such serious matter resulted in severe discipline, if necessary, for public protection. Respondent's misconduct unaccompanied by any substantial mitigation, but significant aggravation warranted disbarment. *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.9.**[4 a-e]**

In the Matter of Priamos (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.

In the Matter of Hindin (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657.

In the Matter of Berg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 709.

In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547.

In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511

In the Matter of Acuna (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 495.

In the Matter of Brimberry (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Heiner (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96.

In the Matter of Collins (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.

In the Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563.

In the Matter of Kizer (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87.

1013 Stayed Suspension

1013.01 One month or less

1013.02 Two months (incl. anything between 1 and 3 mos.)

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

1013.03 Three months (incl. anything between 3 and 6 mos.)

1013.04 Six months (incl. anything between 6 and 9 mos.)

Where respondent failed to perform legal services with competence, failed to obey Supreme Court orders, and failed to timely report judicial sanctions imposed by the Supreme Court, where there was mitigation for 17 years of practice without prior discipline, exemplary post–misconduct practice, good character, and cooperation with the State Bar, and where there was aggravation due to multiple acts of wrongdoing and significant harm to the administration of justice, the appropriate disciplinary recommendation was a six–month stayed suspension and one year of probation on conditions. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 **[7]**

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

1013.05 Nine months (incl. anything between 9 mos. & 1 year)

1013.06 One year (incl. anything between 1 yr. & 18 mos.)

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

In the Matter of Sullivan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608. **[4]**

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

1013.07 18 months (incl. anything between 18 mos. & 2 yrs.)

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

1013.08 Two years (incl. anything between 2 & 3 yrs.)

In the Matter of Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

Respondent's failure to have gained insight into his misconduct was troubling. The discipline imposed for his misconduct of filing and pursuing frivolous actions in bad faith and for a corrupt motive must reflect this lack of insight as well as the harm to the victims and assurance to the public and bar that such conduct will not be tolerated. The discipline recommended, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years on conditions, including 60 days' actual suspension, appropriately balances these values and the record as a whole.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[6]**

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Layton (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366.

In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

1013.09 Three years (incl. anything between 3 & 4 yrs.)

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

1013.10 Four years (incl. anything between 4 & 5 yrs.)

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

1013.11 Five years or more

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

Review department recommended five years' stayed suspension and three years' actual suspension where, in a single client matter, (1) respondent committed multiple violations of Rules of Professional Conduct, rule 3-300; (2) respondent engaged in acts involving moral turpitude by concealing important information about a business transaction from his client and by overreaching his client; (3) respondent failed to report a civil fraud judgment to the State Bar; and (4) there were several factors in aggravation and two factors in mitigation, including respondent's long years of practice without prior discipline.*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.**[3 a-g]**

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Elliott (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

1015 Actual Suspension

1015.01 One month or less

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

1015.02 Two months (incl. anything between 1 and 3 mos.)

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

Where respondent made appearances without authority, committed acts of moral turpitude, failed to communicate with his clients and failed to return their file upon request, where there was aggravation including multiple acts of misconduct, bad faith, significant client harm, and indifference towards atonement or rectification, and where there was mitigation for no prior record in over 17 years of practice, the appropriate discipline recommendation was two years' stayed suspension and two years' probation on conditions, which included 75 days' actual suspension and compliance with rule 955. *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844. **[10]**

Where respondents committed acts of moral turpitude by knowingly making repeated misrepresentations to the Superior Court, where there was extensive aggravation including uncharged misconduct, lack of candor, harm to the administration of justice, multiple acts of misconduct demonstrating a pattern of disrespect for professional norms, indifference towards atonement or rectification, with mitigation for strong good character testimony, extensive community service, and no prior record for respondent who was supervising counsel, and where respondent who was inexperienced associate had only practiced law in California for less than three years prior to misconduct and was not culpable of overreaching, appropriate discipline recommendation was one year stayed suspension, two years' probation on conditions, which included 90 days actual suspension for respondent who was partner in charge and 60 days actual suspension for respondent who was associate. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[12 a–d]**

Respondent's failure to have gained insight into his misconduct was troubling. The discipline imposed for his misconduct of filing and pursuing frivolous actions in bad faith and for a corrupt motive must reflect this lack of insight as well as the harm to the victims and assurance to the public and bar that such conduct will not be tolerated. The discipline recommended, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years on conditions, including 60 days' actual suspension, appropriately balances these values and the record as a whole. *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. **[6]**

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Sullivan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

1015.03 Three months (incl. anything between 3 and 6 mos.)

In the Matter of Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348

A 90-day period of actual suspension for probation violations is appropriate discipline under the discipline standard and the case law. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[3]**

Where attorney committed acts involving moral turpitude, threatened to report individuals to various agencies to gain advantage in a civil dispute, showed disrespect to a judge, and failed to maintain a current address with the State Bar, where the misconduct was aggravated by multiple acts, significant harm to the administration of justice, and lack of insight but mitigated by an absence of priors over 24 years of practice, the appropriate discipline recommendation was 90 days actual suspension. *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 **[8]**

Where attorney committed an act involving moral turpitude by filing a false verification, and failed to maintain a current address with the State Bar, where the misconduct was aggravated by serious prior misconduct and subsequent dishonesty and concealment but mitigated by limited character evidence and cooperation, the appropriate discipline recommendation was 150 days actual suspension under standard 1.7(a). *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151 **[7]**

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

Where respondent committed acts involving moral turpitude and harassed a juror in violation of rule 5–320(D), where there was mitigation for discipline–free practice, and where there was aggravation due to multiple acts of wrongdoing, significant harm to the administration of justice, and a demonstrated indifference toward rectification, the appropriate disciplinary recommendation was one year stayed suspension, 18 months of probation on conditions which included three months actual suspension. *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 **[7]**

Where respondent charged and collected unconscionable fees and improperly entered into a business transaction with a client, where there was aggravation including significant client harm and multiple acts of misconduct, and mitigation for community service and entering into a pretrial stipulation, appropriate discipline recommendation was one year stayed suspension and two years' probation on conditions which included 90 days' actual suspension. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. **[6]**

Where respondent committed multiple acts involving moral turpitude and breached an implied fiduciary duty in violation of section 6068(a), where there was mitigation for good character and entering into a comprehensive stipulation of facts, and where there was aggravation due to multiple acts of wrongdoing, significant harm to the administration of justice, and a failure to recognize the serious consequences of his behavior, the appropriate disciplinary recommendation was one year stayed suspension, two years of probation on conditions which included four months actual suspension. *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798. **[11]**

Where respondents committed acts of moral turpitude by knowingly making repeated misrepresentations to the Superior Court, where there was extensive aggravation including uncharged misconduct, lack of candor, harm to the administration of justice, multiple acts of misconduct demonstrating a pattern of disrespect for professional norms, indifference towards atonement or rectification, with mitigation for strong good character testimony, extensive community service, and no prior record for respondent who was supervising counsel, and where respondent who was inexperienced associate had only practiced law in California for less than three years prior to misconduct and was not culpable of overreaching, appropriate discipline recommendation was one year stayed suspension, two years' probation on conditions, which included 90 days actual suspension for respondent who was partner in charge and 60 days actual suspension for respondent who was associate. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774. **[12 a–d]**

In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

1015.04 Six months (incl. anything between 6 and 9 mos.)

In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

Where respondent engaged in the unauthorized practice of law in another jurisdiction, charged and collected illegal and unconscionable fees, failed to return unearned fees, failed to maintain funds in trust, and committed multiple acts involving moral turpitude, where there was mitigation for extreme emotional distress, good character, and entering into a stipulation of material facts, and where there was aggravation due to one prior record of discipline, multiple acts of wrongdoing, significant harm to clients, the public, and the administration of justice, and indifference towards the consequences of her misconduct, the appropriate disciplinary recommendation was a two–year stayed suspension and two years of probation on conditions which included six months' actual suspension and until restitution is paid. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. **[12]**

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Layton (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366.

In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

1015.05 Nine months (incl. anything between 9 mos. & 1 year)

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

1015.06 One year (incl. anything between 1 yr. & 18 mos.)

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

1015.07 18 months (incl. anything between 18 mos. & 2 yrs.)

Where respondent failed to obey a court order, failed to communicate with and failed to properly withdraw from employment in more than 300 client matters, where there was mitigation for 10 years of practice without prior discipline and delay in initiating the disciplinary proceeding, and where there was aggravation due to multiple acts of wrongdoing, significant harm to the administration of justice, and an absence of remorse, the appropriate disciplinary recommendation was a three–year stayed suspension, three years of probation on conditions which included eighteen months actual suspension and until respondent complies with standard 1.4(c)(ii). *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. **[14]**

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

1015.08 Two years (incl. anything between 2 & 3 yrs.)

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296 **[6]**

Where respondent abandoned four clients and failed to competently perform, failed to communicate, failed to provide accountings, failed to refund unearned fees, failed to return client files, and improperly agreed to withdraw a State Bar complaint, and where there was no mitigation but aggravation due to a prior record of discipline, multiple acts of wrongdoing, significant client harm, a failure to atone for the consequences of his behavior, and additional uncharged misconduct involving an act of moral turpitude due to overreaching, the appropriate disciplinary recommendation was a five–year stayed suspension, five years of probation on conditions which included two years of actual suspension and until compliance with Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii). *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. **[9]**

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Elliott (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

1015.09 Three years (incl. anything between 3 & 4 yrs.)

In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

Review department recommended five years' stayed suspension and three years' actual suspension where, in a single client matter, (1) respondent committed multiple violations of Rules of Professional Conduct, rule 3-300; (2) respondent engaged in acts involving moral turpitude by concealing important information about a business transaction from his client and by overreaching his client; (3) respondent failed to report a civil fraud judgment to the State Bar; and (4) there were several factors in aggravation and two factors in mitigation, including respondent's long years of practice without prior discipline.*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.**[3 a-g]**

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

1015.10 Four years (incl. anything between 4 & 5 yrs.)

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

1015.11 Five years or more

1017 Probation

1017.01 One month or less

1017.02 Two months (incl. anything between 1 and 3 mos.)

1017.03 Three months (incl. anything between 3 and 6 mos.)

1017.04 Six months (incl. anything between 6 and 9 mos.)

1017.05 Nine months (incl. anything between 9 mos. & 1 year)

1017.06 One year (incl. anything between 1 yr. & 18 mos.)

Where respondent failed to perform legal services with competence, failed to obey Supreme Court orders, and failed to timely report judicial sanctions imposed by the Supreme Court, where there was mitigation for 17 years

of practice without prior discipline, exemplary post–misconduct practice, good character, and cooperation with the State Bar, and where there was aggravation due to multiple acts of wrongdoing and significant harm to the administration of justice, the appropriate disciplinary recommendation was a six–month stayed suspension and one year of probation on conditions. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 **[7]**

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

1017.07 18 months (incl. anything between 18 mos. & 2 yrs.)

1017.08 Two years (incl. anything between 2 & 3 yrs.)

In the Matter of Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Regan (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844.

In the Matter of Maloney and Virsik (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.

Respondent's failure to have gained insight into his misconduct was troubling. The discipline imposed for his misconduct of filing and pursuing frivolous actions in bad faith and for a corrupt motive must reflect this lack of insight as well as the harm to the victims and assurance to the public and bar that such conduct will not be tolerated. The discipline recommended, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years on conditions, including 60 days' actual suspension, appropriately balances these values and the record as a whole.*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.**[6]**

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 585.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

1017.09 Three years (incl. anything between 3 & 4 yrs.)

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Casey (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

In the Matter of Sullivan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Layton (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

1017.10 Four years (incl. anything between 4 & 5 yrs.)

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

1017.11 Five years or more

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Elliott (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

1020 Probation Conditions (other than basic) (includes conditions attached to discipline orders even when no probation imposed)

In view of the serious nature of respondent's misdemeanor conviction of being an accessory after the fact in connection with the submission of false information to a federally insured bank for the purpose of inducing it to loan money to respondent for the purchase of a farm (18 U.S.C. §1014), review department added a quarterly reporting probation condition to its discipline recommendation. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[6]**

1021 Restitution

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308.

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Copren (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364.

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

It is inappropriate to use restitution as a means of awarding tort damages for harassment and intentional infliction of emotional distress. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[8]**

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

1022 Probation Monitor

1022.10 Appointed

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

1022.50 Not appointed

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

1023 Testing and/or Treatment

1023.10 Alcohol

In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108.

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

1023.20 Non-prescription drugs

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108.

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

1023.30 Prescription drugs

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

1023.40 Psychological treatment

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403

It is proper to recommend a probation condition requiring appropriate mental health treatment even though no expert testimony was proffered that respondent suffered from a mental or other problem requiring psychiatric treatment where the record contains other clear evidence that respondent suffers from a mental or other problem requiring medical treatment. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[9]**

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

1023.90 Other

1024 Ethics exam/ethics school

In the Matter of Wenzel (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380.

In the Matter of Guillory (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402.

In the Matter of Parish (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370

In the Matter of Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Jensen (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283

In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

In the Matter of Taylor (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of Scott (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446.

In the Matter of Blum (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.166.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

In the Matter of Sawyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765.

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

In the Matter of Sullivan (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 608.

In the Matter of Elliott (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541.

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420.

In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211.

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Layton (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

In the Matter of Lybbert (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297.

In the Matter of Anderson (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.

In the Matter of Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83.

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of Ward (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737.

In the Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716.

In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

In the Matter of Katz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Mitchell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

In the Matter of Buckley (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

In the Matter of Peterson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

1025 Law office management

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Kennon (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

1026 Trust account auditing

In the Matter of Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Cacioppo (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

1027 Limitations on practice

1029 Other special probation conditions

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Petilla (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

In the Matter of Doran (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.

In view of the serious nature of respondent's misdemeanor conviction of being an accessory after the fact in connection with the submission of false information to a federally insured bank for the purpose of inducing it to loan money to respondent for the purchase of a farm (18 U.S.C. §1014), review department added a quarterly reporting probation condition to its discipline recommendation. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[6]**

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752.

1030 Standard 1.2(c)(i) (1986 Standard 1.4(c)(ii)) Rehabilitation Requirement

In the Matter of Smithwick (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320

In the Matter of Huang (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296

In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 2

In the Matter of Lawrence (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239

In the Matter of Field (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171

In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In the Matter of Kittrell (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615.

In the Matter of Davis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.

In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483.

In the Matter of McCarthy (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 364

In the Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

In the Matter of Lantz (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126.

In the Matter of Lais (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112.

In the Matter of Stansbury (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103.

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

In the Matter of Kroff (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838.

In the Matter of Elliott (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 541.

In the Matter of Rubens (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

In the Matter of Harris (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Hertz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In the Matter of Burckhardt (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

In the Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.

In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

In the Matter of Trillo (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59.

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

1040 Public Reproval

1041 With conditions [for conditions see topic numbers 1020 et seq.]

In the Matter of Parish (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370

In the Matter of Lindmark (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668.

In the Matter of Pasyanos (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.

1045 Without conditions

In the Matter of Yee (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330

In the Matter of Posthuma (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.

1050 Private Reproval

1051 With conditions [for conditions see topic numbers 1020 et seq.]

In the Matter of Respondent Z (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.85.

In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.

In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335.

In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175.

In the Matter of Respondent E (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716.

1055 Without conditions

In the Matter of Respondent X (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592.

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

1090 Miscellaneous Substantive Issues re Discipline

Disciplinary probation furthers the fundamental purposes of attorney discipline only when attorney probationers are effectively monitored to ensure that they do not engage in further misconduct and are conforming their conduct to the ethical strictures of the profession. Historically, attorney probationers have been monitored to ensure their compliance with these requirements through appointed voluntary probation monitors or through court-ordered self-reporting by the attorney or both. Even though probation monitors have played an important role in monitoring attorneys on probation and were, at one time, appointed in most instances, the use of a probation monitor may not be necessary where only routine, simple, periodic reporting conditions are recommended or are coupled with a rule 955 requirement and/or passage of the Professional Responsibility Examination. Appointment of a probation monitor was not warranted in this case in light of the simple probation conditions recommended and the found misconduct, mitigation, and aggravation. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[3]**

Quarterly probation reporting is important because it requires attorney probationers, four times a year, to reflect upon their prior misconduct and to review their current conduct to ensure that it complies with all of the conditions of their probation. However, quarterly probation reporting is not mandated in all cases in which probation is recommended. When the circumstances in a case establish that quarterly probation reporting is not necessary, the circumstances should be set forth in the court's decision. In this case involving attorney-client

misconduct with a recent priorreproval, however, the appropriateness of a quarterly-reporting condition of probation was clear. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[4]**

Even though the review department's duty to independently determine the appropriate level of discipline precludes it from giving excess weight to the State Bar's discipline recommendation, the review department gave it some consideration. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[5]**

1091 Proportionality with Other Cases

Where attorney committed multiple acts involving moral turpitude, failed to obey the laws or court orders and where the misconduct was aggravated by multiple acts and harm to the administration of justice but mitigated by character evidence, cooperation, and pro bono service, the appropriate discipline recommendation was a 4-year actual suspension. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 **[12]**

Where respondent misappropriated $50,000 of $79,875.89 insurance settlement funds he held in his trust account for his corporate client by disbursing $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors; where respondent violated his fiduciary duty to remaining three directors by disbursing the $50,000 to president without their knowledge or consent; where respondent knowingly and intentionally misappropriated remaining $29,875.89 of settlement funds for his own use and benefit by withdrawing them from his trust account as attorney's fees without the knowledge and consent of remaining three directors; where respondent violated rule of professional conduct requiring disputed funds to be held in trust by withdrawing $29,875.89 in fees from his trust account when his right to collect fees was disputed; where respondent repeatedly refused to account for proceeds of insurance settlement check in accordance with requests of chairman of corporations board of directors; where there was extensive aggravation, including concealment, overreaching, and failure to make restitution, with mitigation for strong good character testimony, extensive community service, no prior record of discipline, and lack of additional misconduct in more than five years; and where misconduct involved only a single client matter; and even though standard for attorney sanctions for professional misconduct for willful misappropriation called for and Supreme Court has repeatedly held that usual discipline for willfully misappropriation of client funds is disbarment, appropriate discipline recommendation was not disbarment, but four years' stayed suspension, four years' probation on conditions, which included two years' actual suspension continuing until respondent pays restitution of $29,875.89 with interest. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[9 a-d]**

In the Matter of Gillis (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 387

In the Matter of Freydl (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349.

In the Matter of Phillips (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315.

Failure to recommend period of stayed suspension merely because attorney failed to appear in disciplinary proceeding results in marked reduction in public protection and in defaulting attorney receiving less discipline than attorneys who appear and participate in disciplinary process. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[6]**

In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

The review department found respondent culpable of serious misconduct which burdened parties to litigation and the trial and appellate courts to adjudicate two matters. This included a patently frivolous appeal, dishonesty to law enforcement officers and misleading a court. Of special concern was that respondent's background as a certified family law specialist for much of his practice and his activity in bar work failed to serve him to avoid the misconduct in this record. Respondent's misdeeds cannot be ascribed to inexperience or simple zealousness. Moreover, there is nothing in the record which could ascribe this misconduct to any health or similar, singular condition. Respondent's lack of insight and failure to appreciate the wrongfulness of his misconduct does not bode well for respondent avoiding similar misconduct in the future. Anytime respondent lost on the merits of an issue, he would not accept the court's adverse judicial determination and would attempt to blame the ruling on the court's lack of understanding of the issues. Balancing all relevant factors and seeking to protect the public, courts and

the legal profession, the review department increased the actual suspension from one year to two years. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[5 a-d]**

Respondent was found culpable of ten disciplinable acts of moral turpitude (seven acts of misrepresentation, one act of improperly retaining for his own benefit funds out of a medical provider's lien reduction, and one act of attempting to obtain a greater fee than that to which he was entitled by failing to disclose to his client costs he recovered), eight instances of improper solicitation of clients, and two instances of failing to properly account to his client. There were substantial aggravating factors, including a prior record of discipline, but no mitigating circumstances. The review department recommended that respondent be suspended from the practice of law for a period of five years, that execution be stayed, and that respondent be placed on probation for a period of five years on conditions including three years actual suspension and until respondent pays restitution and until he provides proof of his rehabilitation, fitness to practice, and learning and ability in the general law. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[9]**

In the Matter of Sawyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[6]**

Even though none of respondent's individual acts of misconduct involved dishonesty, concealment, or mishandling of client funds and even though respondent had no prior record of discipline over a lengthy practice, respondent's disbarment was warranted as consistent with past case law and the standards for attorney discipline for respondent's panoply of protracted failure to communicate with clients, incompetent practice, and failure to supervise subordinate staff affecting many different clients over a 10-year period. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. **[11]**

Cases involving a magnitude and wide range of misconduct have typically resulted in disbarment, notwithstanding the attorney's lack of a prior record of discipline or even with some mitigation present. Where respondent's misconduct was quite serious and wide-ranging, and, very importantly, commenced only two years after respondent's admission and continued for over seven years thereafter, the review department concluded that the public was entitled to the protection of a formal reinstatement proceeding to ensure respondent's fitness to practice before she is again allowed to practice law. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[10]**

Improper business transactions with clients have resulted in discipline ranging from reproval to suspension. Where, despite respondent's asserted intent to advance interests of beneficiaries of trust of which respondent was trustee, respondent realized significant benefits from improper loans from trust to himself, and where respondent also was grossly negligent in handling his duties as trustee, in view of the seriousness of respondent's misconduct, and comparable case law, the review department recommended three years stayed suspension, three years probation, and 60 days actual suspension. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[7]**

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

Failing to appear as ordered at settlement conference, and intentionally misleading settlement judge regarding client's death, was serious misconduct which threatened public and undermined its confidence in legal profession. However, considering comparable case law, and in view of respondent's many years of practice prior to misconduct, and lack of proven aggravating factors, appropriate discipline was one-year stayed suspension and two years probation with no actual suspension, rather than two-year stayed suspension with two years probation and thirty days actual suspension. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[15]**

In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In the Matter of Riley (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.

In light of all relevant evidence and comparable case law, as well as heightened concern regarding enforcement of child support orders, respondent's very serious misconduct of advising and aiding a client in avoiding a child support order, which misconduct was substantially aggravated by respondent's overreaching in arranging real

property transactions between the client and respondent's father, warranted increasing recommended discipline to one-year actual suspension coupled with three years of probation, even though review department found respondent culpable of less misconduct than did hearing judge. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[12]**

The Legislature itself has recognized that the inherent authority of the Supreme Court controls the outcome in disciplinary proceedings. It is therefore incumbent upon the review department not only to review the statutory criteria for summary disbarment, but also to review Supreme Court precedent to assure that application of statutory summary disbarment does not conflict with Supreme Court standards for disbarment. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[4]**

Where respondent with no prior record of discipline failed to communicate reasonably with two clients and failed to relinquish their files promptly, causing harm to clients, six-month stayed suspension, with no actual suspension, was well within appropriate range of discipline as indicated by comparable cases. *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716. **[5]**

In light of comparable case law and absence of mitigating circumstances, public reproval was appropriate discipline for respondent who failed to refund promptly an unearned legal fee and failed to take reasonable steps to avoid prejudice to clients prior to withdrawal from representation. Hearing judge's recommended discipline of stayed suspension was therefore modified. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[13]**

Where respondent engaged in serious improper communications with a represented party, exposing the party to serious risks of harm, some of which occurred, and committed other stipulated wrongdoing, recommended discipline of four years probation conditioned on thirty days actual suspension was inconsistent with decisional law and insufficient. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[10]**

In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

Where respondent was culpable of failing to set aside $942 of his legal fee in a trust account pending resolution of a dispute with his client; aggravating factor of bad faith arose from respondent's intent to serve his clients rather than from any venal purpose; aggravating factors were outweighed by mitigating factors including long period of unblemished practice since misconduct, indicating unlikelihood of further misconduct; and prior similar cases indicated that it would be appropriate to depart from the 90-day minimum actual suspension for trust account violations, appropriate discipline was private reproval conditioned on passage of professional responsibility examination. *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335. **[22]**

Recent Supreme Court decisions reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule 955. One of the primary reasons for the adoption of the Standards for Attorney Sanctions for Professional Misconduct was to achieve greater consistency in disciplinary sanctions for similar offenses. Any reason for deviating from the standards or established case law must be clearly stated. Accordingly, where respondent participated in the rule 955 proceeding, but did not present a convincing case of mitigation, diligence, and rectification of misconduct, and instead demonstrated a pattern of inattention to important duties, an inability to conform to professional norms, and a lack of concern for potential harm to his clients and the public, the public interest and the administration of justice would be served by respondent's disbarment. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[15]**

Where respondent had been inattentive to a client's legal needs and had wrongfully retained the client's personal property, but respondent had only committed misconduct in two matters in 23 years of practice, disbarment was not appropriate under guiding Supreme Court opinions. Instead, review department recommended five years stayed suspension, five years probation, restitution, and actual suspension for two years and until respondent proved her rehabilitation, fitness to practice, and legal ability. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[10]**

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

In the Matter of Lilly (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185.

Before recommending to the Supreme Court that an attorney be summarily disbarred pursuant to Business and Professions Code section 6102 (c), the State Bar Court has a duty to analyze the record in light of the case law to assure that application of section 6102 (c) does not conflict with Supreme Court standards for disbarment. The State Bar Court will only order a hearing if Supreme Court precedent supports a lesser sanction than disbarment for the particular crime depending on circumstances which might be adduced at a disciplinary hearing. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[7]**

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

Although standard 2.2(a) calls for 90 days minimum suspension for commingling, the Supreme Court has declined to impose suspension if the commingling results from a good faith fee dispute. Where respondent's trust fund violation was no more serious than trust fund violations in a prior Supreme Court case in which a public reproval was imposed, and where respondent presented far greater evidence in mitigation than the attorneys in that case, the appropriate discipline was a private reproval on condition of taking and passing the Professional Responsibility Examination. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[22]**

In the Matter of Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

The Standards for Attorney Sanctions for Professional Misconduct serve as guidelines in determining the appropriate degree of discipline to recommend. The review department must also consider whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[26]**

Where attorney displayed indifference and lack of remorse by failing to participate in past and present disciplinary proceedings, far more severe discipline was required than in other cases involving similar misconduct where attorneys did participate in disciplinary proceedings. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. **[28]**

The Standards for Attorney Sanctions for Professional Misconduct are guidelines; they do not need to be followed in talismanic fashion. Hearing judge in matter arising from perjury conviction properly analyzed relevant case law in order to arrive at appropriate sanction, rather than automatically applying standard 3.2, which provides that discipline for conviction of a crime involving moral turpitude shall be disbarment unless compelling circumstances clearly predominate. Supreme Court cases involving crimes of moral turpitude have considered the nature of the crime and the magnitude of its impact on the public and the integrity of the legal system. This factual analysis in determining the propriety of disbarment is similar to that used in matters involving entrusted funds or property. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[11]**

In cases involving attorney discipline for serious offenses, the Supreme Court has: (1) stated that serious offenses call for severe discipline and warrant disbarment in the absence of clear or compelling mitigation; (2) recited similar language but evaluated the type of misconduct as a lesser offense; or (3) emphasized that there is no fixed formula as to discipline, and that appropriate discipline can only be arrived at by a balanced consideration of relevant factors, on a case-by-case basis. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[13]**

Violations of the ethical rule governing placement of client funds in a trust account have not always resulted in actual or even stayed suspensions. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[27]**

In determining the appropriate degree of discipline to recommend, the review department starts with the Standards for Attorney Sanctions for Professional Misconduct, which serve as guidelines. It also considers whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[4]**

Where respondent misrepresented his educational background in his resume, these actions were dishonest, and some period of actual suspension was warranted. Where respondent's misconduct extended over a three-year period,

and was aggravated by his misrepresentations in discovery responses in the disciplinary proceeding, and where respondent had personal problems but they did not fully explain his misconduct, a 60-day actual suspension, with one year of probation, was appropriate to recognize the seriousness of the misconduct, the mitigating circumstances, and the sanction imposed in previous cases. *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. **[5]**

Despite the need to examine cases on an individual basis to determine appropriate discipline, it is also a goal of disciplinary proceedings that there be consistent recommendations as to discipline, a goal that has been achieved in large measure through the application of the Standards for Attorney Sanctions for Professional Misconduct. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[10]**

Pursuant to Supreme Court precedent, only the most serious instances of repeated misconduct and multiple instances of misappropriation have warranted actual suspension, much less disbarment; a year of actual suspension, if not less, has been more commonly the discipline imposed in cases involving but a single instance of misappropriation. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[11]**

Recent Supreme Court precedent indicated that attorney with no prior discipline record who abandoned two clients within three years and improperly retained unearned advance fees should receive sanction greater than public reproval; two years stayed suspension, two years probation, and 30 days actual suspension were recommended. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[15]**

At respondent's request, in a conviction proceeding, the review department took judicial notice of the record in a disciplinary case involving another attorney who was respondent's co-defendant in the underlying criminal matter. The discipline imposed on the co-defendant was considered in determining the appropriate discipline for respondent. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[2]**

In assessing appropriate discipline, the review department considers whether the recommended discipline conforms to or is disproportionate to prior decisions of the Supreme Court based on similar facts. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[6]**

Disbarment would be excessive in case arising out of criminal conviction for filing false federal income tax return, even though offense involved moral turpitude, based on comparable Supreme Court cases and given respondent's compelling showing of mitigation, including absence of any prior or subsequent misconduct; extreme emotional difficulties arising from an amputation; respondent's acknowledgment of his misconduct and his candor and cooperation with the State Bar; a persuasive showing of respondent's good character and high esteem in the community; family problems existing at the time of the misconduct; and the fact that the misconduct did not involve the practice of law. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[8]**

Misdemeanor convictions of sex offenses which are not serious and are unrelated to the practice of law have generally resulted in only private reproval absent aggravating factors. Where respondent was convicted of such a misdemeanor, disbarment would have been manifestly disproportionate to his cumulative misconduct, notwithstanding his record of two prior private reprovals. Respondent's misconduct was less serious than wilful failure to file tax returns or driving under the influence, and did not warrant the same degree of discipline. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[1]**

Supreme Court attorney disciplinary opinions in which prohibited solicitation or capping activities were a significant or sole part of the lawyer's misconduct have imposed discipline ranging from six months actual suspension for isolated acts to disbarment in a few aggravated cases. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[9]**

Strong mitigating factors in matter involving capping and other misconduct dramatically lessened need for strict discipline imposed by Supreme Court in similar matters, but did not eliminate need for measurable discipline to maintain integrity of and public confidence in legal profession. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[10]**

In conducting its review and making its own disciplinary recommendation, the review department must consider the proportionality of the recommended discipline in relation to other cases. *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139. **[20]**

Where no Supreme Court precedent would have justified disbarment for respondent's failure to perform services in two matters if both matters had been decided together, additional prior discipline for failure to pass Professional Responsibility Examination did not sufficiently add to severity of misconduct to justify imposing disbarment. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[9]**

In assessing appropriate discipline, review department starts with Standards for Attorney Sanctions for Professional Misconduct, which serve as guidelines, and also considers whether recommended discipline is consistent with or disproportionate to prior decisions of the Supreme Court based upon similar facts. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[14]**

Supreme Court has usually not dealt severely with misappropriations involving a relatively small amount for a relatively brief time when no intentional dishonesty was involved and the offense involved attorney's use of trust account as an operating account. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[18]**

Fact that, in addition to unintentionally misappropriating client's funds, attorney had committed act of moral turpitude by concealing personal assets in trust account to avoid tax levy might, but would not necessarily, indicate greater discipline to be in order, based on Supreme Court precedent. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[19]**

Recommendation of disbarment for misconduct in single matter, involving failure to perform services, misappropriation of advanced fees and costs, trust fund violation, and misrepresentation to clients was excessive when viewed in the context of decisions of the Supreme Court. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[15]**

In determining the appropriate sanction, the court must balance the aggravating circumstances with the mitigating circumstances and also consider whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[20]**

1092 Excessiveness of Discipline

Where respondent's default was set aside for limited purpose of conducting discipline hearing, neither amended default rules nor discipline standards provided for presumptive discipline of disbarment. Even two-year actual suspension was excessive discipline for violation of probation conditions attached to prior public reproval. Rather, appropriate discipline, under standard 2.10 and case law, was 90-day actual suspension and lengthy probation with conditions. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[8 a-c]**

Where respondent's misconduct in inaccurately reporting her MCLE compliance was a one-time error, she had a long period of practice with no discipline, and an exemplary record of pro bono and community service, and she caused no harm to the public or the judicial system, and where, most significantly, she immediately accepted responsibility, rectified the situation, and implemented a corrective plan to avoid future problems. It was appropriate under these unique circumstances to deviate from the standard calling for disbarment or actual suspension for acts of moral turpitude. Even a 30-day actual suspension was excessive; public reproval was adequate to serve the goals of attorney discipline. *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330 **[5 a-c]**

Respondent was unable to confront her husband concerning his handling of the trust account. Absent equally strong evidence of respondent's recovery from such a disability concerning such a fundamental duty of a lawyer the review department would recommend severe remedial discipline. Respondent's compelling evidence of her actions to terminate her relations with her husband and her continuing psychiatric treatment make clear that such a recovery is well under way. Respondent expressed remorse for the misconduct; was candid with the State Bar in stipulating to the misconduct; has taken effective steps to avoid a repetition of that misconduct including severing her relations with her husband and continuing in therapy; and has made a contribution to society in seeking, and obtaining, legislation dealing with human reproduction. While serious misconduct occurred as the result of respondent's inattention to financial matters, including the trust account she maintained with her husband, a future recurrence of such problems is unlikely. The hearing judge's recommended condition of continued psychiatric treatment lends assurance to this conclusion. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[7]**

Failing to appear as ordered at settlement conference, and intentionally misleading settlement judge regarding client's death, was serious misconduct which threatened public and undermined its confidence in legal profession. However, considering comparable case law, and in view of respondent's many years of practice prior to misconduct, and lack of proven aggravating factors, appropriate discipline was one-year stayed suspension and two years probation with no actual suspension, rather than two-year stayed suspension with two years probation and thirty days actual suspension. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[15]**

In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.

In light of comparable case law and absence of mitigating circumstances, public reproval was appropriate discipline for respondent who failed to refund promptly an unearned legal fee and failed to take reasonable steps to avoid prejudice to clients prior to withdrawal from representation. Hearing judge's recommended discipline of stayed suspension was therefore modified. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[13]**

Where respondent had filed his required rule 955 affidavit prior to the initiation of rule 955 proceedings by referral order, had met the notice requirements of the rule timely, had taken responsibility for his own errors, and, because of other discipline, might remain on actual suspension for over two years, a six-month actual suspension for respondent's untimely filing of his rule 955 affidavit would be excessive. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[9]**

Where respondent's misconduct involved negligent law office management over an extended period of time, resulting in delay and disservice to a number of clients but no act of moral turpitude or serious misconduct in any individual matter, and respondent had since changed his office practices, a one-year actual suspension was excessive in the absence of serious aggravation. However, where no persuasive reason had been offered to go below the minimum three-month actual suspension called for by the standards, a one-year stayed suspension, two years probation, and a three-month actual suspension, with law office management requirements, constituted sufficient discipline. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. **[10]**

Where respondent, after authorities' discovery of welfare fraud committed by him and his wife, was cooperative with welfare authorities and remorseful, took full responsibility, and stipulated to most of the facts at the State Bar hearing, hearing judge was justified in recommending lengthy suspension in lieu of disbarment. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[4]**

Where respondent had been inattentive to a client's legal needs and had wrongfully retained the client's personal property, but respondent had only committed misconduct in two matters in 23 years of practice, disbarment was not appropriate under guiding Supreme Court opinions. Instead, review department recommended five years stayed suspension, five years probation, restitution, and actual suspension for two years and until respondent proved her rehabilitation, fitness to practice, and legal ability. *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219. **[10]**

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196.

Not all serious trust fund misappropriation cases warrant disbarment. Where respondent had a 21-year record of practice without prior discipline and respondent's misconduct took place within a relatively narrow time frame, standard 1.4(c)(ii) hearing, with three-year actual suspension and five-year stayed suspension and probation, would be adequate to protect public, despite gravity of respondent's misconduct and lack of evidence regarding its cause. *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185. **[8]**

Where two or more acts of professional misconduct are found, the discipline should be the most severe of the several applicable sanctions, not the sum of the applicable standards. Accordingly, it was not appropriate to recommend 18-month actual suspension based on conclusion that one-year actual suspension was appropriate for misappropriation and six-month actual suspension was appropriate for writing insufficiently funded checks. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153. **[20]**

An attorney on interim suspension following a criminal conviction has little control over the length of such suspension prior to final resolution of the case. Where an attorney's prior actual suspension had consisted largely of time already spent on interim suspension, and such a lengthy actual suspension would not ordinarily have been

imposed for the misconduct involved in the prior matter, and where imposition of an even greater actual suspension in the attorney's subsequent matter would have resulted in discipline far in excess of that warranted by the facts and comparable case law, it would not be appropriate to adhere strictly to the standard directing imposition of greater discipline for a second offense. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[10]**

Although respondent's use and distribution of illegal drugs did not result from an initial, legal use of prescribed medications, which would have mitigated his later, reprehensible drug transactions, the great number of years which had passed since the attorney's misconduct, coupled with evidence of impressive and sustained rehabilitation, were sufficiently mitigating to conclude that disbarment would be excessive discipline. To underscore the gravity of the attorney's misconduct, which occurred after the attorney had completed law school and had applied unsuccessfully to the California bar, the review department recommended two years actual suspension, retroactive to the start of the attorney's interim suspension. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[3]**

Where respondent inadvertently mishandled a small sum of trust funds and was unlikely to repeat her misconduct, no suspension was necessary. Although standard 2.2(b) requires at least three months actual suspension for a trust account violation, the standards are guidelines to be construed in light of decisional law. A private reproval was appropriate in light of the nature of the misconduct and the mitigating circumstances, including respondent's severe emotional difficulties, her having taken the disciplinary proceeding very seriously, and her having suffered great hardship as a consequence. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[14]**

In requiring an invariable minimum of one year's actual suspension, standard 2.2(a) is not faithful to the teachings of the Supreme Court's decisions. Negligent misappropriation quickly and voluntarily remedied may require no actual suspension or only a short suspension. *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. **[9]**

In the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

Disbarment will not be ordered where there is no evidence that a sanction short of disbarment is inadequate to deter future misconduct and protect the public. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[15]**

First offense deceit has not resulted in disbarment in Supreme Court cases. No act of concealment or dishonesty is more reprehensible than attempts to mislead a court; nonetheless, disbarment for such misconduct may be too drastic and unnecessary to achieve the goals of attorney discipline. Where respondent presented evidence of general good character, discipline of five years stayed suspension, five years probation, and two years actual suspension, with standard 1.4(c)(ii) requirement, was adequate. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[20]**

A single act of very serious misconduct can and has resulted in disbarment even absent a prior disciplinary record; where a respondent's culpability is egregious and inexplicable, disbarment is appropriate even for a single misappropriation. *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. **[12]**

Disbarment would be excessive in case arising out of criminal conviction for filing false federal income tax return, even though offense involved moral turpitude, based on comparable Supreme Court cases and given respondent's compelling showing of mitigation, including absence of any prior or subsequent misconduct; extreme emotional difficulties arising from an amputation; respondent's acknowledgment of his misconduct and his candor and cooperation with the State Bar; a persuasive showing of respondent's good character and high esteem in the community; family problems existing at the time of the misconduct; and the fact that the misconduct did not involve the practice of law. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[8]**

Misdemeanor convictions of sex offenses which are not serious and are unrelated to the practice of law have generally resulted in only private reproval absent aggravating factors. Where respondent was convicted of such a misdemeanor, disbarment would have been manifestly disproportionate to his cumulative misconduct, notwithstanding his record of two prior private reprovals. Respondent's misconduct was less serious than wilful failure

to file tax returns or driving under the influence, and did not warrant the same degree of discipline. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[1]**

In order to properly fulfill the purposes of lawyer discipline, the review department must examine the nature and chronology of a respondent's record of discipline. Mere fact that attorney has three impositions of discipline, without further analysis, may not justify disbarment. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[7]**

Where no Supreme Court precedent would have justified disbarment for respondent's failure to perform services in two matters if both matters had been decided together, additional prior discipline for failure to pass Professional Responsibility Examination did not sufficiently add to severity of misconduct to justify imposing disbarment. *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. **[9]**

Recommendation of disbarment for misconduct in single matter, involving failure to perform services, misappropriation of advanced fees and costs, trust fund violation, and misrepresentation to clients was excessive when viewed in the context of decisions of the Supreme Court. *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59. **[15]**

1093 Inadequacy of Discipline

Discipline standard applicable to misdemeanor convictions involving moral turpitude provides for disbarment or actual suspension. Where respondent repeatedly committed serious misconduct and did not demonstrate reform, appropriate discipline was actual suspension for two years and until proof of rehabilitation and fitness to practice. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[7 a,b]**

Standards for attorney discipline should be followed whenever possible. Where applicable standard provided for suspension or reproval, hearing judge erred in resolving case by issuing admonition. Despite extensive mitigation, attorney judicial candidate's recklessly false allegation implicating opponent in bribery and fraud warranted public discipline, because it threatened to erode public confidence in the judiciary. Accordingly, public reproval was appropriate discipline. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[6]**

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

The review department found respondent culpable of serious misconduct which burdened parties to litigation and the trial and appellate courts to adjudicate two matters. This included a patently frivolous appeal, dishonesty to law enforcement officers and misleading a court. Of special concern was that respondent's background as a certified family law specialist for much of his practice and his activity in bar work failed to serve him to avoid the misconduct in this record. Respondent's misdeeds cannot be ascribed to inexperience or simple zealousness. Moreover, there is nothing in the record which could ascribe this misconduct to any health or similar, singular condition. Respondent's lack of insight and failure to appreciate the wrongfulness of his misconduct does not bode well for respondent avoiding similar misconduct in the future. Anytime respondent lost on the merits of an issue, he would not accept the court's adverse judicial determination and would attempt to blame the ruling on the court's lack of understanding of the issues. Balancing all relevant factors and seeking to protect the public, courts and the legal profession, the review department increased the actual suspension from one year to two years. *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. **[5 a-d]**

In respondent's second disciplinary proceeding for his failure to comply with the quarterly reporting requirements imposed on him under two prior reprovals, it was inappropriate to include, in the discipline recommendation, a reporting condition with a lower frequency of reporting than that previously imposed on respondent, which he had been unable or unwilling to comply. Absent extraordinary and enunciated circumstances, the reporting condition should have at least required that respondent demonstrate that he can now comply with the reporting requirements previously imposed on him under his two reprovals by imposing the same reporting requirements on him prospectively. Recommending a lower reporting requirement would "reward" respondent for his noncompliance. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[9]**

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

In the Matter of Katz (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

Regardless of who seeks review, the review department has the authority and obligation to conduct de novo review and to increase the discipline, if appropriate. *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390. **[3]**

Where respondent seriously abused the judicial system for a dozen years despite heavy sanctions, showed no remorse, and refused to mend his ways, no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession. Because of respondent's total lack of repentance, a lengthy suspension coupled with probation terms was inappropriate; there was a great danger that respondent would fail to comply with any probation terms imposed. Respondent's repeated acts of moral turpitude demonstrated that he was no longer worthy of membership in the bar. *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. **[14]**

Where respondent was culpable of one instance each of collection of an illegal fee and intentional failure to perform competently, and of multiple instances each of violating his duty to uphold the law; reckless failure to perform competently; withdrawing from employment without protecting clients from foreseeable prejudice; and failure to pay trust funds on demand, and where most severe applicable standard proposed three-month minimum actual suspension for non-misappropriation trust fund offenses, and where respondent's mitigating evidence was not sufficient to justify deviating from applicable standard given respondent's record of numerous violations over extended time period, review department increased hearing judge's recommended actual suspension to 90 days, as condition of three-year probation, with one-year stayed suspension as justified by case law. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[29]**

Where respondent did not appear from record to be venal or dishonest, but overall nature of respondent's misconduct revealed somewhat indifferent attitude toward ethical obligations, especially those to administration of justice and persons other than current clients, some actual suspension was warranted in order to protect public by augmenting respondent's understanding of his duties. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91. **[34]**

Where, in representing four criminal clients, respondent violated six court orders, was held in contempt four times, failed to appear at scheduled court hearings nine times, and had warrants issued against him three times, and where respondent had breached two separate disciplinary orders and defaulted in current disciplinary proceeding, respondent's misconduct reflected disdain and contempt for the orderly process and rule of law and inability to conform to the most basic duties of an attorney. These facts, coupled with lack of mitigation, demonstrated that risk of future misconduct was great and indicated that respondent was not a good candidate for probation and/or suspension. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[14]**

The aggravating effect of prior discipline may be diminished if misconduct underlying prior discipline occurred contemporaneously with misconduct currently under consideration. However, where at time respondent committed current misconduct, he was either involved in disciplinary process or was actually on disciplinary probation, this indicated that respondent's prior discipline had very little impact on his behavior, and demonstrated respondent's inability to conform his conduct to ethical norms. In such circumstances, greater showing required in reinstatement would better protect public than showing required to return to practice after suspension under standard 1.4(c)(ii). Accordingly, application of standard calling for disbarment for third imposition of discipline was appropriate. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[15]**

In light of all relevant evidence and comparable case law, as well as heightened concern regarding enforcement of child support orders, respondent's very serious misconduct of advising and aiding a client in avoiding a child support order, which misconduct was substantially aggravated by respondent's overreaching in arranging real property transactions between the client and respondent's father, warranted increasing recommended discipline to one-year actual suspension coupled with three years of probation, even though review department found respondent culpable of less misconduct than did hearing judge. *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. **[12]**

Where respondent engaged in serious improper communications with a represented party, exposing the party to serious risks of harm, some of which occurred, and committed other stipulated wrongdoing, recommended discipline of four years probation conditioned on thirty days actual suspension was inconsistent with decisional law and insufficient. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[10]**

Where parties agreed to highly unusual stipulation expressly preserving right to seek review, but did not contemplate that review department would recommend discipline more severe than that set forth in order approving stipulation, parties' expectation that review department would be bound by stipulated discipline was unjustified. However, it was appropriate to relieve parties from stipulation due to their mutual mistake. Accordingly, review department vacated order approving stipulation and remanded proceeding for new stipulation or trial. *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664. **[11]**

Where respondents seriously disregarded their fiduciary duty to clients, including leaving it to non-lawyer contractors to explain complex retainer agreement without allowing clients to review it over time or discuss it with respondents, and where such retainer agreement, though purporting to be for contingent fees, contained unconscionable provision for minimum fee upon discharge, and where respondents' acts in seeking to enforce such provision damaged clients, respondents' conduct warranted greater actual suspension than 15 months recommended by hearing judge. Respondents' involvement in client solicitation alone warranted one-year actual suspension; their remaining offenses deserved an additional six months. *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. **[14]**

Where an attorney has previously been disciplined for misappropriation, the attorney is eligible for disbarment if found culpable of misappropriation in a second matter. Where respondent's total misconduct in two separate disciplinary cases involved ten client matters, spanned all but three years of his practice, and harmed or jeopardized numerous clients, and respondent had an ongoing substance abuse problem and had not complied with his probation in the first matter, his aggregate misconduct clearly required imposition of the harshest discipline, and there was no basis for a recommendation of suspension rather than disbarment. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[13]**

Because the review department must review the record independently and is not bound by the hearing judge's findings or recommendation (Trans. Rules Proc. of State Bar, rule 453(a)), the issue of appropriate discipline in a matter involving violation of rule 955, California Rules of Court and other misconduct did not turn on the one narrow issue argued on review by the parties regarding the appropriateness of a retroactive suspension. The review department therefore considered whether any form of suspension was adequate discipline given Supreme Court precedent generally ordering disbarment for rule 955 violations. Although the State Bar's declination to recommend disbarment was accorded considerable weight, it could not be reconciled with the precedent making disbarment the appropriate discipline. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[1]**

Mitigating evidence of family pressures and misfortunes, good character, therapy, community service, and compliance with probation duties, similar to evidence which had been found sufficiently mitigating to avert an attorney's disbarment for prior misconduct, was not sufficient to justify a recommendation short of disbarment in a subsequent matter in view of the attorney's additional, serious misconduct and the need for protection of the public. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[6]**

In the Matter of Howard (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

Where Office of Trials argued that recommended discipline was too low in light of existing findings, and also suggested supplemental findings, and on de novo review, review department agreed that discipline was insufficient in light of findings made by hearing judge, review department did not need to address issue of supplemental findings. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[1]**

In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.

The Supreme Court has expressed concern that the State Bar Court should make clear the reasons for departure from the standards in any case where the recommended discipline differs therefrom. Where hearing judge did not articulate basis for recommending 18 months suspension instead of two-year minimum called for by applicable standard, respondent would have had to wait two years to reapply for admission if criminal conviction had occurred prior to admission to practice, and no reason appeared on record to depart from standard except to give credit for time spent on interim suspension, review department recommended actual suspension of two years. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[11]**

Misconduct committed by attorney who was grossly negligent, though not dishonest, in handling a significant sum of client trust funds in one matter, and who failed to communicate adequately with a client in another

matter, warranted 90 days rather than 60 days of actual suspension as condition of 3-year probation accompanying 3-year stayed suspension. *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47. **[1]**

A lengthy suspension with a standard 1.4(c)(ii) showing was not adequate discipline, where respondent committed extensive misdeeds which became commonplace in respondent's practice, caused harm to a number of clients, and failed to rectify the harm. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1. **[9]**

An attorney's lengthy delay in notifying his client of receipt of a check in partial settlement of her case, and his failure to render a timely and appropriate accounting upon his withdrawal, which was aggravated by unilateral payment to himself of his fees, merited more than a public reproval. The attorney's handling of trust account records was required to be reviewed by an accountant for some period of time to ensure protection of other clients. However, in view of mitigating circumstances, subsequent corrective measures, and lack of harm to the client or her doctor, no actual suspension was necessary to protect the public. The Review Department recommended two months' stayed suspension, with one year's probation, periodic auditing of the attorney's trust account, and a professional responsibility examination. *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387. **[28]**

Recent Supreme Court precedent indicated that attorney with no prior discipline record who abandoned two clients within three years and improperly retained unearned advance fees should receive sanction greater than public reproval; two years stayed suspension, two years probation, and 30 days actual suspension were recommended. *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267. **[15]**

Fact that, in addition to unintentionally misappropriating client's funds, attorney had committed act of moral turpitude by concealing personal assets in trust account to avoid tax levy might, but would not necessarily, indicate greater discipline to be in order, based on Supreme Court precedent. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[19]**

In the Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.

1094 Admonition in Lieu of Discipline

Standards for attorney discipline should be followed whenever possible. Where applicable standard provided for suspension or reproval, hearing judge erred in resolving case by issuing admonition. Despite extensive mitigation, attorney judicial candidate's recklessly false allegation implicating opponent in bribery and fraud warranted public discipline, because it threatened to erode public confidence in the judiciary. Accordingly, public reproval was appropriate discipline. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. **[6]**

Decisions of the Supreme Court and the review department involving abandonment of a client's case where the attorney has no prior record of misconduct have typically resulted in discipline ranging from no actual suspension to 90 days of actual suspension. However, most of the past abandonment cases involved the attorney's inattention in civil matters. Balancing all relevant factors in this case involving an attorney's inattention in a criminal case involving an incarcerated client, and giving weight to, but not relying too heavily on, the State Bar's recommendation of respondent's 90-day actual suspension, the review department concluded that a 6-month actual suspension was appropriate. *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. **[5]**

Since an admonition does not constitute either an exoneration or the imposition of discipline, neither respondent nor State Bar is entitled to an award of costs. *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442. **[7]**

Admonitions are not discipline and may be reopened and proceed anew as a formal disciplinary proceeding if a formal proceeding is brought with two years based on other misconduct. The rules of procedure define the start of a formal proceeding as the issuance of a notice to show cause. (Trans. Rules Proc. of State Bar, rules 415, 550.) *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[20]**

The Office of Trial Counsel has discretion whether or not to file formal charges in a matter eligible for disposition by admonition. The State Bar Court cannot dismiss a proceeding prior to hearing on the ground that it meets the criteria for admonition, unless a case for selective prosecution is established. (Trans. Rules Proc. of State Bar, rule 415.) *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121. **[5]**

Where respondent successfully performed services for which he was retained, and his sole culpability was for single act of failing to inform client of respondent's entirely proper exercise of judgment not to pursue damages, and both harm to client and extent of misconduct were minimal, appropriate discipline would have been private reproval. However, in light of attorney's many years of practice without prior disciplinary record, and other extenuating circumstances, discipline would be punitive and would not further purposes of attorney discipline. Since finding of culpability precluded dismissal, admonition was an appropriate disposition. *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439. **[20]**

1099 Other Miscellaneous Issues

Statutes regarding legal disciplinary system are not exclusive, but rather supplementary to California Supreme Court's disciplinary authority over members of California bar. Given Supreme Court's partial delegation of its disciplinary authority to State Bar Court, and its instruction that State Bar Court should follow disciplinary standards whenever possible, statute providing for actual suspension of up to three years for violations of Rules of Professional Conduct did not preclude State Bar Court from recommending disbarment for rules violation when otherwise justified by disciplinary standards. *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418 **[6]**

Hearing judge erred in recommending that respondent receive credit toward his period of actual suspension for the time he had been on involuntary inactive enrollment pursuant to section 6007(e). Neither the statute nor the case law authorizes the State Bar Court to credit a member's period of involuntary inactive enrollment, under subdivision (e), toward a period of actual suspension. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[9]**

Where respondent misappropriated $50,000 of $79,875.89 insurance settlement funds he held in his trust account for his corporate client by disbursing $50,000 to corporation's president, who was one of corporation's four directors, in president's individual capacity without knowledge or consent of corporation's remaining three directors; where respondent violated his fiduciary duty to remaining three directors by disbursing the $50,000 to president without their knowledge or consent; where respondent knowingly and intentionally misappropriated remaining $29,875.89 of settlement funds for his own use and benefit by withdrawing them from his trust account as attorney's fees without the knowledge and consent of remaining three directors; where respondent violated rule of professional conduct requiring disputed funds to be held in trust by withdrawing $29,875.89 in fees from his trust account when his right to collect fees was disputed; where respondent repeatedly refused to account for proceeds of insurance settlement check in accordance with requests of chairman of corporations board of directors; where there was extensive aggravation, including concealment, overreaching, and failure to make restitution, with mitigation for strong good character testimony, extensive community service, no prior record of discipline, and lack of additional misconduct in more than five years; and where misconduct involved only a single client matter; and even though standard for attorney sanctions for professional misconduct for willful misappropriation called for and Supreme Court has repeatedly held that usual discipline for willfully misappropriation of client funds is disbarment, appropriate discipline recommendation was not disbarment, but four years' stayed suspension, four years' probation on conditions, which included two years' actual suspension continuing until respondent pays restitution of $29,875.89 with interest. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576. **[9 a-d]**

Respondent was unable to confront her husband concerning his handling of the trust account. Absent equally strong evidence of respondent's recovery from such a disability concerning such a fundamental duty of a lawyer the review department would recommend severe remedial discipline. Respondent's compelling evidence of her actions to terminate her relations with her husband and her continuing psychiatric treatment make clear that such a recovery is well under way. Respondent expressed remorse for the misconduct; was candid with the State Bar in stipulating to the misconduct; has taken effective steps to avoid a repetition of that misconduct including severing her relations with her husband and continuing in therapy; and has made a contribution to society in seeking, and obtaining, legislation dealing with human reproduction. While serious misconduct occurred as the result of respondent's inattention to financial matters, including the trust account she maintained with her husband, a future recurrence of such problems is unlikely. The hearing judge's recommended condition of continued psychiatric treatment lends assurance to this conclusion. *In the Matter of Blum* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 403 **[7]**

Even if credit card cash advances that attorney obtained and lost while gambling in Nevada casinos were "gambling debts" and therefore not enforceable debts in California, hearing judge's recommendation that attorney be required to make restitution to credit card company was not only legal, but appropriate and necessary to respondent's rehabilitation and for protection of public in light of hearing judge's findings that attorney obtained the cash advances without intending to repay them. Requiring attorney to make restitution will force attorney to confront his misconduct in concrete terms. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[11]**

Where State Bar neither impeached nor rebutted attorney's testimony that he had not gambled for more than five years, where State Bar did not proffer any expert testimony that attorney suffered from compulsive gambling, and where there was no evidence that attorney currently suffered from compulsive gambling, record did not support hearing judge's recommendation that attorney be required to attend Gamblers Anonymous meetings while on disciplinary probation. *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231.**[12]**

In default proceeding, period of stayed suspension and disciplinary provision authorizing probation conditions to be imposed on attorney in the future by State Bar Court ought not to be rejected by hearing judge merely because attorney's actual suspension will continue until attorney establishes rehabilitation under standard 1.4(c)(ii) or until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[3]**

In default proceeding, no loss of public protection occurs when specific probation conditions are not immediately imposed on attorney who is placed on actual suspension because such attorney will be prohibited from practicing law for duration of attorney's actual suspension and until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[4]**

Failure to recommend period of stayed suspension merely because attorney failed to appear in disciplinary proceeding results in marked reduction in public protection and in defaulting attorney receiving less discipline than attorneys who appear and participate in disciplinary process. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[6]**

Despite the mandate in State Bar Rule of Procedure, rule 290(a) that every imposition of discipline (other than reprovals) include a requirement that attorney attend State Bar Ethics School, the appropriate time to consider imposing State Bar Ethics School as a condition of probation in default proceeding in which attorney's actual suspension will continue until the attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205, is at the time of ruling on the rule 205 motion to terminate the actual suspension. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[7]**

Disciplinary recommendation in a default proceeding in which attorney's actual suspension will continue until attorney files and State Bar Court grants motion to terminate actual suspension under State Bar Rule of Procedure, rule 205 may, in appropriate cases, require that attorney's actual suspension continue until attorney attends State Bar Ethics School. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.**[8]**

Introducing into evidence the pleadings and exhibits from a civil matter without also introducing the trial transcript from the civil proceeding provides little evidence as to the nature and extent of respondent's conduct underlying the adverse civil findings of harassment and intentional infliction of emotional distress on a client or the resulting harm to the client. Such evidence may have had a material effect on the measure of the appropriate level of discipline.*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. **[3]**

Where the State Bar Court recommends that an attorney who has defaulted in a disciplinary proceeding be placed on actual suspension, rule 205(a) of the Rules of Procedure requires that the discipline recommendation contain two elements: (1) a specific period of actual suspension; and (2) a statement that the attorney's actual suspension shall continue unless the State Bar Court grants a motion to terminate the actual suspension at the conclusion of the specific period of actual suspension or upon such later date ordered by the court. In the present case the hearing judge recommended that respondent be actually suspended until he accomplishes certain tasks (i.e., provide evidence of reimbursement to his former client, attend Ethics School, pass the professional responsibility examination, and make a motion to the State Bar Court to terminate the actual suspension). This

recommendation does not meet the requirement of rule 205(a) that the recommended discipline include a specific period of actual suspension. At best, the hearing judge's recommendation will result in an indefinite, as distinguished from a specific, period of actual suspension. To extend an attorney's recommended actual suspension until he or she moves the State Bar Court to terminate that suspension under rule 205 there must be a stated, defined and measurable period of actual suspension recommended. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[1 a, h]**

While rule 205 of the Rules of Procedure does not specifically preclude a hearing judge in a default matter from recommending a period of actual suspension be imposed as a condition of probation along with appropriate additional conditions of probation, the rule clearly contemplates that probation and its attendant conditions be imposed at the time the defaulting attorney brings a motion under rule 205(c) to terminate his or her actual suspension. The entire purpose of rule 205 is to eliminate the necessity of multiple proceedings against an attorney who is unwilling to participate in the disciplinary process and evidences no interest in maintaining his or her membership in the bar. Under rule 205 the burden is placed on a defaulting attorney to bring forward to the State Bar Court his or her interest in continuing the right to practice. The appropriate time to consider imposing probation and its attendant conditions is when the attorney seeks relief from the actual suspension that may be imposed following his or her default in a disciplinary proceeding. It is only at that time that the court has before it an attorney who evidences a willingness to comply with conditions of probation and a full understanding of the reasons for the attorney's failure to participate in the disciplinary process. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[2 a, b]**

Attendant to a recommendation of suspension, the State Bar Court lacks the authority to impose conditions of probation without the prior approval of the Supreme Court. Therefore, it is appropriate, in any decision or opinion made under rule 205 of the Rules of Procedure recommending the actual suspension of an attorney, to recommend to the Supreme Court that the disciplined attorney be ordered to comply with the conditions of probation, if any, reasonably related to the found misconduct that the State Bar Court may impose as conditions of probation attendant on terminating the actual suspension of that attorney. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[3]**

Attorney discipline is under the control of the Supreme Court and the State Bar Court may only recommend such discipline for the approval of the Supreme Court. As a consequence the clear parameters of any proposed discipline must be included in the State Bar Court's recommendation to the Supreme Court. Both stayed and actual suspension are discipline within the context of attorney discipline. It follows that in any recommendation for discipline made to the Supreme Court under rule 205 of the Rules of Procedure must include, if appropriate, a period of stayed suspension. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[4 a, b]**

There is nothing in rule 205 of the Rules of Procedure that expressly precludes the State Bar Court from recommending appropriate preconditions to a defaulting and disciplined attorney bringing a motion to terminate his or her actual suspension under rule 205, such as recommended in this matter by the hearing judge, requiring respondent to make restitution and attend Ethics School. However, the requirement that respondent take and pass the Professional Responsibility Examination prior to bringing a motion for relief from suspension is in conflict with Supreme Court case law requiring that a disciplined attorney be given a minimum of one year within which to pass the examination. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103. **[5 a,b]**

Respondent was found culpable of ten disciplinable acts of moral turpitude (seven acts of misrepresentation, one act of improperly retaining for his own benefit funds out of a medical provider's lien reduction, and one act of attempting to obtain a greater fee than that to which he was entitled by failing to disclose to his client costs he recovered), eight instances of improper solicitation of clients, and two instances of failing to properly account to his client. There were substantial aggravating factors, including a prior record of discipline, but no mitigating circumstances. The review department recommended that respondent be suspended from the practice of law for a period of five years, that execution be stayed, and that respondent be placed on probation for a period of five years on conditions including three years actual suspension and until respondent pays restitution and until he provides proof of his rehabilitation, fitness to practice, and learning and ability in the general law. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838. **[9]**

Even though respondent was culpable of failing to comply with the conditions attached to his private reproval, the review department did not strictly apply the Standard for Attorney Sanctions for Professional Misconduct for such violations which calls for suspension. Instead, the review department imposed a public reproval because of respondent's extensive participation in the proceeding and because respondent acknowledged his obligation to comply with State Bar Court orders. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[5]**

In view of the serious nature of respondent's misdemeanor conviction of being an accessory after the fact in connection with the submission of false information to a federally insured bank for the purpose of inducing it to loan money to respondent for the purchase of a farm (18 U.S.C. §1014), review department added a quarterly reporting probation condition to its discipline recommendation. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[6]**

Disciplinary probation furthers the fundamental purposes of attorney discipline only when attorney probationers are effectively monitored to ensure that they do not engage in further misconduct and are conforming their conduct to the ethical strictures of the profession. Historically, attorney probationers have been monitored to ensure their compliance with these requirements through appointed voluntary probation monitors or through court-ordered self-reporting by the attorney or both. Even though probation monitors have played an important role in monitoring attorneys on probation and were, at one time, appointed in most instances, the use of a probation monitor may not be necessary where only routine, simple, periodic reporting conditions are recommended or are coupled with a rule 955 requirement and/or passage of the Professional Responsibility Examination. Appointment of a probation monitor was not warranted in this case in light of the simple probation conditions recommended and the found misconduct, mitigation, and aggravation. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[3]**

Quarterly probation reporting is important because it requires attorney probationers, four times a year, to reflect upon their prior misconduct and to review their current conduct to ensure that it complies with all of the conditions of their probation. However, quarterly probation reporting is not mandated in all cases in which probation is recommended. When the circumstances in a case establish that quarterly probation reporting is not necessary, the circumstances should be set forth in the court's decision. In this case involving attorney-client misconduct with a recent priorreproval, however, the appropriateness of a quarterly-reporting condition of probation was clear. *In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759. **[4]**

In respondent's second disciplinary proceeding for his failure to comply with the quarterly reporting requirements imposed on him under two prior reprovals, it was inappropriate to include, in the discipline recommendation, a reporting condition with a lower frequency of reporting than that previously imposed on respondent, which he had been unable or unwilling to comply. Absent extraordinary and enunciated circumstances, the reporting condition should have at least required that respondent demonstrate that he can now comply with the reporting requirements previously imposed on him under his two reprovals by imposing the same reporting requirements on him prospectively. Recommending a lower reporting requirement would "reward" respondent for his noncompliance. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. **[9]**

Even though an attorney's willful violation of his statutory duty to obey court orders issued in connection with his profession is stated grounds for disbarment or suspension, discipline within that range is not mandated. Thus, in light of the unusual circumstances surrounding respondent's violation of this duty, a private reproval was the appropriate level of discipline. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[4]**

Even though the review department's duty to independently determine the appropriate level of discipline precludes it from giving excess weight to the State Bar's discipline recommendation, the review department gave it some consideration. *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 592. **[5]**

Even though statutes authorizing conviction referral proceedings authorize only the disbarment or suspension of attorneys convicted of crimes, the State Bar Court still had jurisdiction in conviction matter to recommend to the Supreme Court that it cancel respondent's license to practice law. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[9]**

Respondent's willful failure to disclose his arrest and pending trial on felony charges by updating his answers to the moral character questions on his initial application for admission to practice law was a fraud upon the Supreme Court because it allowed him to admitted without adequate consideration of his moral character. Thus, the State Bar Court may recommend that his license to practice be revoked without addressing the nature of his crimes or the facts and circumstances surrounding them. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[12]**

Cases involving a magnitude and wide range of misconduct have typically resulted in disbarment, notwithstanding the attorney's lack of a prior record of discipline or even with some mitigation present. Where respondent's misconduct was quite serious and wide-ranging, and, very importantly, commenced only two years after respondent's admission and continued for over seven years thereafter, the review department concluded that the public was entitled to the protection of a formal reinstatement proceeding to ensure respondent's fitness to practice before she is again allowed to practice law. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363. **[10]**

Where respondent violated rule of professional conduct which prohibits an attorney from improperly obtaining an interest in a client's property and/or entering into a business transaction with a client, and that misconduct was the same misconduct underlying the charge that respondent violated statutory duty to uphold law on account of his violation of provisions of the Probate Code which prohibit self-dealing by trustees, and where discipline did not depend on whether respondent violated both rule and statute, statutory violation was cumulative and review department did not address it. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[1]**

Because an incarcerated client has a limited ability to assist an attorney or to stay apprised of the attorney's efforts, the abandonment of an incarcerated client is a serious matter warranting substantial discipline. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. **[3]**

Where respondent's first actual suspension ended in December 1991, and his second actual suspension, which was ordered to be "consecutive" to the first, did not take effect until June 1992, hearing judge did not err in finding that respondent could have practiced law during the interval, and fact that respondent did not in fact practice law during such time did not entitle him to "credit for time served" and was neither a mitigating nor an aggravating circumstance in subsequent proceeding for probation violation and failure to comply with rule 955, California Rules of Court. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[7]**

Period of stayed suspension was required for respondent's wilful failure to comply with rule 955(c), California Rules of Court, so as to provide enforcement mechanism for compliance with terms and conditions of probation. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[16]**

Discipline imposed in separate disciplinary proceedings may be "concurrent" without either starting together or ending at same time, in sense that periods of probation and actual suspension imposed in different proceedings run together only during time periods that they overlap. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[17]**

The Supreme Court order in a probation revocation matter can become effective earlier than the Supreme Court order in an original discipline matter. (Cal. Rules of Court, rule 952(a), (b).) Accordingly, where a probation revocation matter and an original discipline matter were consolidated, the review department made a separate disciplinary recommendation for each matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[1]**

Where respondent requested "credit for time served" based on his having voluntarily limited his law practice to avoid misconduct, but cited no authority supporting such request, and where much of respondent's misconduct occurred after date he testified he terminated his practice, review department declined to give such credit. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[11]**

Where extended time had passed since hearing judge's decision in consolidated probation revocation and original discipline matters, during which time respondent had been ineligible to practice law, review department recommended that actual suspension in original discipline matter be fully concurrent with, and retroactive to effective date of, respondent's actual suspension in probation revocation matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[25]**

Disbarment is a remedy generally available for statutory violations in original disciplinary proceedings, but not in probation revocation proceedings. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[6]**

Because time to seek Supreme Court review is shorter for probation revocation matters than for original disciplinary matters, it is necessary to make separate discipline recommendations when such cases are consolidated. (Cal. Rules of Court, rule 952(a), (b).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[1]**

In original disciplinary proceedings for violation of statute requiring adherence to conditions of disciplinary probation, standard of proof is clear and convincing evidence, and discipline may be disbarment. In proceedings on motion to revoke probation, standard of proof is preponderance of evidence and recommended actual suspension may not exceed entire period of stayed suspension. (Trans. Rules Proc. of State Bar, rules 610-614 (eff. Jan. 1, 1993).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[4]**

Where hearing judge's oral comments at close of case regarding appropriate discipline deviated from the recommendation made in judge's written decision, but hearing overall was fair and respondent's counsel had opportunity to present argument regarding degree of discipline, hearing judge's written decision controlled, and respondent was not denied due process. Respondent could not, as a matter of law, rely on hearing judge's oral or written discipline recommendation since it was not binding on review department or Supreme Court. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752. **[10]**

Where respondent's failure to adhere to statutory requirement of written attorney-client fee agreements was at heart of both matters in which he had been charged with misconduct, and respondent's attention needed to be directed to written fee agreements and also to his obligations upon withdrawal from employment, public reproval was properly conditioned on completion of State Bar Ethics School. Its format of classroom instruction, followed by a test, would better remedy these problems than the more passive experience of the California Professional Responsibility Examination. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[14]**

Where State Bar Court did not recommend respondent's suspension from law practice, it was not required to include, as condition of public reproval, requirement that respondent pass a professional responsibility examination. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. **[16]**

Where, due to the dismissal of all charges, a disciplinary hearing had included a culpability phase but not a sanction phase, and where the review department found respondent culpable of misconduct, it would be inappropriate for the review department to recommend or impose any sanction even if the State Bar wished to waive its opportunity to introduce evidence regarding aggravation, because respondent wanted and was entitled to the opportunity to offer evidence in mitigation. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. **[14]**

The Supreme Court has expressly approved retroactive disciplinary suspension. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[9]**

Both the Legislature, by statute, and the Supreme Court, by case law, have recognized that the Supreme Court has inherent authority over regulation of the practice of law. The Supreme Court has not felt constrained by lack of authorizing legislation to exercise this inherent power, and has concerned itself with comparable treatment of respondents in comparable situations. Accordingly, Supreme Court case law constituted appropriate authority for review department recommendation that a disbarred respondent be permitted to credit time spent on inactive enrollment toward waiting period to apply for reinstatement, just as an interimly suspended attorney-felon can do by rule (rule 662, Trans. Rules Proc. of State Bar). *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[5]**

By rule, convicted felons are always entitled to credit for time spent on interim suspension against the waiting period for seeking reinstatement. (Rule 662, Trans. Rules Proc. of State Bar.) Inactive enrollment has the same effect as interim suspension in banning the practice of law pending a final order of discipline, and is similarly designed to protect the public during the pendency of a disciplinary case against the malfeasant attorney. Giving credit for interim suspension against the waiting period for reinstatement reflects the decision that five years removal from practice is a sufficient minimum opportunity for rehabilitation, even if the time period precedes the order of disbarment. No policy interest

would be served by treating inactively enrolled attorneys differently from interimly suspended attorneys in this regard. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[6]**

Claim that respondent's failure to give required notice of suspension in four different client matters should not have been charged as four separate violations was relevant to degree of discipline but not to culpability. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[8]**

A stipulated disciplinary order does not constitute precedent, but does represent a determination by the Office of the Chief Trial Counsel and the hearing judge that the degree of discipline ordered satisfies the need to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[11]**

From the point of view of a suspended attorney, the effect of a suspension is the same regardless of whether it is called interim or actual: the attorney is denied the right to practice law for the duration of the suspension. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[12]**

Normally, the requirement that a disciplined attorney show rehabilitation, fitness to practice, and learning in the law prior to returning to practice is imposed where the attorney's actual suspension is two years or greater. However, where period of time that attorney was enrolled inactive on account of failure to answer notice to show cause, coupled with one-year actual suspension recommended by review department, resulted in attorney being continuously ineligible to practice law for greater than two years, it was appropriate to recommend compliance with such requirement. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[5]**

In attorney disciplinary matters, a period of stayed suspension subject to probation conditions is applied primarily as an additional measure to protect the public, courts and legal profession. However, where one-year actual suspension, coupled with requirement that attorney demonstrate rehabilitation, present fitness to practice and present learning in the law before being relieved of his actual suspension, would protect public, courts and profession, review department concluded that stayed suspension and probation were not necessary. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[6]**

Uncharged misconduct relied upon to enhance discipline in one proceeding cannot later constitute grounds for additional discipline in an independent disciplinary proceeding. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. **[7]**

Whether a suspension is interim or actual, the effect on the attorney is the same. The issue is what is the appropriate total length of suspension under the circumstances of each case. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[7]**

The California Professional Responsibility Examination, when appropriately ordered, does assist in the rehabilitation of an errant attorney and, as a general proposition, the examination is an effective tool to measure an attorney's understanding and appreciation of the rules and statutes which are designed to protect the public and the best interests of the profession. However, when imposed as a condition of a reproval, the examination may only be required based on a finding that the protection of the public and the interests of the attorney will be served thereby. (Cal. Rules of Court, rule 956(a).) *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181. **[2]**

No decisional law requires automatic imposition of a requirement to take and pass a professional responsibility examination as a condition of a reproval. Routinely requiring the examination should be limited to cases in which the attorney's behavior has so far deviated from ethical norms as to warrant the serious step of either actual or wholly stayed suspension from practice. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181. **[3]**

Respondent's inconsistent responses to State Bar investigators precluded a finding in mitigation that respondent was cooperative with the State Bar. However, respondent's behavior while acting as his own counsel during the disciplinary proceeding, which was consistent with an honest, if mistaken, belief in his own innocence, did not demonstrate an intent to hinder or mislead the court. A respondent is not required to acquiesce in the findings and conclusions of the State Bar Court, but the respondent's attitude toward the disciplinary process and

amenability in conforming to the Rules of Professional Conduct are proper issues for the court's review, particularly in determining appropriate discipline. *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32. **[14]**

The respondent's name does not appear in an opinion imposing a private reproval, although the proceeding remains public. (Trans. Rules Proc. of State Bar, rule 615.) *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. **[1]**

A respondent who receives a private reproval is entitled to have his or her name omitted from the published review department opinion, although the disciplinary proceeding itself is, and remains, public. (Trans. Rules Proc. of State Bar, rule 615.) *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. **[1]**

Depending upon the circumstances, a finding of contempt against an attorney may result in no discipline at all or substantial discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[18]**

Sections 6068(a) and 6103 were not intended to refer to the Rules of Professional Conduct or to make disbarment available for violations of such rules. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[5]**

Under section 6077, the discipline which may be recommended by the State Bar for a wilful violation of the Rules of Professional Conduct is limited to a maximum of three years suspension. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[6]**

Section 6077 does not bind the Supreme Court, in the exercise of its inherent power, should it decide that greater discipline than three years suspension for violation of a Rule of Professional Conduct is needed to protect the public in a particular case; the Supreme Court is not limited by the Legislature in exercising its disciplinary authority. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[7]**

Section 6078 authorizes the State Bar Court to hold a hearing on charged violations of law and to recommend disbarment in those cases warranting disbarment, but section 6077 declares that a Rule of Professional Conduct violation does not warrant discipline in excess of three years suspension. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[8]**

Section 6103's authorization of discipline, including disbarment, is limited by its terms to occasions when an attorney violates the oath and duties defined in the Business and Professions Code or violates a court order. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[9]**

For an egregious rule violation, the State Bar may seek suspension of at least two years and application of standard 1.4(c)(ii); an attorney who can satisfy the showing required by standards 1.4(c)(ii) poses no continuing threat to the public warranting disbarment. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[11]**

In cases involving attorney discipline for serious offenses, the Supreme Court has: (1) stated that serious offenses call for severe discipline and warrant disbarment in the absence of clear or compelling mitigation; (2) recited similar language but evaluated the type of misconduct as a lesser offense; or (3) emphasized that there is no fixed formula as to discipline, and that appropriate discipline can only be arrived at by a balanced consideration of relevant factors, on a case-by-case basis. *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. **[13]**

If violations of the Rules of Professional Conduct were automatically also violations of the statute governing an attorney's duty to obey the law, the statute limiting the discipline for rule violations to a maximum of three years' suspension would be rendered meaningless; such a construction of the statutory scheme would be illogical. *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354. **[16]**

Where respondent had been placed on involuntary inactive enrollment pursuant to section 6007(c) prior to hearing on underlying charges, and after review, proceeding on underlying charges was remanded for partial rehearing and new discipline recommendation, review department directed that on remand, whether suspension or disbarment was recommended, respondent should receive credit for time spent on inactive enrollment. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[25]**

Typically, Supreme Court orders actual suspension for an appropriate period and until restitution is made, rather than ordering suspension until restitution is made and then for an additional fixed term. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[2]**

The Supreme Court has expressed concern with assuring that the record in disciplinary proceedings reflects the correct evidence and finding of prior discipline or lack thereof. Accordingly, where only one of respondent's two prior disciplinary proceedings was made a part of the record and weighed by the hearing judge, it was necessary for the review department to remand the matter to the hearing judge to take evidence on the other prior discipline and consider its effect on the recommended discipline. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[5]**

As a matter of policy, not all attorneys who fail to participate in disciplinary proceedings should be precluded from receiving discipline containing probation conditions. Defaulting attorneys do present a problem for the hearing department in that the cause of their misconduct is not always evident on the record, thus making it difficult to determine which probation conditions or duties would further the goals of discipline. Nonetheless, the view that an attorney's default is prima facie evidence that the attorney is not amenable to probation runs contrary to the duty to consider each case on its own merits to determine appropriate discipline, and also precludes the use of probation monitoring as an effective means of public protection. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[8]**

In determining recommended discipline, matters should be considered on a case-by-case basis, balancing the relevant factors, including the facts, gravity of misconduct and mitigating and aggravating evidence, and considering them in light of the objectives of attorney discipline. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[9]**

Probation is not mandated in all cases where an actual suspension is imposed. When a lengthy period of actual suspension is recommended, imposing the provisions of standard 1.4(c)(ii) in lieu of a probation grant may serve adequately to protect the public and test the attorney's rehabilitation. Probation may not be indicated by virtue of the nature of the misconduct, the passage of time since the misconduct or clear evidence of the attorney's rehabilitation. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[11]**

A respondent should not be admitted to disciplinary probation when there is clear evidence that the respondent will not comply with its conditions. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291. **[13]**

The State Bar cannot impose discipline for any violation not alleged in the original notice to show cause. If the evidence produced before the hearing department shows the attorney has committed an ethical violation that was not charged in the original notice, the State Bar must amend the notice to conform to the evidence adduced at the hearing. *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163. **[16]**

Where delay in commencement of disciplinary probation until end of actual suspension would not further rehabilitation objective of probation, review department recommended that probation commence on finality of Supreme Court's discipline order. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. **[21]**

Review department recognized that respondent's default raised concerns regarding respondent's suitability for probation, but concluded that respondent should not be denied opportunity to comply with probation terms which would appear to have rehabilitative benefit. *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. **[7]**

The Supreme Court's principal concern in the area of attorney discipline is protection of the public and preservation of confidence in the legal profession, interests served by maintaining the highest possible professional standards for attorneys. That same concern is therefore the principal concern of the review department. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[3]**

Where attorney had been placed on involuntary inactive enrollment following disbarment recommendation by hearing department, but on review, discipline recommendation was decreased to suspension and probation, review department recommended that period of involuntary inactive enrollment already served by attorney, and any additional period served thereafter, be credited towards period of actual suspension. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[24]**

If order placing attorney on inactive enrollment was predicated solely on hearing department's disbarment recommendation, which was later superseded by review department's recommendation of suspension, parties could stipulate, pursuant to rule 799 of the Rules of Procedure, to permit attorney's retransfer to active status pending the finality of disciplinary proceedings. Attorney also retained option of stipulating to continued inactive enrollment, in which case review department recommended that such inactive enrollment be credited toward period of actual suspension. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[25]**

1500 Substantive Issues in Conviction Matters

1510 Nature of Underlying Conviction

1511 Driving Under the Influence

Misdemeanor convictions for driving under the influence do not establish moral turpitude per se, but may involve moral turpitude depending on the surrounding circumstances. Where respondent repeatedly attempted to leverage his position as a criminal prosecutor to avoid arrest; lied to arresting officers about his alcohol consumption and the conditions of his suspended driver's license; committed two drunk driving offenses while on probation for an earlier drunk driving conviction; and broke his promise, during his consideration for admission to the State Bar, that he would not drink and drive again, his conduct showed lack of respect for the integrity of the legal system and the profession, contempt for the law, and disregard for public safety, and thus involved moral turpitude. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[3 a-c]**

In contrast to original disciplinary proceedings, which emanate from complaints against lawyers or from State Bar investigations and require an accusatory pleading alleging with reasonable specificity the charges related to alleged violations of specific conduct rules or laws, conviction referral proceedings are intended to be more streamlined because they are initiated based solely on a member of the State Bar's conviction, which is conclusive evidence of guilt of the crime. Convictions for offenses which may or may not involve moral turpitude or other misconduct warranting discipline should be referred for an evidentiary hearing to determine whether in the commission of the crime the convicted lawyer was guilty of misconduct warranting suspension or disbarment; typical offenses in this category include: assault and battery crimes, driving while intoxicated, certain tax convictions, and certain drug law convictions. Because it is appropriate to consider a wide ambit of facts and circumstances surrounding an attorney's commission of a crime during an evidentiary hearing in a referral proceeding, the State Bar met historic notice requirements by alerting respondent that evidence could be introduced on the facts and circumstances surrounding his assault conviction. The review department held the State Bar was not further required to provide respondent written notice of all the facts it considered germane to the referral proceeding at the time it started or respondent's default was entered for failure to reply to the notice of hearing. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[1 a–d]**

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

A reinstatement petitioner's recent conviction for driving under the influence did not, by itself, establish a lack of either rehabilitation or present moral fitness, where the conviction was an isolated, uncharacteristic and aberrational incident; the petitioner did not have a chemical dependency problem; the petitioner had taken steps to prevent any further occurrence; and the conviction was petitioner's first DUI offense, was unrelated to the practice of law, and was unrelated to the misconduct which led to petitioner's resignation. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[15]**

The general policy of the State Bar is not to refer a first offense misdemeanor drunk driving conviction to the Supreme Court for discipline. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[3]**

Although drunk driving is a serious societal problem, it may or may not become a matter subject to professional discipline. Where an interim suspension order would impose a degree of discipline far more severe than the probable final discipline, the range of final discipline is dispositive of the good cause requirement for vacating the order. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[6]**

Whether good cause exists for vacating or not imposing an interim suspension order depends on the facts that are not genuinely in dispute in each case. Good cause existed for vacating an interim suspension order following a felony drunk driving conviction where respondent had practiced law for 22 years with no prior disciplinary record; respondent had been convicted of drunk driving twice; respondent's conviction involved serious injury to another

person, but did not involve violent behavior, clients, or the practice of law; where the final disciplinary order was likely to impose a sanction far less severe than would result from the interim suspension order; and where there was no indication of any adverse effect of the misconduct on respondent's practice, of any violation of respondent's criminal sentence, or of any particular danger to respondent's clients. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[10]**

Convictions combining concealed firearms and driving offenses can result in lawyer discipline. However, no moral turpitude or misconduct warranting discipline occurred where respondent's conviction for driving under the influence and fighting in public, under circumstances involving a concealed weapon, was found by the hearing judge to have been a singular instance, and did not involve disrespect for the law, dangerous or violent criminal behavior, or an alcohol dependency problem, and respondent's possession of the weapon was understandable because of recent threats to his life. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[2]**

The California Supreme Court has classified driving under the influence of alcohol as a crime which may or may not involve moral turpitude, and which may, at least under certain circumstances, result in professional discipline. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[1]**

The general policy of the State Bar is not to refer an attorney for a State Bar disciplinary hearing following the attorney's first misdemeanor conviction for driving under the influence of alcohol. First offense convictions are automatically referred when they involve a felony and may be referred if aggravating circumstances are apparent from the record of a misdemeanor conviction. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[5]**

Where respondent clearly was on notice that drinking and driving could result in criminal penalties, and it was established law that any vehicular homicide or felony conviction resulting from drunk driving could result in professional discipline, respondent apparently had sufficient notice that criminal behavior of driving under the influence could, depending on circumstances, result in professional discipline. However, review department declined to decide notice issue where disciplinary proceeding was dismissed on another ground. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[8]**

Under both ABA model ethics rules and California law, lawyers convicted simply of a single misdemeanor offense of driving under the influence may receive a disciplinary reprimand, but for the most part are treated like under citizens and sanctioned under the criminal law. Their suitability to practice law is called into question, however, where the incident is compounded by serious injury or death or is coupled with other aggravating behavior. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[10]**

Although drunk drivers pose a extreme danger to society, the Supreme Court has held that an attorney's conviction for drunk driving does not per se establish moral turpitude, even when the attorney has prior convictions for that offense. The Court has also determined that the more serious crime of gross vehicular manslaughter while intoxicated does not per se involve moral turpitude. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[1]**

In order to determine that a crime involved moral turpitude, specific resulting harm need not be shown. Conduct which poses a danger to the public, such as drunk driving, is no less serious because it did not result in death or injury. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[5]**

In analyzing whether a conviction for drunk driving involves moral turpitude, such factors as a prior conviction for drunk driving, a violation of criminal probation, and a high blood alcohol level have been held insufficient to warrant a moral turpitude finding. Where respondent had several drunk driving convictions and was aware of the problems of drunk driving due to past prosecutorial experience, and where the circumstances of respondent's crimes involved threats to peace and safety and confrontations with law enforcement officers, respondent's misconduct approached but did not cross the moral turpitude line, but did constitute misconduct warranting discipline. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[6]**

Where respondent's drunk driving convictions involved more serious misconduct than in prior reported disciplinary cases involving drunk driving, including repeated abusive conduct with law enforcement officers, and respondent had two prior disciplinary reprovals, but respondent presented favorable evidence of professional

ability and character references as well as efforts toward overcoming his addiction to alcohol, a 60-day actual suspension was appropriate to serve the aims of attorney discipline and, coupled with three years of probation, to assist in convincing respondent to deal with his alcohol abuse problems seriously. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[7]**

A literal application of standard 1.7(b) would call for disbarment of any attorney who is found culpable in a third disciplinary proceeding, unless compelling mitigating circumstances predominate. However, this standard must be applied in light of the nature and extent of the prior record. Where respondent's prior record of two reprovals involved inattention to the needs of clients, misconduct of a different nature than the drunk driving convictions involved in respondent's third proceeding, respondent's prior disciplinary record did not warrant disbarment, but did constitute a proper aggravating factor. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[8]**

A conviction for driving under the influence is not professional misconduct on its face; whether such a conviction involves misconduct warranting discipline depends on consideration of all the facts and circumstances. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[1]**

Respondent's conviction for driving under the influence of alcohol and/or drugs did not involve moral turpitude, where the facts and circumstances surrounding the conviction demonstrated that respondent ingested legal medications that he did not know, nor reasonably should have known, would impair his driving ability, and thereafter unexpectedly drove his car. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[4]**

Although the circumstances of an attorney's ingestion of medications may not be a defense to the criminal charge of driving under the influence, they are relevant to whether professional discipline is necessary for the protection of the public, courts and legal profession. Where those circumstances demonstrated that the attorney ingested legal medications that he did not know, nor reasonably should have known, would impair his driving ability and thereafter unexpectedly drove his car, they did not indicate that the attorney's criminal violation demeaned the integrity of the legal profession or constituted a breach of the attorney's responsibility to society, other than any criminal violation would. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[5]**

An attorney's conviction is conclusive proof, for disciplinary purposes, that the attorney committed the crime for which the attorney was convicted. However, California's driving under the influence laws do not prohibit drinking or ingestion of drugs and driving. Rather, they prohibit driving under the influence of alcohol or drugs and/or driving with a specified blood alcohol content. Thus, the mere fact that an attorney ingested legal medications and then drove a vehicle did not indicate that the attorney's conduct demeaned the integrity of the profession or constituted a breach of the attorney's responsibility to society. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[6]**

The question whether criminal conduct involved moral turpitude is one of law ultimately for the Supreme Court to decide, based on all of the facts and circumstances surrounding the conviction. Moral turpitude may be found in a driving under the influence matter depending on possible aggravating factors. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[2]**

1512 Non-Violent Theft Crimes (Fraud, Embezzlement, etc.)

In order to warrant classification as a crime inherently involving moral turpitude, the least adjudicated elements of the crime must, as a matter of law, constitute moral turpitude no matter how the crime was committed. Given that either reckless disregard or knowledge of intent of another to commit insurance fraud is an element of respondent's violation of Penal Code section 549, this offense does not inherently involve moral turpitude, but rather is an offense for which there is probable cause to believe involves moral turpitude. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[2]**

An attorney's conviction of a crime pursuant to a plea of nolo contendere is conclusive proof that the attorney committed all acts necessary to constitute the offense. Thus, respondent's convictions on two counts of violating Penal Code section 549 based on respondent's recklessness and not his actual knowledge conclusively establish that he acted in reckless disregard of the unlawful intentions of others. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[5]**

The facts and circumstances surrounding respondent's scheme to defraud the government presented clear and convincing evidence of moral turpitude where respondent misappropriated his clients' identities, authorized the forgery of clients' signatures, and conspired to use his trust account as a subterfuge to avoid paying income taxes due on legal fees and to fund a massive capping and fee splitting scheme for the principal purpose of enriching himself, his cousin, and his nonattorney office manager. However else moral turpitude may be defined, it most certainly includes these deceitful acts by respondent for his personal gain.*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[1]**

Respondent's convictions of making false statements to federally insured financial institution to influence action on loans, felonies involving moral turpitude, did not occur in respondent's practice of law or in manner such that a client was victim. Thus, respondent's convictions did not meet statutory criteria for disbarment under former version of summary disbarment statute that was in effect between 1986 and January 1, 1997. And respondent's summary disbarment was warranted, if at all, only under present version of statute (Bus. & Prof. Code, § 6102, subd. (c)), effective January 1, 1997. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51. **[1 a-c]**

Past Supreme Court practice in considering automatic or summary disbarment was not found by the review department to entail weighing and balancing issues such as the motive of the attorney in committing the crime, the extent to which harm did or did not occur, whether the offenses were limited or repeated or other issues pertaining to evidence bearing on either mitigating or aggravating circumstances. Therefore, to the extent that language in the review department opinions *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71, and *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729, would require the review department to undertake such an analysis, such language was disapproved. Although respondent denies that his offense was serious enough to warrant disbarment, all the facts are not before us nor are they undisputed. What is undisputed is that respondent stands finally convicted, inter alia, of mail fraud, a felony which unquestionably involves moral turpitude; and, as we observed collectively in *Segall* and *Salameh*, is the type of offense which has often resulted in disbarment. Our reading of the summary disbarment law and past Supreme Court practice, would not warrant any exception to a summary disbarment recommendation based on respondent's claims. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942. **[2]**

In determining whether an attorney's convictions meet the statutory criteria for summary disbarment, the review department is limited to the record of conviction and any undisputed facts that may exist. Where the record of conviction did not establish that the offenses were committed in the course of the practice of law or in any way such that a client of respondent's was a victim, the offenses did not meet the criteria for summary disbarment under the version of Business and Professions Code section 6102, subdivision (c), in effect prior to January 1, 1997. Summary disbarment was warranted, if at all, only under the present version of the statute. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[1]**

The only prerequisite to initiating a conviction referral proceeding against an attorney in the State Bar Court is a guilty plea by the attorney or a guilty verdict rendered against the attorney. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[1]**

Unless the most compelling of mitigating circumstances clearly predominate, disbarment is the appropriate discipline in cases involving convictions of serious crimes involving moral turpitude. The nature and extent of respondent's felony conviction of conspiracy to commit theft and theft, alone, established his unfitness to practice law. Likewise, the facts and circumstances surrounding his crimes, the numerous aggravating circumstances, and the lack of any substantial mitigating circumstance further convinced the review department that respondent remained unfit to practice unless and until he established by clear and convincing evidence in a reinstatement proceeding that he was rehabilitated. Accordingly, disbarment was recommended. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[13]**

Respondent's conviction of grand theft and forgery was conclusive evidence of his guilt of all elements of those crimes. The grand theft conviction necessarily carried with it the specific intent to deprive the victim permanently of his funds. The forgery conviction necessarily showed that respondent acted without authority and with an intent to defraud. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[3]**

Convictions of grand theft and forgery would have resulted in recommendation of summary disbarment if crimes had occurred in practice of law or a client was a victim. Where respondent's crimes did not occur in practice of law or victimize a client, case was not eligible for summary disbarment, and respondent was entitled to hearing on appropriate degree of discipline. Nevertheless, opportunity for hearing was not designed to lower professional standards. Respondent's crimes constituted heinous misconduct for an attorney. Where such crimes were of great magnitude, and were related to the very types of matters in which attorneys frequently act, such as ensuring validity of documents requiring notarial services, respondent's crimes were of such a serious nature that by themselves, they would warrant disbarment. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[4]**

Disbarment was warranted for convictions of grand theft and forgery unless most compelling mitigating circumstances clearly predominated. Despite hearing judge's conclusion that respondent's crimes were aberrant and brought on by incredible psychological stress due to marital and business problems, review department did not agree that mitigation was compelling. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[5]**

Respondent's lack of a prior record of discipline in 14 years of practice was entitled to mitigating weight but did not of itself prove that disbarment was excessive for convictions of grand theft and forgery. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[6]**

Respondent's favorable character showing, while attested to by many references, did not amount to a showing of extraordinary demonstration of good character, where not all witnesses were familiar with the magnitude and nature of respondent's crimes, and where respondent's repeated contention that he did not act to defraud his victim served to undercut his favorable character showing in light of the conclusive effect of his convictions for grand theft and forgery. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[7]**

Not all instances of serious professional misconduct warrant disbarment, depending on mitigating circumstances. Theft crimes unrelated to the practice of law have resulted in less than disbarment. However, where respondent's offenses of grand theft and forgery were extremely grave and multiple examples of felonious and fraudulent misconduct, likely to impugn public confidence in the legal profession, and respondent's experience in sophisticated law practice, public office and private business should have dissuaded him from committing felonies, review department recommended disbarment notwithstanding respondent's evidence of stress caused by personal and financial problems. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[11]**

Summary disbarment is statutorily authorized if an attorney commits a California or federal felony as to which: (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement; and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. If the State Bar Court determines that disbarment would be ordered by the Supreme Court without regard to mitigating circumstances, a recommendation of summary disbarment is justified. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[2]**

Where respondent, while acting as the executor of a deceased client's estate, embezzled more than $500,000 from such estate, the magnitude of the theft would result in disbarment regardless of alleged mitigating circumstances. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[4]**

Where respondent committed grand theft by embezzlement, the felony conviction papers demonstrated that an element of respondent's offense was the specific intent to deceive, defraud, steal, or make or suborn a false statement. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[5]**

Where respondent embezzled funds from a deceased former client's estate while serving as the estate's executor, but not its attorney, neither the estate nor the beneficiaries of the estate were respondent's clients, nor did respondent commit the offense in the practice of law. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[6]**

By statute, summary disbarment is available only for a narrow range of grievous misconduct. Grand theft by an attorney in the capacity of executor of an estate, though egregious, does not come within the statutory definition of an offense justifying summary disbarment unless it was committed in the practice of law or in such a manner that a client was a victim. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[7]**

The statutory requirement for summary disbarment that an attorney's crime be committed in such a manner that a client was a victim is met even when the victimization occurred outside the practice of law, and may apply even when the victim was a former or deceased client. Where an attorney is appointed under a former client's will as executor of the client's probate estate, and is convicted of grand theft by embezzlement from the estate, there is such a clear nexus between the crime and the trust and confidence of the client that was violated that the client-as-victim requirement for summary disbarment is satisfied. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[8]**

The Legislature has determined that public protection and integrity and confidence in the State Bar warrant interim suspension of attorneys convicted of misdemeanors only where there is probable cause to believe that the misdemeanor involves moral turpitude per se, and even in such cases good cause may justify not imposing interim suspension, as in the case of shoplifting. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[9]**

Where respondent, who had pleaded guilty to welfare fraud based on eligibility statements signed by him but filled out by his wife, attempted to establish in mitigation that he did not know of his wife's fraudulent conduct, it was respondent's burden to prove such mitigation, and review department gave great weight to hearing judge's contrary finding based on evaluation of credibility of respondent and his wife. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[2]**

Where respondent's knowledge of welfare fraud perpetrated by his wife was conclusively established by his guilty plea to a crime of which fraud was an essential element, the State Bar did not need affirmative evidence beyond the conviction itself to prove respondent's participation in the fraud. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[3]**

It was not mitigating that when respondent signed a declaration that the information on welfare eligibility forms was true, the forms were actually still blank, and untrue information was filled in thereafter by respondent's wife. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[8]**

Where an attorney's prior discipline involved culpability of moral turpitude for attempted receipt of stolen property, and the attorney's subsequent misconduct involved moral turpitude in misleading applications for employment, there was no pattern or common thread linking the former misconduct with the later case. However, the attorney's multiple breaches of ethical duties demonstrated that the attorney lacked a true understanding of professional responsibilities. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[11]**

Mail fraud (18 U.S.C. § 1341) is a crime involving moral turpitude, for which interim suspension is ordered following an attorney's conviction. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[1]**

A conviction for mail fraud (18 U.S.C. § 1341) involves intentional fraud within the meaning of the summary disbarment statute (Bus. & Prof. Code § 6102 (c)). *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[4]**

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

1513 Violent Crimes

Under California case law interpreting the California Supreme Court's inherent authority, professional discipline can be imposed based on a criminal conviction for violent behavior not involving moral turpitude, wilful failure to file a tax return, or repeated minor violations evincing indifference to legal obligations. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[9]**

1513.10 Homicide, Assault, Battery, and Related Crimes

In contrast to original disciplinary proceedings, which emanate from complaints against lawyers or from State Bar investigations and require an accusatory pleading alleging with reasonable specificity the charges related to alleged violations of specific conduct rules or laws, conviction referral proceedings are intended to be more streamlined because they are initiated based solely on a member of the State Bar's conviction, which is conclusive evidence of guilt of the crime. Convictions for offenses which may or may not involve moral turpitude or other

misconduct warranting discipline should be referred for an evidentiary hearing to determine whether in the commission of the crime the convicted lawyer was guilty of misconduct warranting suspension or disbarment; typical offenses in this category include: assault and battery crimes, driving while intoxicated, certain tax convictions, and certain drug law convictions. Because it is appropriate to consider a wide ambit of facts and circumstances surrounding an attorney's commission of a crime during an evidentiary hearing in a referral proceeding, the State Bar met historic notice requirements by alerting respondent that evidence could be introduced on the facts and circumstances surrounding his assault conviction. The review department held the State Bar was not further required to provide respondent written notice of all the facts it considered germane to the referral proceeding at the time it started or respondent's default was entered for failure to reply to the notice of hearing. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[1 a–d]**

Although agreeable demeanor is not a recognized factor in mitigation, where respondent committed a violent crime, the hearing judge's finding that respondent had an agreeable demeanor and was not violent or aggressive, was a factor to consider in determining the degree of discipline because it was relevant to his potential capacity for future violence. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[2]**

To the extent that the reduction of an attorney's felony conviction to a misdemeanor was an indication of the criminal court's view of the seriousness of the criminal conduct, the evidence was relevant to the issue of the appropriate discipline. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[3]**

The lack of client harm is a relevant mitigating circumstance in the context of a criminal conviction. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[4]**

As part of his plea in the criminal case, respondent admitted that he caused great bodily injury to another person. Thus, the crime for which respondent was convicted necessarily involved severe injury and it would be duplicative to consider harm to the victim as a separate aggravating circumstance. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[5]**

Although the record indicated that respondent was not likely to commit similar misconduct in the future, the discipline system also has a responsibility to preserve the integrity of the legal profession. That concern persuaded the review department that public discipline, including a period of suspension, was warranted for an attorney's conviction of assault with a firearm, with the enhancement that he discharged a firearm at an occupied motor vehicle which caused great bodily injury to the person of another. However, given the totality of the circumstances, including the fact that respondent had already been interimly suspended for ten and one-half months as the result of his conviction, and comparable case law, the review department did not believe that a period of prospective actual suspension was necessary. Accordingly, it recommended a period of stayed suspension along with a period of probation with conditions. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[6]**

Conviction of violation of criminal statute is conclusive evidence of guilt of elements of that crime. Where respondent was convicted of battery on a police officer engaged in performance of official duties, and such officer's use of excessive force would have required finding that officer was not engaged in performance of official duties, respondent's conviction precluded State Bar Court from considering his claim that police initiated altercation or used excessive force in incident leading to respondent's conviction. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[8]**

Where respondent, an experienced family law attorney, drank a strong alcoholic beverage prior to visiting with his young child, and then trespassed on his estranged wife's apartment; intimidated her when she requested that he leave; engaged in an altercation with police who attempted to escort him out of the apartment, and was hostile and used racial epithets to police when being taken away under arrest, respondent's conduct surrounding his criminal conviction for battery on a police officer did not involve moral turpitude but did involve misconduct warranting discipline. Given respondent's experience, he should have attempted to defuse a risky domestic incident; instead, he created one with a serious risk of harm. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[9]**

Disciplinary conviction referral cases in which assaultive behavior was the principal offense have generally resulted in suspension of varying degrees. In matter arising from misdemeanor conviction for battery on police officer, it was an aggravating circumstance that respondent provoked a dangerous and risky confrontation with

police responding to his own domestic disturbance notwithstanding respondent's significant experience as a practicing lawyer in handling family law matters. Where this and other aggravating circumstances clearly outweighed mitigating ones, discipline of two years stayed suspension, two years probation, and 60 days actual suspension was abundantly fair and warranted. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[10]**

Respondent's conviction of assault conclusively established that he did not act in self-defense, i.e., that he did not have an honest *and* reasonable belief that he was about to suffer bodily injury. Hearing judge could not reach conclusions, even based on credible evidence, that were inconsistent with such conclusive effect. Thus, where hearing judge found that respondent honestly believed he was about to be assaulted, review department rejected any finding that such belief was reasonable as being inconsistent with the conviction. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[2]**

An attorney's conviction for assault with a firearm is conclusive proof that the attorney committed the elements for that crime, i. e., that a person was assaulted and that the assault was committed with a firearm. An assault is defined as an unlawful attempt to apply physical force upon the person of another at a time when the accused had the present ability to apply such physical force. An attempt to apply physical force is not unlawful when done in lawful self-defense. An attorney's conviction of this crime therefore conclusively established that the attorney unlawfully attempted to apply physical force upon the victim. As the assault was by definition unlawful, the review department concluded that it was not done in self-defense. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[7]**

The crime of assault with a firearm does not in and of itself constitute a crime of moral turpitude for attorney discipline purposes. If moral turpitude exists for this crime, it must be based on the particular circumstances surrounding the conviction. Criminal convictions have been determined to involve moral turpitude where the surrounding circumstances indicate a flagrant disregard for human life. However, where respondent's crime occurred while he had an honest belief that he had been shot or shot at and was in immediate danger of being shot at again; respondent considered his escape options before using his firearm, and fired only once as safely as he could from a moving vehicle; and there was no evidence that respondent intended to injure the victim, the review department concluded that respondent's conviction did not demonstrate moral turpitude or render respondent unfit to practice law. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[8]**

Violent criminal behavior that does not rise to the level of moral turpitude may result in the imposition of discipline under both California case law and the ABA model ethics rules. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[11]**

Where the circumstances of respondent's conviction for assault with a firearm indicated that respondent engaged in a confrontation on a crowded freeway with another motorist which put innocent third parties at great risk and ultimately resulted in serious injury, the acts which were conclusively established by respondent's conviction, and the circumstances surrounding the conviction, including respondent's status as a trained and experienced reserve law enforcement officer, demonstrated a reckless disregard for the safety of others and therefore involved other misconduct warranting discipline. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[12]**

Respondent's conviction for exhibiting a replica of a firearm in a threatening manner to cause reasonable fear or apprehension of harm conclusively established that respondent's acts were done in a threatening manner so as to cause a reasonable person apprehension or fear of bodily harm. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[7]**

Where, in brandishing replica firearm so as to cause reasonable fear of harm, respondent did not act out of uncontrollable anger or other disabling disorder; had the time and opportunity to ponder his acts beforehand; repeated his outrageous conduct after additional time for reconsideration; put innocent bystanders in fear for their safety and well-being; responded inappropriately to a dispute easily and routinely settled through normal legal processes; and did not act due to any abuse of alcohol, review department agreed with hearing referee's conclusion that the circumstances surrounding respondent's criminal offenses involved moral turpitude. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[12]**

In determining whether respondent's criminal convictions for exhibiting a replica firearm in a threatening manner involved moral turpitude, it was of no consequence that no one was physically injured by respondent's acts. The acts were intended to be, and were, perceived to be life-threatening, and could have provoked heart attacks or an armed response, thus demonstrating a flagrant disregard toward human life. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[13]**

Any determination of moral turpitude in an offense not inherently involving moral turpitude is fact-sensitive. Serious assaultive conduct has sometimes been found not to involve moral turpitude. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[14]**

1513.20 Robbery, Burglary, and Related Crimes

1513.90 Other Violent Crimes

Convictions combining concealed firearms and driving offenses can result in lawyer discipline. However, no moral turpitude or misconduct warranting discipline occurred where respondent's conviction for driving under the influence and fighting in public, under circumstances involving a concealed weapon, was found by the hearing judge to have been a singular instance, and did not involve disrespect for the law, dangerous or violent criminal behavior, or an alcohol dependency problem, and respondent's possession of the weapon was understandable because of recent threats to his life. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[2]**

1514 Sex Offenses

1514.10 Sexual Assault, Rape, and Related Crimes

1514.20 Sexual Conduct with Minors

Case law indicates a wide range of available discipline for cases involving sexual conduct toward children depending on the circumstances. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[8]**

1514.30 Non-Violent Misdemeanor Sex Offenses

Criminal conduct not related to the practice of law and not committed against a client reveals moral turpitude if it shows a deficiency in character traits necessary for the practice of law, or involves such a serious breach of duty or such flagrant disrespect for law and societal norms as to be likely to undermine public confidence in and respect for the legal profession. Where respondent was convicted of a misdemeanor for repeatedly placing video cameras in restaurant bathrooms to obtain secret recordings to view for sexual gratification, conviction was conclusive proof that respondent acted with intent to invade the privacy of restaurant patrons, and respondent's crime involved moral turpitude. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[1 a–c]**

Misdemeanor convictions of sex offenses which are not serious and are unrelated to the practice of law have generally resulted in only private reproval absent aggravating factors. Where respondent was convicted of such a misdemeanor, disbarment would have been manifestly disproportionate to his cumulative misconduct, notwithstanding his record of two prior private reprovals. Respondent's misconduct was less serious than wilful failure to file tax returns or driving under the influence, and did not warrant the same degree of discipline. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[1]**

Where respondent was convicted of misdemeanor sex offense not involving moral turpitude and not related to practice of law, respondent's record of two prior private reprovals made it appropriate to impose public reproval rather than private reproval that would otherwise have been warranted, but due to lack of common thread among matters and their collective lack of severity, it would have been manifestly unjust to recommend suspension. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[5]**

1514.90 Other Sex Offenses

1515 Drug-Related Crimes

In contrast to original disciplinary proceedings, which emanate from complaints against lawyers or from State Bar investigations and require an accusatory pleading alleging with reasonable specificity the charges related to

alleged violations of specific conduct rules or laws, conviction referral proceedings are intended to be more streamlined because they are initiated based solely on a member of the State Bar's conviction, which is conclusive evidence of guilt of the crime. Convictions for offenses which may or may not involve moral turpitude or other misconduct warranting discipline should be referred for an evidentiary hearing to determine whether in the commission of the crime the convicted lawyer was guilty of misconduct warranting suspension or disbarment; typical offenses in this category include: assault and battery crimes, driving while intoxicated, certain tax convictions, and certain drug law convictions. Because it is appropriate to consider a wide ambit of facts and circumstances surrounding an attorney's commission of a crime during an evidentiary hearing in a referral proceeding, the State Bar met historic notice requirements by alerting respondent that evidence could be introduced on the facts and circumstances surrounding his assault conviction. The review department held the State Bar was not further required to provide respondent written notice of all the facts it considered germane to the referral proceeding at the time it started or respondent's default was entered for failure to reply to the notice of hearing. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[1 a–d]**

It is appropriate for disciplinary purposes to consider any criminal charges that were dismissed as well as the charges for which the attorney was actually convicted. Thus, where the criminal complaint in a Vehicle Code violation matter charged respondent with being under the influence of phencyclidine, and clear and convincing evidence was presented establishing that respondent was under the influence of phencyclidine, that circumstance could be considered in the disciplinary proceeding even though respondent was not convicted of being under the influence of phencyclidine. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[7]**

A conviction of being under the influence of phencyclidine did not per se establish moral turpitude and the review department concluded that the sparse facts presented regarding the surrounding circumstances did not establish moral turpitude. No actual harm occurred to anyone and insufficient facts were presented to conclude that respondent's violation of his prior criminal probation was in either subjective or objective bad faith. However, the conviction did involve other misconduct warranting discipline, because respondent's failure to conform his conduct to the requirements of the criminal law and the court orders imposed on him in connection with his criminal probation called into question his integrity as an officer of the court and his fitness to represent clients and thereby established a nexus between the practice of law and the misconduct. In addition, respondent's conviction of a total of four substance abuse offenses within a relatively short period of time indicated a problem with substance abuse that was clearly affecting respondent's private life, which also established a nexus between the practice of law and the misconduct. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[8]**

Although respondent's use and distribution of illegal drugs did not result from an initial, legal use of prescribed medications, which would have mitigated his later, reprehensible drug transactions, the great number of years which had passed since the attorney's misconduct, coupled with evidence of impressive and sustained rehabilitation, were sufficiently mitigating to conclude that disbarment would be excessive discipline. To underscore the gravity of the attorney's misconduct, which occurred after the attorney had completed law school and had applied unsuccessfully to the California bar, the review department recommended two years actual suspension, retroactive to the start of the attorney's interim suspension. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[3]**

Where an attorney previously involved in serious drug abuse had ceased such abuse unilaterally and did not present any expert evidence of current freedom from substance abuse, and the attorney did not submit any evidence of present learning and ability in the law following an interim suspension the length of which exceeded the attorney's prior period of licensure, public protection would be served by continuing the attorney's actual suspension until the attorney established freedom from drug dependency and present learning and ability in the general law. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[4]**

No Supreme Court opinion has determined that a conviction of possession of marijuana for sale is one that inherently involves moral turpitude; hearing judge's conclusion that such a conviction did inherently involve moral turpitude was in error. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[3]**

The commercial or distribution aspect of respondent's crime was conclusively established by his conviction of possession of marijuana for sale. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[4]**

In matter arising from conviction of possession of marijuana for sale, respondent's role as a principal, his motive of potential financial gain and his awareness of the illegality of his actions demonstrated that moral turpitude was

involved in the circumstances surrounding respondent's conviction. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[5]**

Other than one disbarment in a matter involving additional very serious misconduct, marijuana distribution convictions of attorneys have resulted in suspension ranging from no actual suspension to three years stayed suspension and two years actual suspension. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[13]**

1516 Violation of Tax Laws

In contrast to original disciplinary proceedings, which emanate from complaints against lawyers or from State Bar investigations and require an accusatory pleading alleging with reasonable specificity the charges related to alleged violations of specific conduct rules or laws, conviction referral proceedings are intended to be more streamlined because they are initiated based solely on a member of the State Bar's conviction, which is conclusive evidence of guilt of the crime. Convictions for offenses which may or may not involve moral turpitude or other misconduct warranting discipline should be referred for an evidentiary hearing to determine whether in the commission of the crime the convicted lawyer was guilty of misconduct warranting suspension or disbarment; typical offenses in this category include: assault and battery crimes, driving while intoxicated, certain tax convictions, and certain drug law convictions. Because it is appropriate to consider a wide ambit of facts and circumstances surrounding an attorney's commission of a crime during an evidentiary hearing in a referral proceeding, the State Bar met historic notice requirements by alerting respondent that evidence could be introduced on the facts and circumstances surrounding his assault conviction. The review department held the State Bar was not further required to provide respondent written notice of all the facts it considered germane to the referral proceeding at the time it started or respondent's default was entered for failure to reply to the notice of hearing. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[1 a–d]**

The facts and circumstances surrounding respondent's scheme to defraud the government presented clear and convincing evidence of moral turpitude where respondent misappropriated his clients' identities, authorized the forgery of clients' signatures, and conspired to use his trust account as a subterfuge to avoid paying income taxes due on legal fees and to fund a massive capping and fee splitting scheme for the principal purpose of enriching himself, his cousin, and his nonattorney office manager. However else moral turpitude may be defined, it most certainly includes these deceitful acts by respondent for his personal gain.*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[1]**

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

For State Bar purposes, the crime of conspiracy to impair the collection of federal income taxes (18 U.S.C. § 371) may or may not involve moral turpitude, depending on the facts and circumstances surrounding the conviction. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[1]**

An act of moral turpitude is an act contrary to honesty and good morals. Respondent's conviction for conspiracy to impair the collection of federal income taxes (18 U.S.C. § 371) involved acts of moral turpitude where he concealed the true ownership of property in order to prevent its forfeiture because of illegal drug trading, concealed a former client's history of drug charges when bringing the former client into a real estate venture with another partner, used a real estate venture to launder cash which he knew came from illegal drug sales, several times hid cash from illegal drug sales for the former client, made intentional misrepresentations which he knew could endanger the lives of others, and made a loan to the former client to help finance the former client's illegal drug trade. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[3]**

Disbarments, and not suspensions, have been the rule rather than the exception in cases of serious crimes involving moral turpitude. Although respondent presented substantial mitigation, it was not compelling in light of respondent's extremely serious misconduct over a several-year period. The protection of the public, courts, and legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession necessitated disbarment for respondent's extensive participation in criminal activities involving repeated acts of moral turpitude. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[9]**

Under California case law interpreting the California Supreme Court's inherent authority, professional discipline can be imposed based on a criminal conviction for violent behavior not involving moral turpitude, wilful failure to file a tax return, or repeated minor violations evincing indifference to legal obligations. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[9]**

The wilful failure to file income tax returns alone does not involve moral turpitude per se. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[8]**

Disbarment would be excessive in case arising out of criminal conviction for filing false federal income tax return, even though offense involved moral turpitude, based on comparable Supreme Court cases and given respondent's compelling showing of mitigation, including absence of any prior or subsequent misconduct; extreme emotional difficulties arising from an amputation; respondent's acknowledgment of his misconduct and his candor and cooperation with the State Bar; a persuasive showing of respondent's good character and high esteem in the community; family problems existing at the time of the misconduct; and the fact that the misconduct did not involve the practice of law. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[8]**

1517 Violation of Regulatory Laws

In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.

Respondent's convictions of making false statements to federally insured financial institution to influence action on loans, felonies involving moral turpitude, did not occur in respondent's practice of law or in manner such that a client was victim. Thus, respondent's convictions did not meet statutory criteria for disbarment under former version of summary disbarment statute that was in effect between 1986 and January 1, 1997. And respondent's summary disbarment was warranted, if at all, only under present version of statute (Bus. & Prof. Code, § 6102, subd. (c)), effective January 1, 1997. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.51.**[1 a-c]**

Where respondent was convicted of carrying a loaded firearm in a vehicle in a city, and respondent had an expired concealed weapons permit which he had intended to renew, and was carrying the gun due to a reasonable belief that he and his family were in danger from a person who had made death threats against him, respondent's conviction involved neither moral turpitude nor misconduct constituting a basis for the imposition of professional discipline. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[1]**

Based on surrounding circumstances and on subsequent federal appellate decisions holding that conduct for which respondent was convicted is not a crime, referee properly determined that respondent's convictions for violating federal currency transaction reporting laws did not involve moral turpitude or other conduct warranting discipline. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[2]**

1518 Administration of Justice Offenses (contempt, perjury, etc.)

Respondent's conviction for a crime involving conspiracy to obstruct justice was a serious offense involving moral turpitude per se. *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189 **[1]**

Summary disbarment is statutorily authorized where an attorney is convicted of a felony and (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. The crime of forgery includes as one of its elements the specific intent to defraud. A forgery conviction for altering a court document was unquestionably committed in the course of the practice of law in that it involved fraud on the court perpetrated on behalf of the attorney's client. Accordingly, summary disbarment was appropriate in the absence of conflicting Supreme Court precedent or a violation of due process in disbarring respondent without a hearing. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[2]**

Forgery is by definition a crime of moral turpitude. Under Supreme Court case law, disbarment is the rule rather than the exception for this serious crime. Forgery of a court document involves fraud on the court, which is particularly egregious. Accordingly, where respondent was convicted of such crime, respondent would have faced disbarment even if granted a hearing on the issue of appropriate discipline. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[6]**

It was not mitigating that when respondent signed a declaration that the information on welfare eligibility forms was true, the forms were actually still blank, and untrue information was filled in thereafter by respondent's wife. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[8]**

Where probation conditions required that respondent abstain from intoxicants and non-prescribed drugs, and respondent stated under penalty of perjury that respondent had complied with all "valid, legally reasonable and enforceable" probation conditions, then even if State Bar proved respondent had consumed alcohol, respondent could have avoided perjury conviction by contending he did not consider abstinence condition to be valid, legally reasonable, and/or enforceable. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[5]**

Where respondent was convicted of a felony for harboring respondent's client while the client was a fugitive, even thought respondent was well-motivated, did not act for personal gain and committed no perjurious act, respondent's conviction was a serious matter, and involved acting with conscious disregard of an attorney's obligation to uphold the law. Thus, even though respondent's conduct was aberrational, respondent posed no current risk to the public, the legal profession or the courts, and respondent presented compelling mitigating evidence, a 60-day actual suspension, with one year of stayed suspension and one year of probation, was appropriate to preserve the integrity of the legal profession and enforce high professional standards. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[1]**

Where Supreme Court directed State Bar Court only to hear evidence on appropriate level of discipline, hearing referee correctly ruled that Supreme Court had already established nature of respondent's criminal offense as one inherently involving moral turpitude, and Supreme Court's classification of offense of harboring a fugitive as one involving moral turpitude per se was final and binding on the State Bar Court. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[5]**

The whereabouts of a fugitive client known to an attorney constituted privileged communications which the attorney cannot disclose. (Bus. & Prof. Code, § 6068 (e); ABA Model Rules, rule 1.6.) The attorney must advise the client to surrender and must not assist or facilitate the fugitive in avoiding capture or committing a crime. Thus, respondent's knowledge that his fugitive client was in California and his meetings with the client to discuss the progress of negotiations with the authorities regarding the outstanding criminal charges were client confidences which respondent was obligated to preserve. However, an attorney's ethical duty not to disclose client confidences does not extend to affirmative acts which further a client's unlawful conduct, and respondent's guilty plea constituted conclusive proof that he committed all the acts necessary to commit the charged offense of harboring his fugitive client with the intent of preventing the client's discovery and arrest by federal authorities. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[11]**

Where respondent in criminal conviction matter had acted in what he believed to be the best interests of both his client and the criminal justice system, his good motives were not a defense to his breach of duty, but did constitute a strong factor in mitigation. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[16]**

The Standards for Attorney Sanctions for Professional Misconduct are guidelines; they do not need to be followed in talismanic fashion. Hearing judge in matter arising from perjury conviction properly analyzed relevant case law in order to arrive at appropriate sanction, rather than automatically applying standard 3.2, which provides that discipline for conviction of a crime involving moral turpitude shall be disbarment unless compelling circumstances clearly predominate. Supreme Court cases involving crimes of moral turpitude have considered the nature of the crime and the magnitude of its impact on the public and the integrity of the legal system. This factual analysis in determining the propriety of disbarment is similar to that used in matters involving entrusted funds or property. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[11]**

Where relevant facts and circumstances surrounding perjury conviction were serious, and respondent had not yet demonstrated sufficient rehabilitation, but in light of mitigation and circumstances as a whole disbarment was not necessary, lengthy actual suspension, including some prospective suspension, and standard 1.4(c)(ii) requirement were appropriate discipline. However, review department reduced length of recommended prospective suspension to reflect time expired since issuance of hearing judge's decision. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[12]**

The mere fact that an attorney has been held in contempt of court is not grounds for discipline. The State Bar must establish that the contempt resulted from bad faith noncompliance with a court order, or that the underlying facts present other independent grounds for discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[4]**

Depending upon the circumstances, a finding of contempt against an attorney may result in no discipline at all or substantial discipline. *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490. **[18]**

1519 Other Crimes

Criminal conduct not related to the practice of law and not committed against a client reveals moral turpitude if it shows a deficiency in character traits necessary for the practice of law, or involves such a serious breach of duty or such flagrant disrespect for law and societal norms as to be likely to undermine public confidence in and respect for the legal profession. Where respondent was convicted of a misdemeanor for repeatedly placing video cameras in restaurant bathrooms to obtain secret recordings to view for sexual gratification, conviction was conclusive proof that respondent acted with intent to invade the privacy of restaurant patrons, and respondent's crime involved moral turpitude. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[1 a–c]**

Where respondent was convicted of misdemeanor child endangerment for leaving his nine-month-old daughter alone in hotel room for 40 minutes, fact of conviction established respondent's guilt of all elements of crime, but hearing was required to determine whether facts and circumstances involved moral turpi tude. Where State Bar failed to introduce clear and convincing evidence that respondent lied to police, no moral turpitude was established. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283. **[1 a-c]**

Respondent's convictions of making false statements to federally insured financial institution to influence action on loans, felonies involving moral turpitude, did not occur in respondent's practice of law or in manner such that a client was victim. Thus, respondent's convictions did not meet statutory criteria for disbarment under former version of summary disbarment statute that was in effect between 1986 and January 1, 1997. And respondent's summary disbarment was warranted, if at all, only under present version of statute (Bus. & Prof. Code, § 6102, subd. (c)), effective January 1, 1997. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51. **[1 a-c]**

Respondent's misdemeanor conviction of being an accessory after the fact in connection with the submission of false information to a federally insured bank for the purpose of inducing it to loan money to respondent for the purchase of a farm (18 U.S.C. §1014) involved moral turpitude per se. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[2]**

Summary disbarment is statutorily authorized where an attorney is convicted of a felony and (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. The crime of forgery includes as one of its elements the specific intent to defraud. A forgery conviction for altering a court document was unquestionably committed in the course of the practice of law in that it involved fraud on the court perpetrated on behalf of the attorney's client. Accordingly, summary disbarment was appropriate in the absence of conflicting Supreme Court precedent or a violation of due process in disbarring respondent without a hearing. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[2]**

Forgery is by definition a crime of moral turpitude. Under Supreme Court case law, disbarment is the rule rather than the exception for this serious crime. Forgery of a court document involves fraud on the court, which is particularly egregious. Accordingly, where respondent was convicted of such crime, respondent would have faced disbarment even if granted a hearing on the issue of appropriate discipline. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[6]**

Respondent's conviction of grand theft and forgery was conclusive evidence of his guilt of all elements of those crimes. The grand theft conviction necessarily carried with it the specific intent to deprive the victim permanently of his funds. The forgery conviction necessarily showed that respondent acted without authority and with an intent to defraud. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[3]**

Convictions of grand theft and forgery would have resulted in recommendation of summary disbarment if crimes had occurred in practice of law or a client was a victim. Where respondent's crimes did not occur in practice of law or victimize a client, case was not eligible for summary disbarment, and respondent was entitled to hearing on appropriate degree of discipline. Nevertheless, opportunity for hearing was not designed to lower professional standards. Respondent's crimes constituted heinous misconduct for an attorney. Where such crimes were of great magnitude, and were related to the very types of matters in which attorneys frequently act, such as ensuring validity of documents requiring notarial services, respondent's crimes were of such a serious nature that by themselves, they would warrant disbarment. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[4]**

Disbarment was warranted for convictions of grand theft and forgery unless most compelling mitigating circumstances clearly predominated. Despite hearing judge's conclusion that respondent's crimes were aberrant and brought on by incredible psychological stress due to marital and business problems, review department did not agree that mitigation was compelling. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[5]**

Respondent's lack of a prior record of discipline in 14 years of practice was entitled to mitigating weight but did not of itself prove that disbarment was excessive for convictions of grand theft and forgery. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[6]**

Respondent's favorable character showing, while attested to by many references, did not amount to a showing of extraordinary demonstration of good character, where not all witnesses were familiar with the magnitude and nature of respondent's crimes, and where respondent's repeated contention that he did not act to defraud his victim served to undercut his favorable character showing in light of the conclusive effect of his convictions for grand theft and forgery. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[7]**

Not all instances of serious professional misconduct warrant disbarment, depending on mitigating circumstances. Theft crimes unrelated to the practice of law have resulted in less than disbarment. However, where respondent's offenses of grand theft and forgery were extremely grave and multiple examples of felonious and fraudulent misconduct, likely to impugn public confidence in the legal profession, and respondent's experience in sophisticated law practice, public office and private business should have dissuaded him from committing felonies, review department recommended disbarment notwithstanding respondent's evidence of stress caused by personal and financial problems. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[11]**

Convictions combining concealed firearms and driving offenses can result in lawyer discipline. However, no moral turpitude or misconduct warranting discipline occurred where respondent's conviction for driving under the influence and fighting in public, under circumstances involving a concealed weapon, was found by the hearing judge to have been a singular instance, and did not involve disrespect for the law, dangerous or violent criminal behavior, or an alcohol dependency problem, and respondent's possession of the weapon was understandable because of recent threats to his life. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[2]**

Under California case law interpreting the California Supreme Court's inherent authority, professional discipline can be imposed based on a criminal conviction for violent behavior not involving moral turpitude, wilful failure to file a tax return, or repeated minor violations evincing indifference to legal obligations. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[9]**

An attorney's convictions of several Vehicle Code violations relating to driving a vehicle without a valid license did not per se establish moral turpitude and the review department concluded that the surrounding circumstances did not establish moral turpitude. Although the convictions involved driving, and the potential for harm was significant given the attorney's operation of a motor vehicle while intoxicated, no actual harm had occurred, and the paucity of facts presented did not permit the review department to conclude that moral turpitude was involved. Furthermore, insufficient facts were presented to conclude that the attorney's violation of his prior criminal probation orders was in either subjective or objective bad faith. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[5]**

Convictions of several Vehicle Code violations relating to driving a vehicle without a valid license, though not involving moral turpitude, did involve other misconduct warranting discipline. The respondent's failure to conform his conduct to the requirements of the criminal law and of the court orders imposed on him in connection with his previous criminal probation called into question his integrity as an officer of the court and his fitness to

represent clients and thereby established a nexus between the practice of law and the misconduct. Moreover, respondent's conviction of two substance abuse related crimes within a relatively short period of time of his arrest for the Vehicle Code violations indicated a problem with substance abuse that was clearly affecting the attorney's private life, which also established a nexus between the practice of law and the misconduct. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[6]**

It is appropriate for disciplinary purposes to consider any criminal charges that were dismissed as well as the charges for which the attorney was actually convicted. Thus, where the criminal complaint in a Vehicle Code violation matter charged respondent with being under the influence of phencyclidine, and clear and convincing evidence was presented establishing that respondent was under the influence of phencyclidine, that circumstance could be considered in the disciplinary proceeding even though respondent was not convicted of being under the influence of phencyclidine. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[7]**

1520 Moral Turpitude

1521 Found to Exist Per Se

Respondent's conviction for a crime involving conspiracy to obstruct justice was a serious offense involving moral turpitude per se. *In the Matter of Sullivan* (Review Dept. 2010) 2 Cal. State Bar Ct. Rptr. 189. **[1]**

In order to warrant classification as a crime inherently involving moral turpitude, the least adjudicated elements of the crime must, as a matter of law, constitute moral turpitude no matter how the crime was committed. Given that either reckless disregard or knowledge of intent of another to commit insurance fraud is an element of respondent's violation of Penal Code section 549, this offense does not inherently involve moral turpitude, but rather is an offense for which there is probable cause to believe involves moral turpitude. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[2]**

Respondent's convictions of making false statements to federally insured financial institution to influence action on loans, felonies involving moral turpitude, did not occur in respondent's practice of law or in manner such that a client was victim. Thus, respondent's convictions did not meet statutory criteria for disbarment under former version of summary disbarment statute that was in effect between 1986 and January 1, 1997. And respondent's summary disbarment was warranted, if at all, only under present version of statute (Bus. & Prof. Code, § 6102, subd. (c)), effective January 1, 1997. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51. **[1 a-c]**

Past Supreme Court practice in considering automatic or summary disbarment was not found by the review department to entail weighing and balancing issues such as the motive of the attorney in committing the crime, the extent to which harm did or did not occur, whether the offenses were limited or repeated or other issues pertaining to evidence bearing on either mitigating or aggravating circumstances. Therefore, to the extent that language in the review department opinions *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71, and *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729, would require the review department to undertake such an analysis, such language was disapproved. Although respondent denies that his offense was serious enough to warrant disbarment, all the facts are not before us nor are they undisputed. What is undisputed is that respondent stands finally convicted, inter alia, of mail fraud, a felony which unquestionably involves moral turpitude; and, as we observed collectively in *Segall* and *Salameh*, is the type of offense which has often resulted in disbarment. Our reading of the summary disbarment law and past Supreme Court practice, would not warrant any exception to a summary disbarment recommendation based on respondent's claims. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942. **[2]**

Respondent's misdemeanor conviction of being an accessory after the fact in connection with the submission of false information to a federally insured bank for the purpose of inducing it to loan money to respondent for the purchase of a farm (18 U.S.C. §1014) involved moral turpitude per se. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[2]**

Forgery is by definition a crime of moral turpitude. Under Supreme Court case law, disbarment is the rule rather than the exception for this serious crime. Forgery of a court document involves fraud on the court, which is particularly egregious. Accordingly, where respondent was convicted of such crime, respondent would have faced

disbarment even if granted a hearing on the issue of appropriate discipline. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[6]**

In the Matter of Brazil (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679.

In the Matter of Lybbert (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297.

Where an attorney was convicted of mail fraud arising out of a scheme to defraud an insurance company which retained the attorney to defend its insureds, disbarment would be an appropriate sanction regardless of mitigating circumstances, due to the extremely serious nature of the misconduct and its direct connection with the practice of law. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[8]**

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

Where Supreme Court directed State Bar Court only to hear evidence on appropriate level of discipline, hearing referee correctly ruled that Supreme Court had already established nature of respondent's criminal offense as one inherently involving moral turpitude, and Supreme Court's classification of offense of harboring a fugitive as one involving moral turpitude per se was final and binding on the State Bar Court. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[5]**

Where record established that respondent had had opportunity to be heard by Supreme Court, prior to referral to State Bar Court, on question whether respondent's criminal offense involved moral turpitude per se, respondent was not denied due process by the Supreme Court's determination of that issue. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[6]**

Setting aside the interim suspension of an attorney convicted of a crime involving moral turpitude is an uncommon action and occurs only when it is in the interests of justice to do so, with due regard to maintaining the integrity of and public confidence in the profession. Where respondent successfully petitioned the Supreme Court not to place him on interim suspension, he thereby made a sufficient showing that he did not pose a threat to the public, profession or the courts by his continued practice pending final resolution of the disciplinary proceedings, and rebutted his presumptive disqualification stemming from his conviction. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[15]**

Every attorney convicted of a felony or crime of moral turpitude can anticipate an order of interim suspension and attendant hardships, but hardship to the attorney's family does not outweigh the need to protect the public and maintain the integrity of the legal profession pending a full hearing on the merits. Where, due to delay in transmittal of conviction, attorney had had several months to make alternative employment arrangements, and attorney had given no details of his current income, recent earnings, or efforts to seek other employment, attorney's showing of hardship was insufficient in light of all factors to constitute good cause to vacate interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[9]**

Where a criminal conviction is for a felony and involves moral turpitude per se, these are strong factors militating in favor of interim suspension since felons convicted of crimes involving moral turpitude are presumptively considered unsuitable legal practitioners. Interim suspensions for such crimes have rarely been vacated, but the governing statute does permit the court to set aside orders of interim suspension based on such convictions, and it has been done on occasion. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[5]**

In the Matter of Katz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

1523 Found Based on Facts and Circumstances

Misdemeanor convictions for driving under the influence do not establish moral turpitude per se, but may involve moral turpitude depending on the surrounding circumstances. Where respondent repeatedly attempted to leverage his position as a criminal prosecutor to avoid arrest; lied to arresting officers about his alcohol consumption and the conditions of his suspended driver's license; committed two drunk driving offenses while on probation for an earlier drunk driving conviction; and broke his promise, during his consideration for admission to the State Bar, that he would not drink and drive again, his conduct showed lack of respect for the integrity of

the legal system and the profession, contempt for the law, and disregard for public safety, and thus involved moral turpitude. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[3 a-c]**

Where respondent's convictions do not involve moral turpitude per se, the circumstances surrounding respondent's convictions are reviewed to determine whether they in fact involved moral turpitude or other misconduct warranting discipline. In reviewing the circumstances surrounding respondent's conviction, the fact finder is not restricted to examining the elements of the crime, but rather may look to the whole course of respondent's conduct which reflects upon his fitness to practice law because it is the misconduct underlying respondent's conviction, as opposed to the conviction itself, that warrants discipline. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[6]**

Where respondent knew that his associate was buying cases, where respondent paid his associate for buying, referring, and working on referred cases, and where respondent split attorney's fees on the referred cases in violation of rule 1–310, the facts and circumstances of respondent's misconduct involved moral turpitude. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[8]**

Where respondent entered into a business relationship with a resigned attorney without investigating him, where respondent knowingly permitted the resigned attorney to interview and sign up clients without respondent's knowledge or approval, and where respondent knowingly failed to monitor the cases the resigned attorney referred to him, such conduct establishes an habitual failure to give reasonable attention to the handling of the affairs of his clients rather than an isolated instance of carelessness followed by a firm determination to make amends. Respondent's manner and method of practicing law during his association with the resigned attorney and respondent's failure to protect himself from the actions of the resigned attorney were reckless and therefore involved moral turpitude. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[9 a, b]**

Respondent's misconduct in falsely recording in his financial and bank records the nature of his payments to a resigned attorney with the specific intent to conceal his improper fee splitting with a nonattorney from, inter alia, the State Bar involves moral turpitude. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[10]**

Where respondent learned that cases referred to him by a resigned attorney were based on staged accidents and thereafter failed to inform the clients in those cases that he had substantial information suggesting that the clients knowingly made a false claim based on a staged accident or give whatever legal counsel was appropriate, respondent's wholesale failure to competently represent these clients involves moral turpitude. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[11]**

The facts and circumstances surrounding respondent's scheme to defraud the government presented clear and convincing evidence of moral turpitude where respondent misappropriated his clients' identities, authorized the forgery of clients' signatures, and conspired to use his trust account as a subterfuge to avoid paying income taxes due on legal fees and to fund a massive capping and fee splitting scheme for the principal purpose of enriching himself, his cousin, and his nonattorney office manager. However else moral turpitude may be defined, it most certainly includes these deceitful acts by respondent for his personal gain.*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[1]**

Appropriate level of discipline for respondent's misdemeanor conviction for paying for referral of two clients (Ins. Code, § 750, subd. (a)), where circumstances surrounding conviction involved moral turpitude, was two-year stayed suspension with two-year period of probation and six-month period of actual suspension. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. **[6 a-g]**

An act of moral turpitude is an act contrary to honesty and good morals. Respondent's conviction for conspiracy to impair the collection of federal income taxes (18 U.S.C. § 371) involved acts of moral turpitude where he concealed the true ownership of property in order to prevent its forfeiture because of illegal drug trading, concealed a former client's history of drug charges when bringing the former client into a real estate venture with another partner, used a real estate venture to launder cash which he knew came from illegal drug sales, several times hid cash from illegal drug sales for the former client, made intentional misrepresentations which he knew could endanger the lives of others, and made a loan to the former client to help finance the former client's illegal drug trade. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[3]**

Disbarments, and not suspensions, have been the rule rather than the exception in cases of serious crimes involving moral turpitude. Although respondent presented substantial mitigation, it was not compelling in light of respondent's extremely serious misconduct over a several-year period. The protection of the public, courts, and legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession necessitated disbarment for respondent's extensive participation in criminal activities involving repeated acts of moral turpitude. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[9]**

The California Supreme Court has classified driving under the influence of alcohol as a crime which may or may not involve moral turpitude, and which may, at least under certain circumstances, result in professional discipline. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[1]**

In matter arising from conviction of possession of marijuana for sale, respondent's role as a principal, his motive of potential financial gain and his awareness of the illegality of his actions demonstrated that moral turpitude was involved in the circumstances surrounding respondent's conviction. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[5]**

Where facts showed respondent had sufficient time, however short, for respondent to plan criminal acts and to reflect upon them, review department concluded that respondent's criminal acts were premeditated. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[9]**

Where, in brandishing replica firearm so as to cause reasonable fear of harm, respondent did not act out of uncontrollable anger or other disabling disorder; had the time and opportunity to ponder his acts beforehand; repeated his outrageous conduct after additional time for reconsideration; put innocent bystanders in fear for their safety and well-being; responded inappropriately to a dispute easily and routinely settled through normal legal processes; and did not act due to any abuse of alcohol, review department agreed with hearing referee's conclusion that the circumstances surrounding respondent's criminal offenses involved moral turpitude. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[12]**

In determining whether respondent's criminal convictions for exhibiting a replica firearm in a threatening manner involved moral turpitude, it was of no consequence that no one was physically injured by respondent's acts. The acts were intended to be, and were, perceived to be life-threatening, and could have provoked heart attacks or an armed response, thus demonstrating a flagrant disregard toward human life. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[13]**

Any determination of moral turpitude in an offense not inherently involving moral turpitude is fact-sensitive. Serious assaultive conduct has sometimes been found not to involve moral turpitude. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[14]**

In the Matter of Katz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

The question whether criminal conduct involved moral turpitude is one of law ultimately for the Supreme Court to decide, based on all of the facts and circumstances surrounding the conviction. Moral turpitude may be found in a driving under the influence matter depending on possible aggravating factors. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[2]**

1525 Found; Basis Not Specified

Criminal conduct not related to the practice of law and not committed against a client reveals moral turpitude if it shows a deficiency in character traits necessary for the practice of law, or involves such a serious breach of duty or such flagrant disrespect for law and societal norms as to be likely to undermine public confidence in and respect for the legal profession. Where respondent was convicted of a misdemeanor for repeatedly placing video cameras in restaurant bathrooms to obtain secret recordings to view for sexual gratification, conviction was conclusive proof that respondent acted with intent to invade the privacy of restaurant patrons, and respondent's crime involved moral turpitude. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[1 a–c]**

Where respondent admitted that he hid cameras in restaurant bathrooms for specific purpose of making surreptitious recordings, and that he knew at the time his actions were unethical and illegal, and where respondent's

psychiatrist was unaware of respondent's prior similar conduct, had not directly observed respondent in manic state, and based his opinion solely on respondent's version of the facts, psychiatrist's opinion that respondent was not responsible for his misconduct due to bipolar disorder was contrary to evidence, and did not preclude finding that respondent's criminal conduct involved moral turpitude. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[2]**

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

1527 No Moral Turpitude

Where respondent was convicted of misdemeanor child endangerment for leaving his nine-month-old daughter alone in hotel room for 40 minutes, fact of conviction established respondent's guilt of all elements of crime, but hearing was required to determine whether facts and circumstances involved moral turpi tude. Where State Bar failed to introduce clear and convincing evidence that respondent lied to police, no moral turpitude was established. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283. **[1 a-c]**

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

Where respondent was convicted of carrying a loaded firearm in a vehicle in a city, and respondent had an expired concealed weapons permit which he had intended to renew, and was carrying the gun due to a reasonable belief that he and his family were in danger from a person who had made death threats against him, respondent's conviction involved neither moral turpitude nor misconduct constituting a basis for the imposition of professional discipline. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[1]**

Where respondent, an experienced family law attorney, drank a strong alcoholic beverage prior to visiting with his young child, and then trespassed on his estranged wife's apartment; intimidated her when she requested that he leave; engaged in an altercation with police who attempted to escort him out of the apartment, and was hostile and used racial epithets to police when being taken away under arrest, respondent's conduct surrounding his criminal conviction for battery on a police officer did not involve moral turpitude but did involve misconduct warranting discipline. Given respondent's experience, he should have attempted to defuse a risky domestic incident; instead, he created one with a serious risk of harm. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[9]**

The crime of assault with a firearm does not in and of itself constitute a crime of moral turpitude for attorney discipline purposes. If moral turpitude exists for this crime, it must be based on the particular circumstances surrounding the conviction. Criminal convictions have been determined to involve moral turpitude where the surrounding circumstances indicate a flagrant disregard for human life. However, where respondent's crime occurred while he had an honest belief that he had been shot or shot at and was in immediate danger of being shot at again; respondent considered his escape options before using his firearm, and fired only once as safely as he could from a moving vehicle; and there was no evidence that respondent intended to injure the victim, the review department concluded that respondent's conviction did not demonstrate moral turpitude or render respondent unfit to practice law. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[8]**

Where the crime for which an attorney has been convicted does not inherently involve moral turpitude, a review of comparable case law and an examination of the particular facts and circumstances of the criminal conduct must be made in order to determine if cause for professional discipline exists. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[10]**

Violent criminal behavior that does not rise to the level of moral turpitude may result in the imposition of discipline under both California case law and the ABA model ethics rules. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[11]**

Convictions combining concealed firearms and driving offenses can result in lawyer discipline. However, no moral turpitude or misconduct warranting discipline occurred where respondent's conviction for driving under the influence and fighting in public, under circumstances involving a concealed weapon, was found by the hearing judge to have been a singular instance, and did not involve disrespect for the law, dangerous or violent criminal behavior, or an alcohol dependency problem, and respondent's possession of the weapon was understandable because of recent threats to his life. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[2]**

In analyzing whether a conviction for drunk driving involves moral turpitude, such factors as a prior conviction for drunk driving, a violation of criminal probation, and a high blood alcohol level have been held insufficient to warrant a moral turpitude finding. Where respondent had several drunk driving convictions and was aware of the problems of drunk driving due to past prosecutorial experience, and where the circumstances of respondent's crimes involved threats to peace and safety and confrontations with law enforcement officers, respondent's misconduct approached but did not cross the moral turpitude line, but did constitute misconduct warranting discipline. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[6]**

An attorney's convictions of several Vehicle Code violations relating to driving a vehicle without a valid license did not per se establish moral turpitude and the review department concluded that the surrounding circumstances did not establish moral turpitude. Although the convictions involved driving, and the potential for harm was significant given the attorney's operation of a motor vehicle while intoxicated, no actual harm had occurred, and the paucity of facts presented did not permit the review department to conclude that moral turpitude was involved. Furthermore, insufficient facts were presented to conclude that the attorney's violation of his prior criminal probation orders was in either subjective or objective bad faith. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[5]**

A conviction of being under the influence of phencyclidine did not per se establish moral turpitude and the review department concluded that the sparse facts presented regarding the surrounding circumstances did not establish moral turpitude. No actual harm occurred to anyone and insufficient facts were presented to conclude that respondent's violation of his prior criminal probation was in either subjective or objective bad faith. However, the conviction did involve other misconduct warranting discipline, because respondent's failure to conform his conduct to the requirements of the criminal law and the court orders imposed on him in connection with his criminal probation called into question his integrity as an officer of the court and his fitness to represent clients and thereby established a nexus between the practice of law and the misconduct. In addition, respondent's conviction of a total of four substance abuse offenses within a relatively short period of time indicated a problem with substance abuse that was clearly affecting respondent's private life, which also established a nexus between the practice of law and the misconduct. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[8]**

Respondent's conviction for driving under the influence of alcohol and/or drugs did not involve moral turpitude, where the facts and circumstances surrounding the conviction demonstrated that respondent ingested legal medications that he did not know, nor reasonably should have known, would impair his driving ability, and thereafter unexpectedly drove his car. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[4]**

Based on surrounding circumstances and on subsequent federal appellate decisions holding that conduct for which respondent was convicted is not a crime, referee properly determined that respondent's convictions for violating federal currency transaction reporting laws did not involve moral turpitude or other conduct warranting discipline. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[2]**

The wilful failure to file income tax returns alone does not involve moral turpitude per se. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[8]**

In the Matter of Buckley (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201.

1528 Definition

Misdemeanor convictions for driving under the influence do not establish moral turpitude per se, but may involve moral turpitude depending on the surrounding circumstances. Where respondent repeatedly attempted to leverage his position as a criminal prosecutor to avoid arrest; lied to arresting officers about his alcohol consumption and the conditions of his suspended driver's license; committed two drunk driving offenses while on probation for an earlier drunk driving conviction; and broke his promise, during his consideration for admission to the State Bar, that he would not drink and drive again, his conduct showed lack of respect for the integrity of the legal system and the profession, contempt for the law, and disregard for public safety, and thus involved moral turpitude. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[3 a-c]**

Criminal conduct not related to the practice of law and not committed against a client reveals moral turpitude if it shows a deficiency in character traits necessary for the practice of law, or involves such a serious breach of duty or such flagrant disrespect for law and societal norms as to be likely to undermine public confidence in and

respect for the legal profession. Where respondent was convicted of a misdemeanor for repeatedly placing video cameras in restaurant bathrooms to obtain secret recordings to view for sexual gratification, conviction was conclusive proof that respondent acted with intent to invade the privacy of restaurant patrons, and respondent's crime involved moral turpitude. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[1 a–c]**

An act of moral turpitude is an act contrary to honesty and good morals. Respondent's conviction for conspiracy to impair the collection of federal income taxes (18 U.S.C. § 371) involved acts of moral turpitude where he concealed the true ownership of property in order to prevent its forfeiture because of illegal drug trading, concealed a former client's history of drug charges when bringing the former client into a real estate venture with another partner, used a real estate venture to launder cash which he knew came from illegal drug sales, several times hid cash from illegal drug sales for the former client, made intentional misrepresentations which he knew could endanger the lives of others, and made a loan to the former client to help finance the former client's illegal drug trade. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[3]**

Moral turpitude has been defined in many ways, including as an act contrary to honesty and good morals. The foremost purpose of the moral turpitude standard is not to punish attorneys but to protect the public, courts, and the profession against unsuitable practitioners. Finding that an attorney's conduct involved moral turpitude characterizes the attorney as unsuitable to practice law. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[9]**

Although drunk drivers pose a extreme danger to society, the Supreme Court has held that an attorney's conviction for drunk driving does not per se establish moral turpitude, even when the attorney has prior convictions for that offense. The Court has also determined that the more serious crime of gross vehicular manslaughter while intoxicated does not per se involve moral turpitude. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[1]**

The determination whether the facts and circumstances of an attorney's criminal conviction involved moral turpitude is a matter of law. The concept of moral turpitude does not fit a precise definition; it is a commonsense concept, designed to protect the public. It is measured by the morals of the day and may vary according to the community or the times. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[2]**

The determination of whether an attorney's conviction of certain crimes not involving moral turpitude per se should give rise to discipline, and on what basis, is not always an easy task. When the State Bar Court is asked to decide after hearing whether moral turpitude is involved in an attorney's conviction, the determination must be based on the facts and circumstances surrounding the conviction. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[3]**

In order to determine that a crime involved moral turpitude, specific resulting harm need not be shown. Conduct which poses a danger to the public, such as drunk driving, is no less serious because it did not result in death or injury. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[5]**

The issue of whether an offense constitutes moral turpitude per se is a matter of law to be ultimately determined by the Supreme Court. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[7]**

Moral turpitude determinations are a matter of law. Moral turpitude is not a concept that fits a precise definition. The definition most often recited by the Supreme Court is "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." The definition of moral turpitude is measured by the morals of the day, and may vary according to the community or the times. The moral turpitude prohibition is a flexible, "commonsense" standard, with its purpose not the punishment of attorneys but the protection of the public and the legal community against unsuitable practitioners. A holding that an attorney's act constitutes moral turpitude characterizes the attorney as unsuitable to practice law. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[10]**

Some offenses are crimes of moral turpitude on their face, including acts universally decried as morally reprehensible or necessary involving fraudulent or dishonest acts for personal gain. Other offenses do not in and of themselves constitute crimes of moral turpitude, such as voluntary manslaughter and simple assault. The

commission of such lesser offenses by an attorney in the heat of anger or as result of physical or mental infirmities does not, without more, cast discredit upon the prestige of the legal profession or interfere with the efficient administration of the law and should not be deemed to constitute moral turpitude. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[11]**

Any determination of moral turpitude in an offense not inherently involving moral turpitude is fact-sensitive. Serious assaultive conduct has sometimes been found not to involve moral turpitude. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[14]**

Supreme Court has defined moral turpitude as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, or an act contrary to honesty and good morals. *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178. **[1]**

1530 Other Misconduct Warranting Discipline

1531 Found

Not every violation of law by an attorney merits discipline and the court must examine the facts and circumstances to decide if the attorney has committed criminal conduct that is disciplinable. An attorney's conviction for child endangerment by leaving his daughter unattended in a hotel room falls at the very low end of misconduct justifying professional discipline since it is unrelated to the practice of law but reflects poorly on the attorney's judgment and on the legal profession in general. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[4 a-c]**

Although respondent's violations of rules 1–311 and 4–100(A) did not involve moral turpitude, they did constitute additional misconduct warranting discipline. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[12 a, b]**

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

Where respondent, an experienced family law attorney, drank a strong alcoholic beverage prior to visiting with his young child, and then trespassed on his estranged wife's apartment; intimidated her when she requested that he leave; engaged in an altercation with police who attempted to escort him out of the apartment, and was hostile and used racial epithets to police when being taken away under arrest, respondent's conduct surrounding his criminal conviction for battery on a police officer did not involve moral turpitude but did involve misconduct warranting discipline. Given respondent's experience, he should have attempted to defuse a risky domestic incident; instead, he created one with a serious risk of harm. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[9]**

Violent criminal behavior that does not rise to the level of moral turpitude may result in the imposition of discipline under both California case law and the ABA model ethics rules. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[11]**

Where the circumstances of respondent's conviction for assault with a firearm indicated that respondent engaged in a confrontation on a crowded freeway with another motorist which put innocent third parties at great risk and ultimately resulted in serious injury, the acts which were conclusively established by respondent's conviction, and the circumstances surrounding the conviction, including respondent's status as a trained and experienced reserve law enforcement officer, demonstrated a reckless disregard for the safety of others and therefore involved other misconduct warranting discipline. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[12]**

Under California case law interpreting the California Supreme Court's inherent authority, professional discipline can be imposed based on a criminal conviction for violent behavior not involving moral turpitude, wilful failure to file a tax return, or repeated minor violations evincing indifference to legal obligations. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[9]**

Under both ABA model ethics rules and California law, lawyers convicted simply of a single misdemeanor offense of driving under the influence may receive a disciplinary reprimand, but for the most part are treated like under citizens and sanctioned under the criminal law. Their suitability to practice law is called into question,

however, where the incident is compounded by serious injury or death or is coupled with other aggravating behavior. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[10]**

In analyzing whether a conviction for drunk driving involves moral turpitude, such factors as a prior conviction for drunk driving, a violation of criminal probation, and a high blood alcohol level have been held insufficient to warrant a moral turpitude finding. Where respondent had several drunk driving convictions and was aware of the problems of drunk driving due to past prosecutorial experience, and where the circumstances of respondent's crimes involved threats to peace and safety and confrontations with law enforcement officers, respondent's misconduct approached but did not cross the moral turpitude line, but did constitute misconduct warranting discipline. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[6]**

Convictions of several Vehicle Code violations relating to driving a vehicle without a valid license, though not involving moral turpitude, did involve other misconduct warranting discipline. The respondent's failure to conform his conduct to the requirements of the criminal law and of the court orders imposed on him in connection with his previous criminal probation called into question his integrity as an officer of the court and his fitness to represent clients and thereby established a nexus between the practice of law and the misconduct. Moreover, respondent's conviction of two substance abuse related crimes within a relatively short period of time of his arrest for the Vehicle Code violations indicated a problem with substance abuse that was clearly affecting the attorney's private life, which also established a nexus between the practice of law and the misconduct. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[6]**

A conviction of being under the influence of phencyclidine did not per se establish moral turpitude and the review department concluded that the sparse facts presented regarding the surrounding circumstances did not establish moral turpitude. No actual harm occurred to anyone and insufficient facts were presented to conclude that respondent's violation of his prior criminal probation was in either subjective or objective bad faith. However, the conviction did involve other misconduct warranting discipline, because respondent's failure to conform his conduct to the requirements of the criminal law and the court orders imposed on him in connection with his criminal probation called into question his integrity as an officer of the court and his fitness to represent clients and thereby established a nexus between the practice of law and the misconduct. In addition, respondent's conviction of a total of four substance abuse offenses within a relatively short period of time indicated a problem with substance abuse that was clearly affecting respondent's private life, which also established a nexus between the practice of law and the misconduct. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[8]**

1535 Not Found

Where respondent was convicted of carrying a loaded firearm in a vehicle in a city, and respondent had an expired concealed weapons permit which he had intended to renew, and was carrying the gun due to a reasonable belief that he and his family were in danger from a person who had made death threats against him, respondent's conviction involved neither moral turpitude nor misconduct constituting a basis for the imposition of professional discipline. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[1]**

Convictions combining concealed firearms and driving offenses can result in lawyer discipline. However, no moral turpitude or misconduct warranting discipline occurred where respondent's conviction for driving under the influence and fighting in public, under circumstances involving a concealed weapon, was found by the hearing judge to have been a singular instance, and did not involve disrespect for the law, dangerous or violent criminal behavior, or an alcohol dependency problem, and respondent's possession of the weapon was understandable because of recent threats to his life. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[2]**

In 1990, the majority of the California Supreme Court expressly declined to determine whether a nexus between criminal conduct and the practice of law is required in order to impose professional discipline based on a criminal conviction. The Court unanimously agreed, however, that it would be unreasonable to hold attorneys to such a high standard of conduct that every violation of law, however minor, would constitute a ground for professional discipline. Thus, the integrity of the profession does not require professional discipline in addition to criminal sanctions for every violation of law by an attorney. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[2]**

Where respondent's two convictions for drunk driving occurred while respondent was living outside California and not practicing law, and respondent did not act violently or show disrespect for the legal system in connection with such convictions, and respondent had been rehabilitated and did not pose a danger to clients, courts or the public, respondent was not culpable of misconduct warranting discipline. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[3]**

Where an attorney is convicted of a crime which does not inherently involve moral turpitude, the attorney's conviction is referred to the State Bar Court Hearing Department for a determination whether the facts and circumstances surrounding the crime involved moral turpitude or other misconduct warranting discipline, and to determine the appropriate disposition. Upon a referral of that type, the appropriate disposition can include dismissal of the proceedings if the hearing judge finds that the particular misconduct did not warrant professional discipline. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[4]**

Where respondent clearly was on notice that drinking and driving could result in criminal penalties, and it was established law that any vehicular homicide or felony conviction resulting from drunk driving could result in professional discipline, respondent apparently had sufficient notice that criminal behavior of driving under the influence could, depending on circumstances, result in professional discipline. However, review department declined to decide notice issue where disciplinary proceeding was dismissed on another ground. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[8]**

Under both ABA model ethics rules and California law, lawyers convicted simply of a single misdemeanor offense of driving under the influence may receive a disciplinary reprimand, but for the most part are treated like under citizens and sanctioned under the criminal law. Their suitability to practice law is called into question, however, where the incident is compounded by serious injury or death or is coupled with other aggravating behavior. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[10]**

Although the circumstances of an attorney's ingestion of medications may not be a defense to the criminal charge of driving under the influence, they are relevant to whether professional discipline is necessary for the protection of the public, courts and legal profession. Where those circumstances demonstrated that the attorney ingested legal medications that he did not know, nor reasonably should have known, would impair his driving ability and thereafter unexpectedly drove his car, they did not indicate that the attorney's criminal violation demeaned the integrity of the legal profession or constituted a breach of the attorney's responsibility to society, other than any criminal violation would. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[5]**

An attorney's conviction is conclusive proof, for disciplinary purposes, that the attorney committed the crime for which the attorney was convicted. However, California's driving under the influence laws do not prohibit drinking or ingestion of drugs and driving. Rather, they prohibit driving under the influence of alcohol or drugs and/or driving with a specified blood alcohol content. Thus, the mere fact that an attorney ingested legal medications and then drove a vehicle did not indicate that the attorney's conduct demeaned the integrity of the profession or constituted a breach of the attorney's responsibility to society. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[6]**

Professional discipline following an attorney's criminal conviction has been held to be warranted where the circumstances surrounding the attorney's criminal conduct, though not involving moral turpitude, closely paralleled the duties of a practicing attorney. Where an attorney's activities leading to the conviction were of a personal nature and not the kind of activities that an attorney would likely confront in the ordinary course of the attorney's duties, and the attorney's testimony did not give rise to doubt that the attorney's advice to clients in similar circumstances would be sound, no misconduct warranting discipline was involved in the conviction. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[7]**

A nexus between an attorney's criminal misconduct and the practice of law might have been established if the State Bar had proven that the attorney's present criminal conduct had violated the terms of the attorney's previously imposed criminal probation. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[8]**

A nexus between an attorney's criminal misconduct and the practice of law may be established where the circumstances surrounding the attorney's conviction indicate that the attorney has problems with alcohol abuse. However, an attorney's ingestion of normal doses of legal medications for appropriate symptoms did not

demonstrate a substance abuse problem. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[9]**

Based on surrounding circumstances and on subsequent federal appellate decisions holding that conduct for which respondent was convicted is not a crime, referee properly determined that respondent's convictions for violating federal currency transaction reporting laws did not involve moral turpitude or other conduct warranting discipline. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[2]**

1540 Interim Suspension After Conviction

1541 Ordered

1541.10 California or federal felony

In the Matter of Jackson (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610.

In the Matter of Jebbia (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.51.

The earliest time that respondent can petition for reinstatement if he is disbarred is five years after the effective date of his interim suspension. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 662(b).) Where the order placing respondent on interim suspension provided that he had to stop providing legal services for any paying clients by one date, but could perform legal services for preexisting pro bono clients until a later date, the earlier date was the effective date of the interim suspension because by obtaining an exception for completion of the pro bono cases, respondent acted for the benefit of his pro bono clients, the courts in which their cases were pending, and the justice system, conduct which would be discouraged if he was denied credit for the entire time he was prohibited from earning his living from the practice of law by reason of the interim suspension order resulting from his felony conviction. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[2]**

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

In the Matter of Salameh (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729.

In the Matter of Brazil (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679.

In the Matter of Lilly (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473.

The existence of express statutory authority to grant exceptions to interim suspension constitutes a legislative determination that public confidence will not necessarily be undermined by vacating the interim suspension of a convicted felon. On a sufficient showing, the Supreme Court has set aside interim suspensions for crimes involving moral turpitude per se, indicating that such relief is also available for felonies which may or may not involve moral turpitude. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[7]**

Where a felony could have been charged as a misdemeanor, the reduction of the felony conviction to a misdemeanor in postconviction proceedings does not affect the characterization of the crime as a felony for the purpose of interim suspension, but it may be taken into account in determining whether good cause exists for vacating an interim suspension order. If the reduction were ignored, arbitrary results might follow based on the discretionary charging practices of different prosecutors. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[8]**

In the Matter of Meza (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608.

1541.20 Moral turpitude per se

In the Matter of Jebbia (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.51.

In the Matter of Salameh (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729.

In the Matter of Brazil (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679.

In the Matter of Lilly (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473.

The Legislature has determined that public protection and integrity and confidence in the State Bar warrant interim suspension of attorneys convicted of misdemeanors only where there is probable cause to believe that the misdemeanor involves moral turpitude per se, and even in such cases good cause may justify not imposing interim suspension, as in the case of shoplifting. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[9]**

In the Matter of Lybbert (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297.

Mail fraud (18 U.S.C. § 1341) is a crime involving moral turpitude, for which interim suspension is ordered following an attorney's conviction. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[1]**

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of Meza (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608.

In the Matter of Katz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

1541.30 Moral Turpitude based on facts and circumstances

1541.90 Other

1542 Stayed

In the Matter of Curtis (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

1543 Vacated

In the Matter of Jackson (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610.

Although drunk driving is a serious societal problem, it may or may not become a matter subject to professional discipline. Where an interim suspension order would impose a degree of discipline far more severe than the probable final discipline, the range of final discipline is dispositive of the good cause requirement for vacating the order. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[6]**

The existence of express statutory authority to grant exceptions to interim suspension constitutes a legislative determination that public confidence will not necessarily be undermined by vacating the interim suspension of a convicted felon. On a sufficient showing, the Supreme Court has set aside interim suspensions for crimes involving moral turpitude per se, indicating that such relief is also available for felonies which may or may not involve moral turpitude. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[7]**

Where a felony could have been charged as a misdemeanor, the reduction of the felony conviction to a misdemeanor in postconviction proceedings does not affect the characterization of the crime as a felony for the purpose of interim suspension, but it may be taken into account in determining whether good cause exists for vacating an interim suspension order. If the reduction were ignored, arbitrary results might follow based on the discretionary charging practices of different prosecutors. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[8]**

Whether good cause exists for vacating or not imposing an interim suspension order depends on the facts that are not genuinely in dispute in each case. Good cause existed for vacating an interim suspension order following a felony drunk driving conviction where respondent had practiced law for 22 years with no prior disciplinary record; respondent had been convicted of drunk driving twice; respondent's conviction involved serious injury to another person, but did not involve violent behavior, clients, or the practice of law; where the final disciplinary order was likely to impose a sanction far less severe than would result from the interim suspension order; and where there was no indication of any adverse effect of the misconduct on respondent's practice, of any violation of respondent's criminal sentence, or of any particular danger to respondent's clients. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[10]**

In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

1545 Not Ordered

In the Matter of Frascinella (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543.

1549 Miscellaneous Issues re Interim Suspension

The important public interest served by the summary disbarment statute does not show that the legislature intended the statute to operate retroactively. A summary disbarment proceeding, by definition, excludes an evidentiary hearing in the State Bar Court prior to disbarment. However, pursuant to Business and Professions Code section 6101, subdivision (a), upon receipt of a certified copy of the record conviction, attorneys convicted of a felony or a crime involving moral turpitude are interimly suspended from the practice of law pending final disposition of the proceeding. Thus, even if an evidentiary hearing is held, the attorney convicted of an offense that would warrant disbarment is immediately suspended from the practice of law and can remain suspended until disbarred. Accordingly, the public is promptly protected from attorneys convicted of crimes of dishonesty regardless of whether summary disbarment occurs. Moreover, the opportunity for a referral hearing is not designed to lower professional standards. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[4]**

Although the record indicated that respondent was not likely to commit similar misconduct in the future, the discipline system also has a responsibility to preserve the integrity of the legal profession. That concern persuaded the review department that public discipline, including a period of suspension, was warranted for an attorney's conviction of assault with a firearm, with the enhancement that he discharged a firearm at an occupied motor vehicle which caused great bodily injury to the person of another. However, given the totality of the circumstances, including the fact that respondent had already been interimly suspended for ten and one-half months as the result of his conviction, and comparable case law, the review department did not believe that a period of prospective actual suspension was necessary. Accordingly, it recommended a period of stayed suspension along with a period of probation with conditions. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[6]**

The earliest time that respondent can petition for reinstatement if he is disbarred is five years after the effective date of his interim suspension. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 662(b).) Where the order placing respondent on interim suspension provided that he had to stop providing legal services for any paying clients by one date, but could perform legal services for preexisting pro bono clients until a later date, the earlier date was the effective date of the interim suspension because by obtaining an exception for completion of the pro bono cases, respondent acted for the benefit of his pro bono clients, the courts in which their cases were pending, and the justice system, conduct which would be discouraged if he was denied credit for the entire time he was prohibited from earning his living from the practice of law by reason of the interim suspension order resulting from his felony conviction. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[2]**

Where respondent misrepresented facts regarding her interim suspension to superior court; deliberately sought to mislead State Bar Court Review Department regarding facts supporting motion for modification of interim suspension order; and intentionally tried to deceive State Bar Court hearing judge regarding correctness of transcript offered as evidence by State Bar, respondent's acts of dishonesty to courts constituted aggravating circumstances surrounding her failure to comply with rule 955 of the California Rules of Court in connection with interim suspension. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[7]**

Finality of an attorney's criminal conviction is not essential for an order referring the conviction to the State Bar Court Hearing Department for a determination whether there is probable cause to conclude that the circumstances of the conviction involved moral turpitude for purposes of interim suspension of the attorney. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[1]**

By rule, convicted felons are always entitled to credit for time spent on interim suspension against the waiting period for seeking reinstatement. (Rule 662, Trans. Rules Proc. of State Bar.) Inactive enrollment has the same effect as interim suspension in banning the practice of law pending a final order of discipline, and is similarly designed to protect the public during the pendency of a disciplinary case against the malfeasant attorney. Giving credit for

interim suspension against the waiting period for reinstatement reflects the decision that five years removal from practice is a sufficient minimum opportunity for rehabilitation, even if the time period precedes the order of disbarment. No policy interest would be served by treating inactively enrolled attorneys differently from interimly suspended attorneys in this regard. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[6]**

Normally, no published opinion results from a petition to set aside an interim suspension order based on a criminal conviction. Where final discipline had not been entered and might not be warranted, the review department could not determine whether it was appropriate to publicize respondent's name in connection with opinion and order vacating interim suspension. Opinion therefore did not name respondent, although proceeding remained public. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[1]**

The Supreme Court has delegated to the State Bar Court its statutory power to place on interim suspension attorneys who have been convicted of crimes. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[2]**

The purpose of interim suspension is to protect the public, courts, and legal profession until all facts relevant to a final disciplinary order are before the State Bar Court. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[4]**

Interim suspension is imposed on an attorney who commits a crime of moral turpitude or a felony, unless an exception is appropriate in the interest of justice, with due regard to maintaining the integrity of, and confidence in, the legal profession. Whether interim suspension is warranted prior to a hearing on the merits of a felony conviction depends, among other things, on the nature of the crime, its relationship to the practice of law, the undisputed surrounding factual circumstances, and the likely range of final discipline. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[5]**

The existence of express statutory authority to grant exceptions to interim suspension constitutes a legislative determination that public confidence will not necessarily be undermined by vacating the interim suspension of a convicted felon. On a sufficient showing, the Supreme Court has set aside interim suspensions for crimes involving moral turpitude per se, indicating that such relief is also available for felonies which may or may not involve moral turpitude. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[7]**

Where a felony could have been charged as a misdemeanor, the reduction of the felony conviction to a misdemeanor in postconviction proceedings does not affect the characterization of the crime as a felony for the purpose of interim suspension, but it may be taken into account in determining whether good cause exists for vacating an interim suspension order. If the reduction were ignored, arbitrary results might follow based on the discretionary charging practices of different prosecutors. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[8]**

The Legislature has determined that public protection and integrity and confidence in the State Bar warrant interim suspension of attorneys convicted of misdemeanors only where there is probable cause to believe that the misdemeanor involves moral turpitude per se, and even in such cases good cause may justify not imposing interim suspension, as in the case of shoplifting. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[9]**

From the point of view of a suspended attorney, the effect of a suspension is the same regardless of whether it is called interim or actual: the attorney is denied the right to practice law for the duration of the suspension. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[12]**

Whether a suspension is interim or actual, the effect on the attorney is the same. The issue is what is the appropriate total length of suspension under the circumstances of each case. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[7]**

An attorney's interim suspension following a criminal conviction is not affected by the expungement of the conviction. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[1]**

An attorney on interim suspension following a criminal conviction has little control over the length of such suspension prior to final resolution of the case. Where an attorney's prior actual suspension had consisted largely of time already spent on interim suspension, and such a lengthy actual suspension would not ordinarily have been imposed for the misconduct involved in the prior matter, and where imposition of an even greater actual suspension

in the attorney's subsequent matter would have resulted in discipline far in excess of that warranted by the facts and comparable case law, it would not be appropriate to adhere strictly to the standard directing imposition of greater discipline for a second offense. *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. **[10]**

Where respondent had been interimly suspended following a criminal conviction, and had been ordered at that time to comply with rule 955, California Rules of Court, the State Bar Court did not recommend that he be required to comply with rule 955 again upon his disbarment. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[10]**

Setting aside the interim suspension of an attorney convicted of a crime involving moral turpitude is an uncommon action and occurs only when it is in the interests of justice to do so, with due regard to maintaining the integrity of and public confidence in the profession. Where respondent successfully petitioned the Supreme Court not to place him on interim suspension, he thereby made a sufficient showing that he did not pose a threat to the public, profession or the courts by his continued practice pending final resolution of the disciplinary proceedings, and rebutted his presumptive disqualification stemming from his conviction. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[15]**

There is no statutory or case law definition for the type of showing necessary to support the setting aside of an interim suspension order of an attorney convicted of a felony or of a crime of moral turpitude. Generally, "good cause" is dependent on the particular facts of each case. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[1]**

Interim suspension of an attorney following a criminal conviction is provisional and temporary, and one of its purposes is to preserve the respect and dignity of the court until a final judgment is entered. Consideration of the integrity of the legal profession has also been incorporated into the balancing test for determination of whether the interest of justice is served by setting aside an order of interim suspension. The purpose of interim suspension is to protect the public, the courts and the legal profession until all facts relevant to a final disciplinary order are before the court. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[2]**

Present fitness to practice law and the concomitant question of public protection are factors to be considered in determining whether good cause exists to decline to impose an interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[3]**

One distinction between an interim suspension order and a final order of discipline is the type of record before the court. At the interim suspension stage, the court has the criminal conviction and a statutory mandate to order interim suspension absent a showing of good cause. The petitioner has the burden of showing good cause to set aside an order of interim suspension, and no evidentiary hearing has occurred to test alleged mitigating factors. Thus, contested facts cannot be relied upon as a basis for vacating the order of interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[4]**

Where a criminal conviction is for a felony and involves moral turpitude per se, these are strong factors militating in favor of interim suspension since felons convicted of crimes involving moral turpitude are presumptively considered unsuitable legal practitioners. Interim suspensions for such crimes have rarely been vacated, but the governing statute does permit the court to set aside orders of interim suspension based on such convictions, and it has been done on occasion. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[5]**

While the leniency of an attorney's criminal sentence might be relevant in assessing final discipline, punishment by the criminal court serves a fundamentally different purpose than the provisions of the State Bar Act, and leniency of the criminal sentence therefore is not relevant to the determination whether there is good cause to vacate the attorney's interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[6]**

Evidence of convicted attorney's efforts toward rehabilitation would be relevant at the hearing on final discipline, but could not be relied upon in proceedings seeking to vacate interim suspension because of lack of opportunity for pretrial discovery and full development of facts. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[7]**

Every attorney convicted of a felony or crime of moral turpitude can anticipate an order of interim suspension and attendant hardships, but hardship to the attorney's family does not outweigh the need to protect the public and maintain the integrity of the legal profession pending a full hearing on the merits. Where, due to delay in transmittal of conviction, attorney had had several months to make alternative employment arrangements, and attorney had given no details of his current income, recent earnings, or efforts to seek other employment, attorney's showing of hardship was insufficient in light of all factors to constitute good cause to vacate interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[9]**

Where review department saw no justifiable reason to deviate from hearing judge's recommendation of suspension in felony conviction matter which had resulted in interim suspension, and effect of examiner's request for review had been to extend interim suspension, review department believed it appropriate to attempt to place respondent in same position as if examiner had not requested review, by modifying length of suspension and giving increased credit for interim suspension. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[14]**

Credit for interim suspension in conviction matters is not restricted to cases in which there are compelling mitigating factors. All facts and circumstances, including unexplained delay in State Bar proceedings, are considered, and all relevant factors are balanced in arriving at a proper discipline. Disciplinary recommendations should not penalize the respondent for appealing a criminal conviction or contesting the State Bar Court's findings and recommendations. Where lengthy interim suspension has occurred, the appropriate consideration in determining whether prospective suspension is necessary is whether the facts and circumstances of a particular matter require a further period of actual suspension for the protection of the public, the profession or the courts. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[13]**

In conviction referral matter in which interim suspension had been imposed and later vacated after seven months, review department declined to recommend total of one year actual suspension, even though possibly appropriate, because resulting additional four-month suspension would have been disruptive and punitive rather than achieving the purposes of disciplinary proceedings (protection of the public, courts and legal profession as well as rehabilitation in proper cases). *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[9]**

1550 Application of Standards to Discipline Based on Criminal Conviction

Note: For Aggravation, Mitigation, and other issues re application of the Standards, see topic numbers 500 et seq., 700 et seq., and 800 et seq.

1551 1986 Standard 3.1 (Scope)

Note: Topic number 1551 retained solely for cases decided prior to January 1, 2014.

The Standards for Attorney Sanctions for Professional Misconduct may be applied retroactively to criminal conduct which occurred before they were adopted. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[5]**

Assessment of the appropriate degree of discipline starts with the Standards for Attorney Sanctions for Professional Misconduct, and in a criminal conviction matter, specifically with part C of those standards. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[4]**

1552 Standard 2.15(b) (interim Standard 2.11(b), 1986 Standard 3.2) (Felony conviction under circumstances involving moral turpitude)

1552.10 Applied - Disbarment

Disbarment was appropriate where respondent was convicted of conspiracy to obstruct justice, a serious offense of moral turpitude, he did not report this conviction to the State Bar, and he did not prove compelling mitigation. If this conviction had marred an otherwise discipline-free record, disbarment would not necessarily be warranted, but respondent's prior record of discipline reveals his criminal misconduct was not an isolated

incident, and also triggered analysis under standard 1.7(b). *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189 **[4 a,b]**

Disbarment was warranted and necessary where attorney failed to meet professional obligations for over two decades in four disciplinary cases. In the first three cases, respondent performed incompetently, and in fourth case, which occurred between his first and second discipline, he was convicted of a crime of moral turpitude that he never reported. Disbarment was recommended under standards 3.2. and 1.7(b), because overall, respondent demonstrated pervasive carelessness towards compliance with ethical rules, and appeared unwilling or unable to conform his behavior to the rules of professional conduct. *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189 **[6]**

In the Matter of Oheb (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920.

In the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469.

Unless the most compelling of mitigating circumstances clearly predominate, disbarment is the appropriate discipline in cases involving convictions of serious crimes involving moral turpitude. The nature and extent of respondent's felony conviction of conspiracy to commit theft and theft, alone, established his unfitness to practice law. Likewise, the facts and circumstances surrounding his crimes, the numerous aggravating circumstances, and the lack of any substantial mitigating circumstance further convinced the review department that respondent remained unfit to practice unless and until he established by clear and convincing evidence in a reinstatement proceeding that he was rehabilitated. Accordingly, disbarment was recommended. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[13]**

Disbarments, and not suspensions, have been the rule rather than the exception in cases of serious crimes involving moral turpitude. Although respondent presented substantial mitigation, it was not compelling in light of respondent's extremely serious misconduct over a several-year period. The protection of the public, courts, and legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession necessitated disbarment for respondent's extensive participation in criminal activities involving repeated acts of moral turpitude. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[9]**

Forgery is by definition a crime of moral turpitude. Under Supreme Court case law, disbarment is the rule rather than the exception for this serious crime. Forgery of a court document involves fraud on the court, which is particularly egregious. Accordingly, where respondent was convicted of such crime, respondent would have faced disbarment even if granted a hearing on the issue of appropriate discipline. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[6]**

Convictions of grand theft and forgery would have resulted in recommendation of summary disbarment if crimes had occurred in practice of law or a client was a victim. Where respondent's crimes did not occur in practice of law or victimize a client, case was not eligible for summary disbarment, and respondent was entitled to hearing on appropriate degree of discipline. Nevertheless, opportunity for hearing was not designed to lower professional standards. Respondent's crimes constituted heinous misconduct for an attorney. Where such crimes were of great magnitude, and were related to the very types of matters in which attorneys frequently act, such as ensuring validity of documents requiring notarial services, respondent's crimes were of such a serious nature that by themselves, they would warrant disbarment. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[4]**

Disbarment was warranted for convictions of grand theft and forgery unless most compelling mitigating circumstances clearly predominated. Despite hearing judge's conclusion that respondent's crimes were aberrant and brought on by incredible psychological stress due to marital and business problems, review department did not agree that mitigation was compelling. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[5]**

Respondent's lack of a prior record of discipline in 14 years of practice was entitled to mitigating weight but did not of itself prove that disbarment was excessive for convictions of grand theft and forgery. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[6]**

Not all instances of serious professional misconduct warrant disbarment, depending on mitigating circumstances. Theft crimes unrelated to the practice of law have resulted in less than disbarment. However, where respondent's offenses of grand theft and forgery were extremely grave and multiple examples of felonious and fraudulent misconduct, likely to impugn public confidence in the legal profession, and respondent's experience in sophisticated law practice,

public office and private business should have dissuaded him from committing felonies, review department recommended disbarment notwithstanding respondent's evidence of stress caused by personal and financial problems. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[11]**

Where respondent, while acting as the executor of a deceased client's estate, embezzled more than $500,000 from such estate, the magnitude of the theft would result in disbarment regardless of alleged mitigating circumstances. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[4]**

1552.30 Applied - Prospective actual suspension for 2 or more years

1552.31 Compelling mitigating circumstances

Standard 3.2 contemplates opportunity to introduce mitigating evidence which, if compelling, would justify sanction short of disbarment. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[17]**

1552.39 Other reason

1552.50 Declined to apply

1552.51 No moral turpitude

1552.52 Compelling mitigation

Where respondent, after authorities' discovery of welfare fraud committed by him and his wife, was cooperative with welfare authorities and remorseful, took full responsibility, and stipulated to most of the facts at the State Bar hearing, hearing judge was justified in recommending lengthy suspension in lieu of disbarment. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[4]**

Although respondent's use and distribution of illegal drugs did not result from an initial, legal use of prescribed medications, which would have mitigated his later, reprehensible drug transactions, the great number of years which had passed since the attorney's misconduct, coupled with evidence of impressive and sustained rehabilitation, were sufficiently mitigating to conclude that disbarment would be excessive discipline. To underscore the gravity of the attorney's misconduct, which occurred after the attorney had completed law school and had applied unsuccessfully to the California bar, the review department recommended two years actual suspension, retroactive to the start of the attorney's interim suspension. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[3]**

Where respondent was convicted of a felony for harboring respondent's client while the client was a fugitive, even thought respondent was well-motivated, did not act for personal gain and committed no perjurious act, respondent's conviction was a serious matter, and involved acting with conscious disregard of an attorney's obligation to uphold the law. Thus, even though respondent's conduct was aberrational, respondent posed no current risk to the public, the legal profession or the courts, and respondent presented compelling mitigating evidence, a 60-day actual suspension, with one year of stayed suspension and one year of probation, was appropriate to preserve the integrity of the legal profession and enforce high professional standards. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[1]**

Under the Standards for Attorney Sanctions for Professional Misconduct, the presumptively appropriate discipline for conviction of a crime involving moral turpitude is disbarment. However, where compelling mitigating circumstances predominate, a lesser sanction may be imposed, and the minimum of a two-year actual suspension suggested by the standards has not been applied by the Supreme Court. In such circumstances, the review department's duty is to determine the appropriate sanction in light of the purposes of attorney discipline: protection of the public, preservation of public confidence in the legal profession and maintenance of high professional standards. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[14]**

Where respondent in criminal conviction matter had acted in what he believed to be the best interests of both his client and the criminal justice system, his good motives were not a defense to his breach of duty, but did constitute a strong factor in mitigation. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[16]**

Disbarment would be excessive in case arising out of criminal conviction for filing false federal income tax return, even though offense involved moral turpitude, based on comparable Supreme Court cases and given respondent's compelling showing of mitigation, including absence of any prior or subsequent misconduct; extreme emotional difficulties arising from an amputation; respondent's acknowledgment of his misconduct and his candor and cooperation with the State Bar; a persuasive showing of respondent's good character and high esteem in the community; family problems existing at the time of the misconduct; and the fact that the misconduct did not involve the practice of law. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[8]**

An attorney's commission of a crime involving moral turpitude is always a matter of serious consequence but does not always result in disbarment; the sanction imposed is determined in each case depending on the nature of the crime and the circumstances presented by the record. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[4]**

Standard 3.2 contemplates opportunity to introduce mitigating evidence which, if compelling, would justify sanction short of disbarment. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[17]**

1552.53 Credit for interim suspension

The Supreme Court has effectively modified the standard calling for a minimum two-year prospective suspension in matters arising from convictions for crimes of moral turpitude, by rejecting the requirement that the suspension be automatically prospective. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[10]**

The Supreme Court has expressed concern that the State Bar Court should make clear the reasons for departure from the standards in any case where the recommended discipline differs therefrom. Where hearing judge did not articulate basis for recommending 18 months suspension instead of two-year minimum called for by applicable standard, respondent would have had to wait two years to reapply for admission if criminal conviction had occurred prior to admission to practice, and no reason appeared on record to depart from standard except to give credit for time spent on interim suspension, review department recommended actual suspension of two years. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[11]**

Although respondent's use and distribution of illegal drugs did not result from an initial, legal use of prescribed medications, which would have mitigated his later, reprehensible drug transactions, the great number of years which had passed since the attorney's misconduct, coupled with evidence of impressive and sustained rehabilitation, were sufficiently mitigating to conclude that disbarment would be excessive discipline. To underscore the gravity of the attorney's misconduct, which occurred after the attorney had completed law school and had applied unsuccessfully to the California bar, the review department recommended two years actual suspension, retroactive to the start of the attorney's interim suspension. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[3]**

Where review department saw no justifiable reason to deviate from hearing judge's recommendation of suspension in felony conviction matter which had resulted in interim suspension, and effect of examiner's request for review had been to extend interim suspension, review department believed it appropriate to attempt to place respondent in same position as if examiner had not requested review, by modifying length of suspension and giving increased credit for interim suspension. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[14]**

Where relevant facts and circumstances surrounding perjury conviction were serious, and respondent had not yet demonstrated sufficient rehabilitation, but in light of mitigation and circumstances as a whole disbarment was not necessary, lengthy actual suspension, including some prospective suspension, and standard 1.4(c)(ii) requirement were appropriate discipline. However, review department reduced length of recommended prospective suspension to reflect time expired since issuance of hearing judge's decision. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[12]**

Credit for interim suspension in conviction matters is not restricted to cases in which there are compelling mitigating factors. All facts and circumstances, including unexplained delay in State Bar proceedings, are considered, and all relevant factors are balanced in arriving at a proper discipline. Disciplinary recommendations should not penalize the respondent for appealing a criminal conviction or contesting the State Bar Court's findings

and recommendations. Where lengthy interim suspension has occurred, the appropriate consideration in determining whether prospective suspension is necessary is whether the facts and circumstances of a particular matter require a further period of actual suspension for the protection of the public, the profession or the courts. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[13]**

Where length of attorney's prolonged interim suspension was largely due to meritorious appeal from criminal conviction, it would have been inequitable not to give credit for interim suspension against period of actual suspension recommended after disciplinary hearing. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[22]**

1552.59 Other reason

Appropriate level of discipline for respondent's misdemeanor conviction for paying for referral of two clients (Ins. Code, § 750, subd. (a)), where circumstances surrounding conviction involved moral turpitude, was two-year stayed suspension with two-year period of probation and six-month period of actual suspension. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. **[6 a-g]**

In a conviction referral proceeding involving respondent's misdemeanor conviction of being an accessory after the fact in connection with the submission of false information to a federally insured bank for the purpose of inducing it to loan money to respondent for the purchase of a farm (18 U.S.C. § 1014), which conviction involved moral turpitude per se, the State Bar proved that respondent's federal income tax returns represented by the copies of the first page of a number of prior federal income tax forms that were submitted to the bank in connection with respondent's loan application were never filed with the I.R.S, but did not prove that the figures on the submitted pages were false. Accordingly, the review department recommended only an 18-month period of actual suspension even though the applicable standard of Standards for Attorney Sanctions for Professional Misconduct provides for disbarment or a minimum of two years' actual suspension. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[5]**

Where enough mitigating circumstances had been sufficiently established, and were coupled with the lack of extreme seriousness of respondent's offense, the hearing judge correctly concluded that suspension rather than disbarment was the appropriate discipline for a conviction of possession of marijuana for sale, even though the circumstances of the conviction involved moral turpitude. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[7]**

The Standards for Attorney Sanctions for Professional Misconduct are guidelines; they do not need to be followed in talismanic fashion. Hearing judge in matter arising from perjury conviction properly analyzed relevant case law in order to arrive at appropriate sanction, rather than automatically applying standard 3.2, which provides that discipline for conviction of a crime involving moral turpitude shall be disbarment unless compelling circumstances clearly predominate. Supreme Court cases involving crimes of moral turpitude have considered the nature of the crime and the magnitude of its impact on the public and the integrity of the legal system. This factual analysis in determining the propriety of disbarment is similar to that used in matters involving entrusted funds or property. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[11]**

Where relevant facts and circumstances surrounding perjury conviction were serious, and respondent had not yet demonstrated sufficient rehabilitation, but in light of mitigation and circumstances as a whole disbarment was not necessary, lengthy actual suspension, including some prospective suspension, and standard 1.4(c)(ii) requirement were appropriate discipline. However, review department reduced length of recommended prospective suspension to reflect time expired since issuance of hearing judge's decision. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[12]**

In conviction referral matter in which interim suspension had been imposed and later vacated after seven months, review department declined to recommend total of one year actual suspension, even though possibly appropriate, because resulting additional four-month suspension would have been disruptive and punitive rather than achieving the purposes of disciplinary proceedings (protection of the public, courts and legal profession as well as rehabilitation in proper cases). *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[9]**

Supreme Court has rejected rigid application of the requirement of prospective suspension in standard 3.2. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[23]**

Under standard providing that disbarment or actual suspension is appropriate for misdemeanor convictions involving moral turpitude, where respondent had four alcohol-related driving convictions, and did not present persuasive evidence that he understood the extent of his alcohol problem and was truly on path to rehabilitation, appropriate discipline was actual suspension for two years and until respondent proved rehabilitation and fitness to practice. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[5 a,b]**

Discipline standard applicable to misdemeanor convictions involving moral turpitude provides for disbarment or actual suspension. Where respondent repeatedly committed serious misconduct and did not demonstrate reform, appropriate discipline was actual suspension for two years and until proof of rehabilitation and fitness to practice. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[7 a,b]**

1553 Standard 2.15(a) (interim Standard 2.11(a), 1986 Standard 3.3 (Felony conviction involving moral turpitude as element))

1553.10 Applied - Summary disbarment recommended

Current law does not provide for summary disbarment unless the elements of the conviction inherently involve moral turpitude. Thus, the State Bar's argument that summary disbarment applies to all felonies which involve moral turpitude in their surrounding facts and circumstances cannot be supported as it is contrary to the uniform meaning and interpretation of over 70 years of summary provisions of the State Bar Act flowing from an attorney's criminal conviction. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[1 a–e]**

Past Supreme Court practice in considering automatic or summary disbarment was not found by the review department to entail weighing and balancing issues such as the motive of the attorney in committing the crime, the extent to which harm did or did not occur, whether the offenses were limited or repeated or other issues pertaining to evidence bearing on either mitigating or aggravating circumstances. Therefore, to the extent that language in the review department opinions *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71, and *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729, would require the review department to undertake such an analysis, such language was disapproved. Although respondent denies that his offense was serious enough to warrant disbarment, all the facts are not before us nor are they undisputed. What is undisputed is that respondent stands finally convicted, inter alia, of mail fraud, a felony which unquestionably involves moral turpitude; and, as we observed collectively in *Segall* and *Salameh*, is the type of offense which has often resulted in disbarment. Our reading of the summary disbarment law and past Supreme Court practice, would not warrant any exception to a summary disbarment recommendation based on respondent's claims. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942. **[2]**

Summary disbarment is statutorily authorized where an attorney is convicted of a felony and (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. The crime of forgery includes as one of its elements the specific intent to defraud. A forgery conviction for altering a court document was unquestionably committed in the course of the practice of law in that it involved fraud on the court perpetrated on behalf of the attorney's client. Accordingly, summary disbarment was appropriate in the absence of conflicting Supreme Court precedent or a violation of due process in disbarring respondent without a hearing. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[2]**

The Legislature itself has recognized that the inherent authority of the Supreme Court controls the outcome in disciplinary proceedings. It is therefore incumbent upon the review department not only to review the statutory criteria for summary disbarment, but also to review Supreme Court precedent to assure that application of statutory summary disbarment does not conflict with Supreme Court standards for disbarment. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[4]**

Forgery is by definition a crime of moral turpitude. Under Supreme Court case law, disbarment is the rule rather than the exception for this serious crime. Forgery of a court document involves fraud on the court, which is particularly egregious. Accordingly, where respondent was convicted of such crime, respondent would have faced

disbarment even if granted a hearing on the issue of appropriate discipline. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[6]**

Summary disbarment is statutorily authorized if an attorney commits a California or federal felony as to which: (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement; and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. If the State Bar Court determines that disbarment would be ordered by the Supreme Court without regard to mitigating circumstances, a recommendation of summary disbarment is justified. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[2]**

In considering whether to recommend summary disbarment, the State Bar Court is generally limited to determining whether the statutory and case law criteria have been met on the face of the conviction papers, although undisputed additional facts may also be taken into account. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[3]**

Where respondent, while acting as the executor of a deceased client's estate, embezzled more than $500,000 from such estate, the magnitude of the theft would result in disbarment regardless of alleged mitigating circumstances. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[4]**

Where respondent committed grand theft by embezzlement, the felony conviction papers demonstrated that an element of respondent's offense was the specific intent to deceive, defraud, steal, or make or suborn a false statement. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[5]**

The statutory requirement for summary disbarment that an attorney's crime be committed in such a manner that a client was a victim is met even when the victimization occurred outside the practice of law, and may apply even when the victim was a former or deceased client. Where an attorney is appointed under a former client's will as executor of the client's probate estate, and is convicted of grand theft by embezzlement from the estate, there is such a clear nexus between the crime and the trust and confidence of the client that was violated that the client-as-victim requirement for summary disbarment is satisfied. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[8]**

Business and Professions Code section 6102 (c), providing for summary disbarment of attorneys convicted of crimes meeting the criteria set forth in the statute, must be read in the context of the statutory scheme of the State Bar Act as a whole, which indicates the Legislature's intent to defer to the Supreme Court's inherent authority to judge each case on its merits and disbar or suspend pursuant to its own view of the record. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[3]**

A conviction for mail fraud (18 U.S.C. § 1341) involves intentional fraud within the meaning of the summary disbarment statute (Bus. & Prof. Code § 6102 (c)). *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[4]**

The practice of law includes not only performing services in court but also legal advice and counsel and the preparation of legal instruments and contracts. Where an attorney was convicted of mail fraud based on the attorney's fraudulent creation of a separate corporation in order to obtain payment for legal work for clients which otherwise would have been performed by the attorney's law firm, the crime was committed in the practice of law within the meaning of the summary disbarment statute (Bus. & Prof. Code § 6102 (c)). *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[5]**

Where an attorney was convicted of mail fraud based on fraudulently billing an insurance company for services rendered on behalf of its insureds, the insureds, as the attorney's clients, were victimized by the crime, and the crime therefore involved a client as a victim within the meaning of the summary disbarment statute (Bus. & Prof. Code § 6102 (c)). The attorney's subsequent restitution to the insurance company, ordered as part of the attorney's criminal sentence, did not negate the harm caused by the crime. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[6]**

Before recommending to the Supreme Court that an attorney be summarily disbarred pursuant to Business and Professions Code section 6102 (c), the State Bar Court has a duty to analyze the record in light of the case law to assure that application of section 6102 (c) does not conflict with Supreme Court standards for disbarment. The

State Bar Court will only order a hearing if Supreme Court precedent supports a lesser sanction than disbarment for the particular crime depending on circumstances which might be adduced at a disciplinary hearing. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[7]**

Where an attorney was convicted of mail fraud arising out of a scheme to defraud an insurance company which retained the attorney to defend its insureds, disbarment would be an appropriate sanction regardless of mitigating circumstances, due to the extremely serious nature of the misconduct and its direct connection with the practice of law. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[8]**

Rule 951(a), California Rules of Court, delegating certain powers to the State Bar Court regarding the discipline of attorneys convicted of crimes, limits the State Bar Court to recommending summary disbarment to the Supreme Court, rather than imposing it directly. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[9]**

1553.50 Declined to apply

1553.51 Conviction not involving moral turpitude as element of crime

Respondent's convictions of making false statements to federally insured financial institution to influence action on loans, felonies involving moral turpitude, did not occur in respondent's practice of law or in manner such that a client was victim. Thus, respondent's convictions did not meet statutory criteria for disbarment under former version of summary disbarment statute that was in effect between 1986 and January 1, 1997. And respondent's summary disbarment was warranted, if at all, only under present version of statute (Bus. & Prof. Code, § 6102, subd. (c)), effective January 1, 1997. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.51.**[1 a-c]**

Retroactive law is one that affects rights, obligations, acts, transactions, or conditions performed or existing before adoption of law. Even though respondent's criminal convictions occurred after January 1, 1997, effective date of present version of the summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)), respondent committed criminal acts underlying those convictions before January 1, 1997, effective date. Thus, respondent's summary disbarment under present version of statute would be improper retroactive application of statute because, but for amendments to statute effective January 1, 1997, respondent would not be subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.51.**[2 a-c]**

In determining whether an attorney's convictions meet the statutory criteria for summary disbarment, the review department is limited to the record of conviction and any undisputed facts that may exist. Where the record of conviction did not establish that the offenses were committed in the course of the practice of law or in any way such that a client of respondent's was a victim, the offenses did not meet the criteria for summary disbarment under the version of Business and Professions Code section 6102, subdivision (c), in effect prior to January 1, 1997. Summary disbarment was warranted, if at all, only under the present version of the statute. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[1]**

Supreme Court and State Bar Court have unquestioned jurisdiction over attorneys' convictions of crime whether or not they are eligible for summary disbarment. There is no requirement that notice of time and place of hearing in conviction referral matter charge commission of "serious" offense for which admonition would be unavailable (Trans. Rules Proc. of State Bar, rule 415), or offense for which State Bar Court may recommend summary disbarment. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[3]**

Convictions of grand theft and forgery would have resulted in recommendation of summary disbarment if crimes had occurred in practice of law or a client was a victim. Where respondent's crimes did not occur in practice of law or victimize a client, case was not eligible for summary disbarment, and respondent was entitled to hearing on appropriate degree of discipline. Nevertheless, opportunity for hearing was not designed to lower professional standards. Respondent's crimes constituted heinous misconduct for an attorney. Where such crimes were of great magnitude, and were related to the very types of matters in which attorneys frequently act, such as ensuring validity of documents requiring notarial services, respondent's crimes were of such a serious nature that by themselves, they would warrant disbarment. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[4]**

Where respondent embezzled funds from a deceased former client's estate while serving as the estate's executor, but not its attorney, neither the estate nor the beneficiaries of the estate were respondent's clients, nor

did respondent commit the offense in the practice of law. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[6]**

By statute, summary disbarment is available only for a narrow range of grievous misconduct. Grand theft by an attorney in the capacity of executor of an estate, though egregious, does not come within the statutory definition of an offense justifying summary disbarment unless it was committed in the practice of law or in such a manner that a client was a victim. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[7]**

Attorney's embezzlement from law partnership was not a crime committed in the course of the practice of law and did not involve a client as victim, and therefore did not come within the scope of the summary disbarment statute (Bus. & Prof. Code § 6102(c)). *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[6]**

In determining whether nature of attorney's crimes warranted summary disbarment, review department gave great weight to decision of court of appeal issued on direct appeal from respondent's criminal conviction. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[7]**

Court of appeal opinion on direct appeal from attorney's criminal conviction is conclusive with respect to attorney's guilt of underlying crime, but for discipline purposes, State Bar Court must independently determine, through careful review of criminal record, whether clients were victims of misconduct or misconduct was committed in attorney's capacity as attorney. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[8]**

Where respondent embezzled from his law partnership through forgeries and other acts internal to the law firm and intended only to deceive his law partner, respondent breached the fiduciary duty of a partner to the partnership, but did not commit a crime related to respondent's status as an attorney. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[9]**

Phrase "offense committed in the course of the practice of law", as used in standard 3.3 and in summary disbarment statute (Bus. & Prof. Code § 6102(c)), addresses the conduct of attorneys as such in dealing with clients and the public, and does not encompass crimes where attorney does not act as such in the commission of the offenses directly, but only in the surrounding circumstances. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[10]**

1553.52 Compelling mitigating circumstances

1553.59 Other reason

A retroactive law is one that affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute. Respondent's crimes were committed and her conviction occurred when the prior version of Business and Professions Code section 6102, subdivision (c) was in effect and her offenses were not within the scope of the former version of the statute. In addition, as respondent would not have been subject to summary disbarment, she had a right under the former version of the statute to a hearing and to present evidence prior to the imposition of discipline. The application of the present version of section 6102, subdivision (c) under these circumstances would be retrospective. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[2]**

It is presumed an amendment to a statute operates prospectively unless the Legislature has expressly stated the contrary or, after considering all pertinent factors, there is clear indication of a legislative intent that the statute operate retrospectively. Business and Professions Code section 6102, subdivision (c) does not contain an express retroactivity provision and after considering extrinsic factors, including public protection and due process, the review department concluded that section 6102, subdivision (c) should not be applied retroactively. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[3]**

The important public interest served by the summary disbarment statute does not show that the legislature intended the statute to operate retroactively. A summary disbarment proceeding, by definition, excludes an evidentiary hearing in the State Bar Court prior to disbarment. However, pursuant to Business and Professions Code section 6101, subdivision (a), upon receipt of a certified copy of the record conviction, attorneys convicted of a felony or a crime involving moral turpitude are interimly suspended from the practice of law pending final disposition of the proceeding. Thus, even if an evidentiary hearing is held, the attorney convicted of an offense

that would warrant disbarment is immediately suspended from the practice of law and can remain suspended until disbarred. Accordingly, the public is promptly protected from attorneys convicted of crimes of dishonesty regardless of whether summary disbarment occurs. Moreover, the opportunity for a referral hearing is not designed to lower professional standards. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[4]**

The issue of retroactive application of the summary disbarment statute (Bus. & Prof. Code § 6102(c)) to conduct occurring prior to its enactment has not been decided by the Supreme Court. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[5]**

1553.70 Standard 2.15(c) (interim Standard 2.11(c) (misdemeanor conviction involving moral turpitude - disbarment or suspension)

1553.71 Applied – disbarment

1553.72 Coupled with other misconduct

1553.73 Other aggravating factors

1553.74 Other reason

1553.80 Applied – actual suspension

1553.81 Compelling mitigating circumstances

1553.89 Other reason

Under standard providing that disbarment or actual suspension is appropriate for misdemeanor convictions involving moral turpitude, where respondent had four alcohol-related driving convictions, and did not present persuasive evidence that he understood the extent of his alcohol problem and was truly on path to rehabilitation, appropriate discipline was actual suspension for two years and until respondent proved rehabilitation and fitness to practice. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[5 a,b]**

Discipline standard applicable to misdemeanor convictions involving moral turpitude provides for disbarment or actual suspension. Where respondent repeatedly committed serious misconduct and did not demonstrate reform, appropriate discipline was actual suspension for two years and until proof of rehabilitation and fitness to practice. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[7 a,b]**

1553.90 Declined to apply – lesser or no discipline

1553.91 No moral turpitude

1553.92 Compelling mitigation

1553.93 Credit for interim suspension

1553.99 Other reason

1554 Standard 2.16 (interim standard 2.12, 1986 Standard 3.4) (No moral turpitude but discipline warranted)

Note: For topic number 1554.10, retained solely for cases decided prior to January 1, 2014, see below, following topic number 1554.39.

1554.20 Standard 2.16(a) (interim Standard 2.12(a) (actual suspension for felony not involving moral turpitude but warranting discipline)

1554.21 Applied

1554.25 Declined to apply – lesser discipline imposed

1554.27 Declined to apply – greater discipline imposed

1554.29 Other issues re Standard 2.16(a) (interim Standard 2.12(a))

1554.30 Standard 2.16(b) (interim Standard 2.12(b) (suspension or reproval for misdemeanor not involving moral turpitude but warranting discipline)

1554.31 Applied – Suspension

1554.33 Applied – Reproval

1554.35 Declined to apply – no discipline imposed

1554.37 Declined to apply – greater discipline imposed

1554.39 Other issues re Standard 2.16(b) (interim Standard 2.12(b))

Note: Topic numbers 1554.10 and 1554.50-1554.59, relating to 1986 **Standard 3.4** (no moral turpitude but discipline warranted) retained solely for cases decided prior to January 1, 2014.

1554.10 1986 Standard 3.4 (no moral turpitude but discipline warranted) – Applied (discipline imposed per general standards)

Note: All cases listed under topic number 1554.10 are also listed under the specific **Part B Standard(s)** applied.

For a single misdemeanor crime not involving moral turpitude and unrelated to practice of law, a short actual suspension is appropriate. Where attorney committed misdemeanor violation of Penal Code section 273a, subdivision (b) (child endangerment) and where the misconduct was aggravated by two prior records of discipline but mitigated by cooperation, remorse and pro bono service, the appropriate discipline recommendation was a 120-day actual suspension. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[12]**

1554.50 Declined to apply

1554.51 No comparable general standard found

1554.59 Other reason

For a single misdemeanor crime not involving moral turpitude and unrelated to practice of law, a short actual suspension is appropriate. Where attorney committed misdemeanor violation of Penal Code section 273a, subdivision (b) (child endangerment) and where the misconduct was aggravated by two prior records of discipline but mitigated by cooperation, remorse and pro bono service, the appropriate discipline recommendation was a 120-day actual suspension. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 **[12]**

In the Matter of Twitty (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664.

The Standards for Attorney Sanctions for Professional Misconduct provide that the appropriate discipline for culpability for professional misconduct where the member has a record of two prior impositions of discipline is disbarment unless the most compelling circumstances clearly predominate. Application of this standard was not appropriate where the attorney's criminal convictions and prior discipline, which were caused by an extensive history of drug and alcohol abuse, did not directly involve clients or the practice of law, and did not cause specific harm to the public or courts, and where the attorney had taken steps to address the underlying substance abuse problem, and had already been under suspension for five years as a result of previous discipline. Continued probation monitoring with substance abuse conditions, and a requirement that the attorney demonstrate rehabilitation and fitness to practice, would ensure that the substance abuse was controlled prior to the attorney's resuming the practice of law. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[9]**

Under the Standards for Attorney Sanctions for Professional Misconduct, the discipline for conviction of a crime which does not involve moral turpitude but does involve other misconduct warranting discipline should be

that which is appropriate to the nature and extent of the misconduct. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[10]**

Where respondent was convicted of misdemeanor sex offense not involving moral turpitude and not related to practice of law, respondent's record of two prior private reprovals made it appropriate to impose public reproval rather than private reproval that would otherwise have been warranted, but due to lack of common thread among matters and their collective lack of severity, it would have been manifestly unjust to recommend suspension. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[5]**

Where respondent in criminal conviction matter had initially misrepresented his occupation in the course of his arrest, it was appropriate to impose requirement to take and pass professional responsibility examination as condition of public reproval. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[6]**

1600 Discipline Imposed in Conviction Matters

1610 Disbarment

Disbarment was warranted and necessary where attorney failed to meet professional obligations for over two decades in four disciplinary cases. In the first three cases, respondent performed incompetently, and in fourth case, which occurred between his first and second discipline, he was convicted of a crime of moral turpitude that he never reported. Disbarment was recommended under standards 3.2. and 1.7(b), because overall, respondent demonstrated pervasive carelessness towards compliance with ethical rules, and appeared unwilling or unable to conform his behavior to the rules of professional conduct. *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189 **[6]**

Where attorney improperly obtained interests adverse to a client, committed trust account violations, intentionally misappropriated $26,699.56, failed to competently perform, failed to account, failed to return client files, collected an unconscionable fee, and committed multiple acts involving moral turpitude, where the misconduct was aggravated by multiple acts, uncharged misconduct, lack of candor, significant client harm and indifference toward rectification but mitigated by an absence of a prior record of discipline and cooperation, the appropriate discipline recommendation was disbarment. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 **[14]**

Where the facts and circumstances underlying respondent's felony conviction involved moral turpitude due to respondent's capping, fee splitting, recklessness, deceit, and repeated failures to competently represent his clients, where the facts and circumstances involved additional misconduct warranting discipline, where there was little weight assigned to respondent's cooperation with the State Bar and to his evidence of good character, and where respondent engaged in multiple acts of misconduct, profited from that misconduct, harmed clients and insurers and failed to complete restitution, the appropriate level of discipline was disbarment. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920. **[17]**

Disbarment was the appropriate discipline for respondent's involvement in a capping scheme, fee splitting arrangement and conspiracy to defraud the Internal Revenue Service due to (1) the extremely serious nature of respondent's misconduct over an extended period of years; (2) the insufficient passage of time since the misconduct to give the necessary assurance that respondent was once again fit to practice law; (3) the fact that the misconduct occurred within three or four years after respondent began practicing law; (4) the fact that respondent was motivated to continue the misconduct for six years by a desire to enhance his standard of living; (5) respondent's decision to offer only limited cooperation to the government for three and one-half years after the commencement of an investigation by the Internal Revenue Service; and (6) respondent's disregard, on virtually hundreds of occasions, of the trust his clients placed in him.*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469. **[7]**

Past Supreme Court practice in considering automatic or summary disbarment was not found by the review department to entail weighing and balancing issues such as the motive of the attorney in committing the crime, the extent to which harm did or did not occur, whether the offenses were limited or repeated or other issues pertaining to evidence bearing on either mitigating or aggravating circumstances. Therefore, to the extent that language in the review department opinions *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71, and *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729, would require the review department to

undertake such an analysis, such language was disapproved. Although respondent denies that his offense was serious enough to warrant disbarment, all the facts are not before us nor are they undisputed. What is undisputed is that respondent stands finally convicted, inter alia, of mail fraud, a felony which unquestionably involves moral turpitude; and, as we observed collectively in *Segall* and *Salameh*, is the type of offense which has often resulted in disbarment. Our reading of the summary disbarment law and past Supreme Court practice, would not warrant any exception to a summary disbarment recommendation based on respondent's claims. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942. **[2]**

Unless the most compelling of mitigating circumstances clearly predominate, disbarment is the appropriate discipline in cases involving convictions of serious crimes involving moral turpitude. The nature and extent of respondent's felony conviction of conspiracy to commit theft and theft, alone, established his unfitness to practice law. Likewise, the facts and circumstances surrounding his crimes, the numerous aggravating circumstances, and the lack of any substantial mitigating circumstance further convinced the review department that respondent remained unfit to practice unless and until he established by clear and convincing evidence in a reinstatement proceeding that he was rehabilitated. Accordingly, disbarment was recommended. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[13]**

In the Matter of Rech (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310.

In the Matter of Salameh (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729.

In the Matter of Brazil (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679.

In the Matter of Lilly (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473.

In the Matter of Segall (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71.

1613 Stayed Suspension

1613.01 One month or less

1613.02 Two months (incl. anything between 1 and 3 mos.)

1613.03 Three months (incl. anything between 3 and 6 mos.)

1613.04 Six months (incl. anything between 6 and 9 mos.)

1613.05 Nine months (incl. anything between 9 mos. & 1 year)

1613.06 One year (incl. anything between 1 yr. & 18 mos.)

In the Matter of Jensen (Review Dept. 2013)5 Cal. State Bar Ct. Rptr.283.

In the Matter of Anderson (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737.

1613.07 18 months (incl. anything between 18 mos. & 2 yrs.)

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

1613.08 Two years (incl. anything between 2 & 3 yrs.)

In the Matter of Wenzel (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380

In the Matter of Duxbury (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

*In the Matter of Carr (*Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

1613.09 Three years (incl. anything between 3 & 4 yrs.)

In the Matter of Guillory (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402.

In the Matter of Sawyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765.

In the Matter of Lybbert (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297.

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of Katz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

1613.10 Four years (incl. anything between 4 & 5 yrs.)

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

1613.11 Five years or more

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

1615 Actual Suspension

1615.01 One month or less

1615.02 Two months (incl. anything between 1 and 3 mos.)

In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

In the Matter of Anderson (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737.

1615.03 Three months (incl. anything between 3 and 6 mos.)

In the Matter of Jensen (Review Dept. 2013)5 Cal. State Bar Ct. Rptr.283.

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

1615.04 Six months (incl. anything between 6 and 9 mos.)

In the Matter of Duxbury (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108.

In the Matter of Katz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

1615.05 Nine months (incl. anything between 9 mos. & 1 year)

1615.06 One year (incl. anything between 1 yr. & 18 mos.)

1615.07 18 months (incl. anything between 18 mos. & 2 yrs.)

In the Matter of Sawyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765.

1615.08 Two years (incl. anything between 2 & 3 yrs.)

In the Matter of Guillory (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402

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In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

1615.09 Three years (incl. anything between 3 & 4 yrs.)

1615.10 Four years (incl. anything between 4 & 5 yrs.)

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

1615.11 Five years or more

1616 Relationship of actual suspension to interim suspension

1616.10 No credit given; actual suspension entirely prospective

1616.50 Full credit given for interim suspension

In the Matter of Sawyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765.

In the Matter of Lybbert (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297.

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

1616.70 Actual suspension all prospective, but length reduced

In the Matter of Katz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

1616.90 Other relationship

1617 Probation (for conditions see topic numbers 1020 et seq.)

1617.01 One month or less

1617.02 Two months (incl. anything between 1 and 3 mos.)

1617.03 Three months (incl. anything between 3 and 6 mos.)

1617.04 Six months (incl. anything between 6 and 9 mos.)

1617.05 Nine months (incl. anything between 9 mos. & 1 year)

1617.06 One year (incl. anything between 1 yr. & 18 mos.)

In the Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737.

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1617.07 18 months (incl. anything between 18 mos. & 2 yrs.)

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In the Matter of Duxbury (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61.

In the Matter of Bouyer (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888.

In the Matter of Burns (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108.

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In the Matter of Lybbert (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297.

In the Matter of Anderson (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of Katz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

1617.10 Four years (incl. anything between 4 & 5 yrs.)

In the Matter of Guillory (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

1617.11 Five years or more

In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

1630 Standard 1.2(c)(i) (1986 Standard 1.4(c)(ii)) Rehabilitation Requirement

In the Matter of Guillory (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402.

In the Matter of Wenzel (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380

In the Matter of Lybbert (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297.

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108.

In the Matter of Passenheim (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62.

In the Matter of Deierling (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

In the Matter of Katz (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

1640 Public Reproval

1641 With conditions [for conditions see topic numbers 1020 et seq.]

In the Matter of Buckley (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201.

1645 Without conditions

1650 Private Reproval

1651 With conditions [for conditions see topic numbers 1020 et seq.]

1655 Without conditions

1690 Miscellaneous Issues in Conviction Cases

1691 Admissibility and/or Effect of Record in Criminal Proceeding

Criminal conduct not related to the practice of law and not committed against a client reveals moral turpitude if it shows a deficiency in character traits necessary for the practice of law, or involves such a serious breach of duty or such flagrant disrespect for law and societal norms as to be likely to undermine public confidence in and respect for the legal profession. Where respondent was convicted of a misdemeanor for repeatedly placing video cameras in restaurant bathrooms to obtain secret recordings to view for sexual gratification, conviction was conclusive proof that respondent acted with intent to invade the privacy of restaurant patrons, and respondent's crime involved moral turpitude. *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380. **[1 a–c]**

Where respondent was convicted of misdemeanor child endangerment for leaving his nine-month-old daughter alone in hotel room for 40 minutes, fact of conviction established respondent's guilt of all elements of crime, but hearing was required to determine whether facts and circumstances involved moral turpi tude. Where State Bar failed to introduce clear and convincing evidence that respondent lied to police, no moral turpitude was established. *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283. **[1 a-c]**

In contrast to original disciplinary proceedings, which emanate from complaints against lawyers or from State Bar investigations and require an accusatory pleading alleging with reasonable specificity the charges related to alleged violations of specific conduct rules or laws, conviction referral proceedings are intended to be more streamlined because they are initiated based solely on a member of the State Bar's conviction, which is conclusive evidence of guilt of the crime. Convictions for offenses which may or may not involve moral turpitude or other misconduct warranting discipline should be referred for an evidentiary hearing to determine whether in the commission of the crime the convicted lawyer was guilty of misconduct warranting suspension or disbarment; typical offenses in this category include: assault and battery crimes, driving while intoxicated, certain tax convictions, and certain drug law convictions. Because it is appropriate to consider a wide ambit of facts and circumstances surrounding an attorney's commission of a crime during an evidentiary hearing in a referral proceeding, the State Bar met historic notice requirements by alerting respondent that evidence could be introduced on the facts and circumstances surrounding his assault conviction. The review department held the State Bar was not further required to provide respondent written notice of all the facts it considered germane to the referral proceeding at the time it started or respondent's default was entered for failure to reply to the notice of hearing. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[1 a–d]**

When an attorney pleads nolo contendere to a felony wobbler, i.e., a crime that may be charged or judged either as a felony or misdemeanor, and that offense is declared to be a misdemeanor at sentencing or at the imposition of probation under Penal Code section 17, subdivision (b), the Legislature made it clear that it remains a felony for State Bar Act purposes even if it is later declared a misdemeanor in postconviction proceedings, including proceedings resulting in punishment or probation. This does not mean that an attorney's conviction of a wobbler will always be of a felony. If the attorney's plea of guilty or nolo contendere or the verdict of guilty is to a misdemeanor charge, including a felony reduced to a misdemeanor at the time of the plea or verdict, the conviction will be of a misdemeanor.*In the Matter of Jackson* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610.**[1 a-c]**

An attorney's criminal conviction based on a plea of nolo contendere is deemed a conviction for attorney disciplinary purposes and is conclusive proof of the attorney's guilt on each of the essential elements of the offense of which the attorney was convicted. Thus, respondent cannot collaterally attack his conviction in the State Bar Court even though the victim of respondent's crime lost her civil lawsuit against respondent for damages. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.**[4]**

Even though the criminal plea agreement on which respondent was convicted dealt with only one of the multiple criminal counts initially filed against him, the State Bar Court's inquiry was not limited to the conviction on that one count to determine the appropriate discipline, but included review of all the surrounding circumstances. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[1]**

In determining whether an attorney's convictions meet the statutory criteria for summary disbarment, the review department is limited to the record of conviction and any undisputed facts that may exist. Where the record of conviction did not establish that the offenses were committed in the course of the practice of law or in any way such that a client of respondent's was a victim, the offenses did not meet the criteria for summary disbarment under the version of Business and Professions Code section 6102, subdivision (c), in effect prior to January 1, 1997. Summary disbarment was warranted, if at all, only under the present version of the statute. *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740. **[1]**

Conviction of violation of criminal statute is conclusive evidence of guilt of elements of that crime. Where respondent was convicted of battery on a police officer engaged in performance of official duties, and such officer's use of excessive force would have required finding that officer was not engaged in performance of official duties, respondent's conviction precluded State Bar Court from considering his claim that police initiated altercation or used excessive force in incident leading to respondent's conviction. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[8]**

An attorney is charged with knowledge that the legal consequences of the attorney's conviction include summary disbarment when statutory authority provides therefor. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[1]**

Summary disbarment is statutorily authorized where an attorney is convicted of a felony and (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. The crime of forgery includes as one of its elements the specific intent to defraud. A forgery conviction for altering a court document was unquestionably committed in the course of the practice of law in that it involved fraud on the court perpetrated on behalf of the attorney's client. Accordingly, summary disbarment was appropriate in the absence of conflicting Supreme Court precedent or a violation of due process in disbarring respondent without a hearing. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[2]**

An attorney convicted of a felony is chargeable with notice that the crime remains a felony for State Bar discipline purposes irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of post-conviction proceedings. Under some circumstances, prosecutorial discretion in originally charging a particular crime as a felony rather than a misdemeanor may raise questions as to the propriety of summary disbarment, but no such issue was presented where there was no evidence of abuse of discretion or other unfairness in charging forgery of a court document as a felony. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[3]**

Where respondent contended that he had only pleaded guilty in order to avoid two separate trials, and that he had not intended to commit a crime, due process did not entitle him to a hearing before the State Bar Court to prove these contentions, because he would be precluded from presenting evidence thereof by the statute providing that proof of an attorney's conviction of a felony or misdemeanor involving moral turpitude is conclusive evidence of the attorney's guilt of the elements of the crime in any proceeding to suspend or disbar the attorney. This conclusive presumption precludes collateral attack on the conviction by attorneys who seek to reassert their innocence in subsequent State Bar proceedings. In this regard, a conviction following a guilty plea is just as conclusive as a conviction following a full criminal trial. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[5]**

Respondent's conviction of grand theft and forgery was conclusive evidence of his guilt of all elements of those crimes. The grand theft conviction necessarily carried with it the specific intent to deprive the victim permanently of his funds. The forgery conviction necessarily showed that respondent acted without authority and with an intent to defraud. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[3]**

Respondent's favorable character showing, while attested to by many references, did not amount to a showing of extraordinary demonstration of good character, where not all witnesses were familiar with the magnitude and nature of respondent's crimes, and where respondent's repeated contention that he did not act to defraud his victim served to undercut his favorable character showing in light of the conclusive effect of his convictions for grand theft and forgery. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[7]**

Finality of an attorney's criminal conviction is not essential for an order referring the conviction to the State Bar Court Hearing Department for a determination whether there is probable cause to conclude that the circumstances of the conviction involved moral turpitude for purposes of interim suspension of the attorney. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[1]**

The possibility that criminal proceedings against an attorney may be dismissed if the attorney complies with the terms of criminal probation is not relevant to the effect of the conviction in disciplinary proceedings. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[2]**

A conviction after a plea of nolo contendere is a conviction for disciplinary purposes no less than a conviction after a plea or verdict of guilty. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[3]**

There are numerous factors to consider in assessing witness credibility beyond observing the witness while testifying. The hearing judge, as the trier of fact in State Bar proceedings, is to determine the credibility of witnesses and hearsay declarants. The fact that some witnesses testified at the State Bar hearing by way of a transcript of

the witnesses' criminal court testimony, which is expressly authorized by statute in State Bar proceedings, is not reason to discount their testimony or find it less credible than live witness testimony. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[1]**

Respondent's conviction of assault conclusively established that he did not act in self-defense, i.e., that he did not have an honest *and* reasonable belief that he was about to suffer bodily injury. Hearing judge could not reach conclusions, even based on credible evidence, that were inconsistent with such conclusive effect. Thus, where hearing judge found that respondent honestly believed he was about to be assaulted, review department rejected any finding that such belief was reasonable as being inconsistent with the conviction. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[2]**

In attorney discipline proceedings arising from a criminal conviction, the record of the attorney's conviction is conclusive evidence of the attorney's guilt of the crime for which the attorney was convicted. This conclusive presumption of guilt applies whether the convicted attorney seeks to reassert his or her innocence or merely to relitigate a claim of procedural error. The convicted attorney is conclusively presumed to have committed all of the elements of the crime. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[3]**

The conclusive presumption of guilt in attorney conviction matters does not apply only for crimes involving moral turpitude. The presumption also applies where the crime for which the attorney was convicted did not involve moral turpitude per se. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[5]**

The conclusive effect of an attorney's criminal conviction merely establishes for State Bar purposes that the attorney committed the acts necessary to constitute the offense. Whether those acts amount to professional misconduct, in the context of a crime that does not necessarily involve moral turpitude, is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[6]**

An attorney's conviction for assault with a firearm is conclusive proof that the attorney committed the elements for that crime, i. e., that a person was assaulted and that the assault was committed with a firearm. An assault is defined as an unlawful attempt to apply physical force upon the person of another at a time when the accused had the present ability to apply such physical force. An attempt to apply physical force is not unlawful when done in lawful self-defense. An attorney's conviction of this crime therefore conclusively established that the attorney unlawfully attempted to apply physical force upon the victim. As the assault was by definition unlawful, the review department concluded that it was not done in self-defense. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[7]**

Summary disbarment is statutorily authorized if an attorney commits a California or federal felony as to which: (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement; and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. If the State Bar Court determines that disbarment would be ordered by the Supreme Court without regard to mitigating circumstances, a recommendation of summary disbarment is justified. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[2]**

In considering whether to recommend summary disbarment, the State Bar Court is generally limited to determining whether the statutory and case law criteria have been met on the face of the conviction papers, although undisputed additional facts may also be taken into account. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[3]**

Where respondent committed grand theft by embezzlement, the felony conviction papers demonstrated that an element of respondent's offense was the specific intent to deceive, defraud, steal, or make or suborn a false statement. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[5]**

Where a felony could have been charged as a misdemeanor, the reduction of the felony conviction to a misdemeanor in postconviction proceedings does not affect the characterization of the crime as a felony for the purpose of interim suspension, but it may be taken into account in determining whether good cause exists for vacating an interim suspension order. If the reduction were ignored, arbitrary results might follow based on the discretionary charging practices of different prosecutors. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[8]**

Where respondent's knowledge of welfare fraud perpetrated by his wife was conclusively established by his guilty plea to a crime of which fraud was an essential element, the State Bar did not need affirmative evidence beyond the conviction itself to prove respondent's participation in the fraud. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[3]**

The determination of whether an attorney's conviction of certain crimes not involving moral turpitude per se should give rise to discipline, and on what basis, is not always an easy task. When the State Bar Court is asked to decide after hearing whether moral turpitude is involved in an attorney's conviction, the determination must be based on the facts and circumstances surrounding the conviction. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[3]**

Record of respondent's criminal conviction, which had been judicially noticed by hearing department, was admitted into evidence by review department in order to make it part of record in disciplinary proceeding for Supreme Court review, but was considered solely for purpose of establishing criminal complaint, charges, plea, and conviction. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[2]**

It is appropriate for disciplinary purposes to consider any criminal charges that were dismissed as well as the charges for which the attorney was actually convicted. Thus, where the criminal complaint in a Vehicle Code violation matter charged respondent with being under the influence of phencyclidine, and clear and convincing evidence was presented establishing that respondent was under the influence of phencyclidine, that circumstance could be considered in the disciplinary proceeding even though respondent was not convicted of being under the influence of phencyclidine. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108. **[7]**

In reviewing the record of an attorney's criminal conviction resulting from a guilty plea, for the purpose of determining the propriety of summary disbarment, the court does not take into account language in the information unnecessary to the crime to which the attorney pled guilty, but may consider additional undisputed facts based on the record. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[2]**

An attorney's conviction is conclusive proof, for disciplinary purposes, that the attorney committed the crime for which the attorney was convicted. However, California's driving under the influence laws do not prohibit drinking or ingestion of drugs and driving. Rather, they prohibit driving under the influence of alcohol or drugs and/or driving with a specified blood alcohol content. Thus, the mere fact that an attorney ingested legal medications and then drove a vehicle did not indicate that the attorney's conduct demeaned the integrity of the profession or constituted a breach of the attorney's responsibility to society. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[6]**

The whereabouts of a fugitive client known to an attorney constituted privileged communications which the attorney cannot disclose. (Bus. & Prof. Code, § 6068 (e); ABA Model Rules, rule 1.6.) The attorney must advise the client to surrender and must not assist or facilitate the fugitive in avoiding capture or committing a crime. Thus, respondent's knowledge that his fugitive client was in California and his meetings with the client to discuss the progress of negotiations with the authorities regarding the outstanding criminal charges were client confidences which respondent was obligated to preserve. However, an attorney's ethical duty not to disclose client confidences does not extend to affirmative acts which further a client's unlawful conduct, and respondent's guilty plea constituted conclusive proof that he committed all the acts necessary to committ the charged offense of harboring his fugitive client with the intent of preventing the client's discovery and arrest by federal authorities. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[11]**

One distinction between an interim suspension order and a final order of discipline is the type of record before the court. At the interim suspension stage, the court has the criminal conviction and a statutory mandate to order interim suspension absent a showing of good cause. The petitioner has the burden of showing good cause to set aside an order of interim suspension, and no evidentiary hearing has occurred to test alleged mitigating factors. Thus, contested facts cannot be relied upon as a basis for vacating the order of interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[4]**

While the leniency of an attorney's criminal sentence might be relevant in assessing final discipline, punishment by the criminal court serves a fundamentally different purpose than the provisions of the State Bar Act, and leniency of the criminal sentence therefore is not relevant to the determination whether there is good cause to vacate the attorney's interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[6]**

The commercial or distribution aspect of respondent's crime was conclusively established by his conviction of possession of marijuana for sale. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[4]**

Respondent's conviction for exhibiting a replica of a firearm in a threatening manner to cause reasonable fear or apprehension of harm conclusively established that respondent's acts were done in a threatening manner so as to cause a reasonable person apprehension or fear of bodily harm. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[7]**

In conviction referral proceedings, discipline is imposed according to the gravity of the crime and the circumstances of the case. In examining such circumstances, the court may look beyond the specific elements of a crime to the whole course of an attorney's conduct as it reflects upon the attorney's fitness to practice law. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[2]**

Given that the examiner's pretrial statement indicated that facts and circumstances surrounding respondent's perjury conviction would be at issue and that the record would include the transcript of a related infraction trial as well as respondent's perjury trial, and given the rule permitting the hearing judge to consider evidence of facts not directly connected with respondent's conviction if such facts are material to the issues stated in the order of reference, respondent had sufficient notice that all relevant facts and circumstances would be considered in the disciplinary proceeding. (Trans. Rules Proc. of State Bar, rule 602.) *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[3]**

In a disciplinary hearing, the record of a felony conviction conclusively establishes the attorney's guilt of the felony. Nevertheless, testimony from attorney character witnesses as to their belief that the respondent was innocent should not have been considered as an aggravating circumstance. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[8]**

At respondent's request, in a conviction proceeding, the review department took judicial notice of the record in a disciplinary case involving another attorney who was respondent's co-defendant in the underlying criminal matter. The discipline imposed on the co-defendant was considered in determining the appropriate discipline for respondent. *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. **[2]**

In a conviction matter, the respondent's criminal conviction by itself constitutes conclusive proof that the respondent committed all acts necessary to constitute the offense charged. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201. **[2]**

Court of appeal opinion regarding respondent's criminal appeal could be cited in related disciplinary proceeding, notwithstanding Supreme Court's depublication order, under Cal. Rules of Court, rule 977(b)(2). *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[1]**

In determining whether nature of attorney's crimes warranted summary disbarment, review department gave great weight to decision of court of appeal issued on direct appeal from respondent's criminal conviction. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[7]**

Court of appeal opinion on direct appeal from attorney's criminal conviction is conclusive with respect to attorney's guilt of underlying crime, but for discipline purposes, State Bar Court must independently determine, through careful review of criminal record, whether clients were victims of misconduct or misconduct was committed in attorney's capacity as attorney. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[8]**

Fact that in a disciplinary proceeding arising from an attorney's criminal conviction, the conviction is conclusive evidence of the attorney's guilt, is not an aggravating factor, but the basis of the attorney's culpability. *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. **[11]**

1699 Other Miscellaneous Issues in Conviction Cases

Members of the State Bar may be disciplined on the basis of their pre-admission misconduct. State Bar Moral Character Committee's consideration for moral character purposes of respondent's pre-admission misdemeanor conviction did not bar State Bar Court from considering it for discipline purposes. Records relating to respondent's admission to the State Bar were admissible in his post-admission disciplinary proceeding, especially where respondent failed to object at trial to being questioned about such records. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[2]**

In contrast to original disciplinary proceedings, which emanate from complaints against lawyers or from State Bar investigations and require an accusatory pleading alleging with reasonable specificity the charges related to alleged violations of specific conduct rules or laws, conviction referral proceedings are intended to be more streamlined because they are initiated based solely on a member of the State Bar's conviction, which is conclusive evidence of guilt of the crime. Convictions for offenses which may or may not involve moral turpitude or other misconduct warranting discipline should be referred for an evidentiary hearing to determine whether in the commission of the crime the convicted lawyer was guilty of misconduct warranting suspension or disbarment; typical offenses in this category include: assault and battery crimes, driving while intoxicated, certain tax convictions, and certain drug law convictions. Because it is appropriate to consider a wide ambit of facts and circumstances surrounding an attorney's commission of a crime during an evidentiary hearing in a referral proceeding, the State Bar met historic notice requirements by alerting respondent that evidence could be introduced on the facts and circumstances surrounding his assault conviction. The review department held the State Bar was not further required to provide respondent written notice of all the facts it considered germane to the referral proceeding at the time it started or respondent's default was entered for failure to reply to the notice of hearing. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[1 a–d]**

In conviction referral proceeding, ample due process protections were afforded to respondent where the State Bar served him via certified mail with a copy of the conviction referral order along with written notice that informed him of the specific conviction that was subject to the referral and of the specific issues to be decided at the hearing, warned him of the specific consequences of failure to timely reply, and directed him to attend the hearing to present evidence on his behalf and to examine and cross-examine witnesses. Further, the motion for entry of default, also served by certified mail, again warned respondent of the consequences of his failure to participate and notified him of the minimum level of discipline the State Bar would recommend if the hearing judge found culpability. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[2]**

While allegations in an original proceeding are deemed admitted after a default is entered, in a conviction referral matter, even after a default, the State Bar must prove by clear and convincing evidence any facts or circumstances it maintains are relevant to the conviction. If respondent in conviction referral proceeding had replied instead of defaulting, he could have sought to discover the State Bar's contentions of specific facts surrounding the conviction, and the court could have required the parties to exchange pretrial statements to identify factual contentions still in dispute before trial. *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110 **[3]**

To the extent that the grade of a crime, i.e., felony or misdemeanor, would influence the most significant actions following criminal conviction - eligibility for interim suspension, or summary disbarment - those issues are reserved to the review department rather than the hearing department. *In the Matter of Jackson* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610. **[2]**

The primary consequence of an order determining the grade of a crime for State Bar disciplinary purposes would be as to the evidence presented on the question of degree of discipline to recommend or impose should moral turpitude or misconduct warranting discipline be found. On the issue of degree of discipline, the ultimate grade of a crime, together with other mitigating evidence, could bear on the ultimate result. *In the Matter of Jackson* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610. **[3]**

The State Bar is required by statute to disclose to criminal investigatory agencies certain incriminating information discovered about an attorney as a result of an investigation or formal proceeding. The State Bar also is obligated by statute to refer all convictions to the State Bar Court. Where it appeared that the State Bar complied with these statutory duties by disclosing information to federal authorities well before the start of trial in an earlier original proceeding and by notifying the State Bar Court after respondent sustained a federal conviction, there was no evidence that the subsequent State Bar Court conviction proceeding was the product of vindictive prosecution tactics of the State Bar. *In the Matter of Curtis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601. **[1]**

A disciplinary proceeding arising from conviction of a crime is fundamentally different from and a complete alternative to an original proceeding brought under Business and Professions Code section 6075 et seq. The streamlined procedures following an attorney's conviction of a crime rest on proceedings in the criminal courts in which the burden is proof beyond a reasonable doubt. These procedures recognize that the basis for attorney

discipline is not the provable violation of a rule of professional conduct but the mere existence of a certified copy of an attorney's record of conviction. Only convictions which do not inherently involve moral turpitude are referred for an evidentiary hearing to determine whether there is a legal basis for imposing discipline, but even in these cases guilt is conclusively established by the record of conviction and is not subject to collateral attack. Thus, where a conviction proceeding was commenced in the State Bar Court, which proceeding arose from the same underlying facts as an earlier original proceeding in the State Bar Court, neither res judicata nor collateral estoppel acted as a bar to the conviction proceeding, since neither the issues nor the causes of action in the two types of proceedings are the same.*In the Matter of Curtis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.**[2 a-g]**

Except in conviction proceedings eligible for summary disbarment, in determining the degree of discipline to be imposed in a conviction proceeding where an earlier original proceeding rested on the same underlying facts, a court should take into consideration any discipline imposed in the earlier original proceeding. To assess the appropriate discipline in the conviction proceeding, and to ensure fundamental fairness, a court should consider: (1) whether discipline in the conviction proceeding is needed to protect the public or the courts or to maintain the integrity of the administration of justice; (2) the extent to which the hearing judge or the parties in the original proceeding addressed the underlying facts supporting the criminal conviction which forms the basis for the subsequent conviction proceeding; (3) whether the criminal conviction yielded any relevant information that was not considered by the hearing judge in the original proceeding; (4) whether the discipline imposed in the conviction proceeding would unfairly duplicate any discipline actually imposed in the original proceeding, or would otherwise be unfair to the respondent; and (5) the extent to which the public policy sought to be protected in the original proceeding relates to the public policy sought to be protected in the criminal conviction which forms the basis for the conviction proceeding.*In the Matter of Curtis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601.**[3 a, b]**

Respondent was not found guilty of criminal charges in Michigan based on the identical facts underlying his Michigan discipline. However, it is well settled in California that dismissal or acquittal of criminal charges does not bar disciplinary proceedings covering the same facts.*In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157.**[5]**

Where factual findings were used by the hearing judge to find culpability, it would be improper to again consider those same findings as factors in aggravation. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61.**[7]**

Respondent's convictions of making false statements to federally insured financial institution to influence action on loans, felonies involving moral turpitude, did not occur in respondent's practice of law or in manner such that a client was victim. Thus, respondent's convictions did not meet statutory criteria for disbarment under former version of summary disbarment statute that was in effect between 1986 and January 1, 1997. And respondent's summary disbarment was warranted, if at all, only under present version of statute (Bus. & Prof. Code, § 6102, subd. (c)), effective January 1, 1997. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51.**[1 a-c]**

Retroactive law is one that affects rights, obligations, acts, transactions, or conditions performed or existing before adoption of law. Even though respondent's criminal convictions occurred after January 1, 1997, effective date of present version of the summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)), respondent committed criminal acts underlying those convictions before January 1, 1997, effective date. Thus, respondent's summary disbarment under present version of statute would be improper retroactive application of statute because, but for amendments to statute effective January 1, 1997, respondent would not be subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51.**[2 a-c]**

In two situations, applying statute to acts before statute's effective date are not retroactive application of statute: when statute merely clarifies, rather than substantially changes law; and when statute changes trial procedure, but does not change legal consequences of parties' past conduct. Amendments effective January 1, 1997, to summary disbarment statute (Bus. & Prof. Code, § 6102, subd. (c)) are not clarifying or procedural because they significantly broadened scope of crimes for which attorneys are subject to summary disbarment. *In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51.**[3 a-c]**

Only as to matters in which a conviction is referred by the review department for a hearing and recommendation as to discipline and thereafter considered by the Supreme Court, will the Supreme Court consider all facts underlying a conviction when deciding on the appropriate discipline. *In the Matter of Weber* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 942.**[1]**

An attorney's criminal conviction based on a plea of nolo contendere is deemed a conviction for attorney disciplinary purposes and is conclusive proof of the attorney's guilt on each of the essential elements of the offense of which the attorney was convicted. Thus, respondent cannot collaterally attack his conviction in the State Bar Court even though the victim of respondent's crime lost her civil lawsuit against respondent for damages. *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. **[4]**

Even though the criminal plea agreement on which respondent was convicted dealt with only one of the multiple criminal counts initially filed against him, the State Bar Court's inquiry was not limited to the conviction on that one count to determine the appropriate discipline, but included review of all the surrounding circumstances. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[1]**

In a conviction referral proceeding involving respondent's misdemeanor conviction of being an accessory after the fact in connection with the submission of false information to a federally insured bank for the purpose of inducing it to loan money to respondent for the purchase of a farm (18 U.S.C. §1014), respondent's contention that, at the time she obtained the loan, she fully expected the farm to succeed and to repay the loan in full might avoid a finding in aggravation, but did not entitle her to any mitigating credit. Respondent was not entitled to any credit for merely intending to do that which she contracted to do. *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765. **[4]**

The only prerequisite to initiating a conviction referral proceeding against an attorney in the State Bar Court is a guilty plea by the attorney or a guilty verdict rendered against the attorney. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[1]**

Criminal court's lenient sentence did not change the nature of respondent's convictions of felony conspiracy to commit theft and theft for disciplinary purposes and was therefore not a mitigating circumstance. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[7]**

Respondent waived any due process violation resulting from the State Bar's failure to notify him in the notice of hearing that the cancellation of his license to practice law would be an issue at the trial where he did not allege in his appellant's brief, with supporting references to the record, that he presented his lack of notice objection to, and obtained a ruling on it from, the hearing judge. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[8]**

Even though statutes authorizing conviction referral proceedings authorize only the disbarment or suspension of attorneys convicted of crimes, the State Bar Court still had jurisdiction in conviction matter to recommend to the Supreme Court that it cancel respondent's license to practice law. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[9]**

Respondent's willful failure to disclose his arrest and pending trial on felony charges by updating his answers to the moral character questions on his initial application for admission to practice law was a fraud upon the Supreme Court because it allowed him to admitted without adequate consideration of his moral character. Thus, the State Bar Court may recommend that his license to practice be revoked without addressing the nature of his crimes or the facts and circumstances surrounding them. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[12]**

Unless the most compelling of mitigating circumstances clearly predominate, disbarment is the appropriate discipline in cases involving convictions of serious crimes involving moral turpitude. The nature and extent of respondent's felony conviction of conspiracy to commit theft and theft, alone, established his unfitness to practice law. Likewise, the facts and circumstances surrounding his crimes, the numerous aggravating circumstances, and the lack of any substantial mitigating circumstance further convinced the review department that respondent remained unfit to practice unless and until he established by clear and convincing evidence in a reinstatement proceeding that he was rehabilitated. Accordingly, disbarment was recommended. *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483. **[13]**

Although the record indicated that respondent was not likely to commit similar misconduct in the future, the discipline system also has a responsibility to preserve the integrity of the legal profession. That concern persuaded the review department that public discipline, including a period of suspension, was warranted for an attorney's

conviction of assault with a firearm, with the enhancement that he discharged a firearm at an occupied motor vehicle which caused great bodily injury to the person of another. However, given the totality of the circumstances, including the fact that respondent had already been interimly suspended for ten and one-half months as the result of his conviction, and comparable case law, the review department did not believe that a period of prospective actual suspension was necessary. Accordingly, it recommended a period of stayed suspension along with a period of probation with conditions. *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. **[6]**

Notice to show cause under rule 550 of Transitional Rules of Procedure of State Bar is not required in conviction referral proceeding. Pursuant to Supreme Court's delegation of authority to State Bar Court in conviction referral matters (Cal. Rules of Court, rule 951(a)), only State Bar Court referral order and notice of time and place of hearing are needed to initiate a conviction referral proceeding. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[2]**

Supreme Court and State Bar Court have unquestioned jurisdiction over attorneys' convictions of crime whether or not they are eligible for summary disbarment. There is no requirement that notice of time and place of hearing in conviction referral matter charge commission of "serious" offense for which admonition would be unavailable (Trans. Rules Proc. of State Bar, rule 415), or offense for which State Bar Court may recommend summary disbarment. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[3]**

Where referral order arising out of attorney's criminal conviction calls for hearing and decision on degree of discipline to recommend if hearing judge finds that facts and circumstances surrounding conviction involve moral turpitude or other misconduct warranting discipline, hearing judge may consider wide variety of evidence surrounding conviction as part of relevant facts and circumstances. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[4]**

Disciplinary conviction referral cases in which assaultive behavior was the principal offense have generally resulted in suspension of varying degrees. In matter arising from misdemeanor conviction for battery on police officer, it was an aggravating circumstance that respondent provoked a dangerous and risky confrontation with police responding to his own domestic disturbance notwithstanding respondent's significant experience as a practicing lawyer in handling family law matters. Where this and other aggravating circumstances clearly outweighed mitigating ones, discipline of two years stayed suspension, two years probation, and 60 days actual suspension was abundantly fair and warranted. *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. **[10]**

An attorney convicted of a felony is chargeable with notice that the crime remains a felony for State Bar discipline purposes irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of post-conviction proceedings. Under some circumstances, prosecutorial discretion in originally charging a particular crime as a felony rather than a misdemeanor may raise questions as to the propriety of summary disbarment, but no such issue was presented where there was no evidence of abuse of discretion or other unfairness in charging forgery of a court document as a felony. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[3]**

The Legislature itself has recognized that the inherent authority of the Supreme Court controls the outcome in disciplinary proceedings. It is therefore incumbent upon the review department not only to review the statutory criteria for summary disbarment, but also to review Supreme Court precedent to assure that application of statutory summary disbarment does not conflict with Supreme Court standards for disbarment. *In the Matter of Salameh* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 729. **[4]**

The question of the proper degree of discipline in a conviction referral matter may rest on a wide scope of evidence not directly connected with the crimes themselves. Evidence that respondent's real estate license had been revoked over a year before his crimes was improperly excluded from rebuttal evidence. Such evidence was not an essential element of the State Bar's case in chief, and could properly be reserved to rebut respondent's contention that his crimes were aberrational. *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. **[9]**

The conclusive effect of an attorney's criminal conviction merely establishes for State Bar purposes that the attorney committed the acts necessary to constitute the offense. Whether those acts amount to professional misconduct, in the context of a crime that does not necessarily involve moral turpitude, is a conclusion that can

only be reached by an examination of the facts and circumstances surrounding the conviction. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[6]**

Where the crime for which an attorney has been convicted does not inherently involve moral turpitude, a review of comparable case law and an examination of the particular facts and circumstances of the criminal conduct must be made in order to determine if cause for professional discipline exists. *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581. **[10]**

Summary disbarment excludes the opportunity for an evidentiary hearing. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[1]**

Where respondent embezzled funds from a deceased former client's estate while serving as the estate's executor, but not its attorney, neither the estate nor the beneficiaries of the estate were respondent's clients, nor did respondent commit the offense in the practice of law. *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473. **[6]**

Normally, no published opinion results from a petition to set aside an interim suspension order based on a criminal conviction. Where final discipline had not been entered and might not be warranted, the review department could not determine whether it was appropriate to publicize respondent's name in connection with opinion and order vacating interim suspension. Opinion therefore did not name respondent, although proceeding remained public. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[1]**

Although drunk driving is a serious societal problem, it may or may not become a matter subject to professional discipline. Where an interim suspension order would impose a degree of discipline far more severe than the probable final discipline, the range of final discipline is dispositive of the good cause requirement for vacating the order. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[6]**

A stipulated disciplinary order does not constitute precedent, but does represent a determination by the Office of the Chief Trial Counsel and the hearing judge that the degree of discipline ordered satisfies the need to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465. **[11]**

Where respondent was convicted after being admitted to practice law for criminal conduct occurring before such admission, there was statutory authority for disciplining respondent as an attorney, based on the conviction. Had the conviction occurred earlier, the disciplinary system would still have had jurisdiction over the misconduct under the Supreme Court's inherent authority. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[1]**

Whether a suspension is interim or actual, the effect on the attorney is the same. The issue is what is the appropriate total length of suspension under the circumstances of each case. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[7]**

In recommending discipline in a matter arising from a criminal conviction, the State Bar Court is not limited to examining only the elements of the offense in question, but is obligated to look at all facts and circumstances surrounding the offense to assess the respondent's fitness as an attorney. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[9]**

In 1990, the majority of the California Supreme Court expressly declined to determine whether a nexus between criminal conduct and the practice of law is required in order to impose professional discipline based on a criminal conviction. The Court unanimously agreed, however, that it would be unreasonable to hold attorneys to such a high standard of conduct that every violation of law, however minor, would constitute a ground for professional discipline. Thus, the integrity of the profession does not require professional discipline in addition to criminal sanctions for every violation of law by an attorney. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[2]**

Where an attorney is convicted of a crime which does not inherently involve moral turpitude, the attorney's conviction is referred to the State Bar Court Hearing Department for a determination whether the facts and circumstances surrounding the crime involved moral turpitude or other misconduct warranting discipline, and to

determine the appropriate disposition. Upon a referral of that type, the appropriate disposition can include dismissal of the proceedings if the hearing judge finds that the particular misconduct did not warrant professional discipline. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[4]**

In addressing the constitutionality of imposing professional discipline for criminal conduct not involving moral turpitude, the State Bar Court must endeavor to interpret the "other misconduct warranting discipline" standard to render its application in the particular case constitutional. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[6]**

A due process challenge to a discipline proceeding based on vagueness is appropriate where the misconduct involved is not clearly within the scope of a disciplinary standard and the standard is so broad that people of common intelligence must necessarily guess at its meaning and differ as to its application. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[7]**

Where respondent clearly was on notice that drinking and driving could result in criminal penalties, and it was established law that any vehicular homicide or felony conviction resulting from drunk driving could result in professional discipline, respondent apparently had sufficient notice that criminal behavior of driving under the influence could, depending on circumstances, result in professional discipline. However, review department declined to decide notice issue where disciplinary proceeding was dismissed on another ground. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[8]**

Evidence that an attorney has taken steps to deal with an alcohol problem is mitigating evidence that may properly be taken into account in determining the degree and nature of discipline, but does not eliminate the initial misconduct as an appropriate basis for discipline. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[11]**

Where compelling mitigation is present, a case which involves a misdemeanor conviction that otherwise would be an appropriate basis for discipline may result in dismissal in the interests of justice. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260. **[12]**

An attorney's criminal misconduct is aggravated when the attorney's previous experiences demonstrate that the attorney was aware of the issues involved in the criminal behavior. *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. **[4]**

Business and Professions Code section 6102 (c), providing for summary disbarment of attorneys convicted of crimes meeting the criteria set forth in the statute, must be read in the context of the statutory scheme of the State Bar Act as a whole, which indicates the Legislature's intent to defer to the Supreme Court's inherent authority to judge each case on its merits and disbar or suspend pursuant to its own view of the record. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[3]**

Before recommending to the Supreme Court that an attorney be summarily disbarred pursuant to Business and Professions Code section 6102 (c), the State Bar Court has a duty to analyze the record in light of the case law to assure that application of section 6102 (c) does not conflict with Supreme Court standards for disbarment. The State Bar Court will only order a hearing if Supreme Court precedent supports a lesser sanction than disbarment for the particular crime depending on circumstances which might be adduced at a disciplinary hearing. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[7]**

Rule 951(a), California Rules of Court, delegating certain powers to the State Bar Court regarding the discipline of attorneys convicted of crimes, limits the State Bar Court to recommending summary disbarment to the Supreme Court, rather than imposing it directly. *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71. **[9]**

No question on respondent's application for admission to practice law called upon respondent, as an applicant, to reveal criminal conduct for which respondent had not yet been convicted or arrested and for which respondent was not awaiting trial. If any such question had been asked, respondent would have had a good argument for withholding information that would lead to criminal liability. Nothing in respondent's manner of completing the application, or in respondent's subsequent two-month delay in reporting to the State Bar a criminal indictment handed down after the application was completed, undermined respondent's showing of rehabilitation from pre-admission criminal conduct. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[1]**

If an attorney engages in criminal conduct, it is not a minimum requirement for rehabilitation that the attorney turn himself or herself in to law enforcement authorities. Where the attorney was not hiding from anyone except those who wished him to resume his criminal activities; he cooperated fully with law enforcement once asked, and he presented character witnesses who attested to his current good character, the hearing judge's finding of rehabilitation was appropriate. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[2]**

Where an attorney previously involved in serious drug abuse had ceased such abuse unilaterally and did not present any expert evidence of current freedom from substance abuse, and the attorney did not submit any evidence of present learning and ability in the law following an interim suspension the length of which exceeded the attorney's prior period of licensure, public protection would be served by continuing the attorney's actual suspension until the attorney established freedom from drug dependency and present learning and ability in the general law. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[4]**

A conviction for driving under the influence is not professional misconduct on its face; whether such a conviction involves misconduct warranting discipline depends on consideration of all the facts and circumstances. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[1]**

Where the Supreme Court's order referring a conviction matter to the State Bar required the State Bar Court to determine whether the conviction involved misconduct warranting discipline, the order demonstrated that the attorney's conviction alone did not establish that the attorney was culpable of professional misconduct. *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756. **[2]**

In criminal conviction matters, the State Bar Court is not limited to examining only the elements of the criminal offense, but is obligated to look at all facts and circumstances surrounding the offense to assess the respondent's fitness as an attorney. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[3]**

Where a certain set of facts was considered by the criminal court at the time of respondent's sentencing, and notice of such consideration was given to respondent at the time, there was sufficient notice to respondent prior to his disciplinary hearing of the relevance of such facts, and since respondent had an opportunity to present evidence on the issue at the disciplinary hearing, due process did not require remanding the case for submission of additional exculpatory evidence. *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737. **[4]**

One distinction between an interim suspension order and a final order of discipline is the type of record before the court. At the interim suspension stage, the court has the criminal conviction and a statutory mandate to order interim suspension absent a showing of good cause. The petitioner has the burden of showing good cause to set aside an order of interim suspension, and no evidentiary hearing has occurred to test alleged mitigating factors. Thus, contested facts cannot be relied upon as a basis for vacating the order of interim suspension. *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608. **[4]**

Where respondent in conviction matter had been ordered to comply with rule 955, California Rules of Court, at the time of respondent's interim suspension, and that suspension had remained in effect continuously since ordered, review department did not recommend that respondent be ordered to comply again in connection with final imposition of discipline. *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[16]**

In proceeding to determine whether criminal convictions involved moral turpitude, declarations submitted by respondent in which clients attested to respondent's character and legal abilities were properly disregarded as irrelevant, because neither declarant was present during the incident underlying the convictions nor did the declarations contain any information which could shed light on the incident. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[1]**

In proceeding to determine whether criminal convictions involved moral turpitude, arresting officer's testimony regarding observations of witnesses at the scene was not hearsay and was properly admitted. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[3]**

In proceeding to determine whether criminal convictions involved moral turpitude, the arresting officer's testimony describing a victim's retelling of the incident was hearsay, but was properly admitted because respondent waived hearsay objection by failing to appear at the hearing. The review department independently reviewed the hearsay evidence, found sufficient trustworthiness, and concluded it was properly relied on by the referee. *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543. **[5]**

Delays in disciplinary proceedings merit consideration only if they have caused specific, legally cognizable prejudice (e.g., by impairing the presentation of evidence). Where respondent was not prepared to state that his case would have been stronger if no delays had occurred, and respondent received credit for time on interim suspension following conviction, respondent failed to demonstrate prejudice from delay in disciplinary proceeding. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[1]**

In conviction referral proceedings, discipline is imposed according to the gravity of the crime and the circumstances of the case. In examining such circumstances, the court may look beyond the specific elements of a crime to the whole course of an attorney's conduct as it reflects upon the attorney's fitness to practice law. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[2]**

Where respondent in conviction matter had complied with rule 955, California Rules of Court at time of respondent's interim suspension, and had not practiced since, order to comply with rule 955 again upon imposition of final discipline was not necessary. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[16]**

Where respondent's two convictions were interconnected in their surrounding facts and circumstances, and where the record in the earlier matter lacked information regarding respondent's compliance with his criminal probation and his subsequent rehabilitation, a remand of the first matter and consolidation with the subsequent, related matter would be appropriate, in order to give the Supreme Court a single, more complete record and a single recommendation of discipline, if any. *In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39. **[6]**

1700 Issues in Probation Cases

1710 Special Issues in Probation Revocation Cases

1711 Special Procedural Issues

The review department reduced hearing judge's recommended two-year stayed suspension to one year in view of the limits of suspension contained in rule 562, Rules of Procedure of the State Bar. *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567. **[9]**

Respondent's argument that the State Bar should be estopped from raising the timeliness of his motion to modify the probation was rejected. It is not at all clear that estoppel is applicable in this disciplinary proceeding. Estoppel will not ordinarily lie against a governmental agency if the result will be the frustration of a strong public policy. The goals of attorney discipline - protection of the public, courts and legal profession - are strong public policy considerations that militate against applying the doctrine. Even if estoppel were applicable, respondent failed to demonstrate a factual basis for the claim as he failed to show that the State Bar's actions were intended to be acted upon by him to his injury and that he was ignorant of the true state of facts. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[2]**

Considerations of due process and fundamental fairness require, under the circumstances presented in this case, an examination of both respondent's ability to pay the restitution and his efforts at acquiring the resources to pay. Respondent presented evidence of his income, but not of his assets and expenses. While respondent's income was not significant during the relevant period of time, it was not conclusive or persuasive when considered outside the context of total assets and expenses. The evidence presented regarding respondent's efforts at acquiring the resources to pay the restitution was also lacking. Based on the above, the review department concluded that no circumstances were presented showing that it would be fundamentally unfair to revoke respondent's probation in this case. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[4]**

Under the current statutes and rules governing probation proceedings, the State Bar has the exclusive jurisdiction to conduct investigations and bring disciplinary charges. The State Bar may file disciplinary charges if it finds in its discretion that there is reasonable cause to believe that an attorney has violated the State Bar Act or Rules of Professional Conduct. Upon reasonable cause to believe that an attorney has violated a condition or conditions of probation, the State Bar may file either an original disciplinary proceeding based on the violation or a motion to revoke probation. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[1]**

Under the current statutes and rules governing probation proceedings, the State Bar has exclusive jurisdiction to supervise members placed on probation and exclusive authority to initiate probation revocation proceedings. Nevertheless, the Supreme Court retains plenary authority over the regulation and discipline of attorneys. Neither the statutes nor the rules of procedure limit the Supreme Court's plenary authority. The Supreme Court may, in the exercise of its plenary authority, impose a hearing judge supervised probation condition regardless of the statutes and rules covering disciplinary proceedings. By imposing such a probation condition, the Supreme Court would necessarily confer jurisdiction on the hearing judge to monitor compliance. Thus, the review department did not find persuasive the State Bar's argument that the hearing judge lacked jurisdiction to supervise probation conditions. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[2]**

The current procedures squarely place on the State Bar the responsibility of monitoring, investigating, and initiating proceedings alleging probation violations. Imposing a hearing judge supervised probation condition presented a number of problems under this structure. The review department declined to recommend such a condition, especially where, as here, there was no showing that the procedures in place for probation proceedings were not adequate to achieve the goals of attorney disciplinary probation. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[3]**

As respondent had a substance abuse problem, an appropriate substance abuse condition of probation was warranted. The review department did not have the entire record before it on summary review and was unable to determine a suitable condition. It therefore remanded the case to the hearing judge. As the modification of one probation condition may require the modification of other conditions, the review department did not limit the hearing judge on remand to reconsideration of the substance abuse condition alone. The hearing judge could reconsider the entire discipline recommendation, including the probation conditions. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[4]**

The State Bar can prosecute a probation violation by way of a motion to revoke probation, or by way of an original disciplinary proceeding based on a violation of the Business and Professions Code section 6068, subdivision (k). It was not error to charge a violation of Business and Professions Code section 6103 in this original disciplinary proceeding. The gravamen of this case was respondent's failure to comply with the conditions of his probation. Regardless of the statute charged, the proceeding was based on a violation of section 6068, subdivision (k). *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[3]**

The Supreme Court order in a probation revocation matter can become effective earlier than the Supreme Court order in an original discipline matter. (Cal. Rules of Court, rule 952(a), (b).) Accordingly, where a probation revocation matter and an original discipline matter were consolidated, the review department made a separate disciplinary recommendation for each matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[1]**

Where respondent was charged with violating disciplinary probation conditions by failing to submit evidence of having obtained assistance from a licensed psychologist or psychiatrist, respondent could be found culpable only of failing to comply with requirement that he submit such evidence, and not of failing to comply with requirement that he obtain such assistance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[8]**

A respondent may be disciplined only for misconduct properly charged in the notice to show cause. In probation revocation matter, where notice to show cause charged that respondent failed to deliver financial records to an accountant, and hearing judge found that respondent failed to render an accounting, respondent was properly found culpable of failing to deliver the records, based on his admission by default of the allegations of the notice to show cause. Respondent's failure to file quarterly reports other than those listed in the notice to show cause could not be used as a basis for culpability or as aggravating circumstances in a default matter. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[1]**

Documentary evidence of communications to respondent from probation department regarding interpretation of probation conditions was judicially noticeable. It was not admissible to show truth of statements contained in such documents; for that purpose, it was hearsay. However, it was admissible to show that respondent had notice of probation department's interpretation, which was relevant to issue of respondent's good faith. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[13]**

Written report from respondent's probation monitor was inadmissible as hearsay where it did not establish that respondent had notice of anything unless probation monitor's recitals of what he told respondent were accepted as true. However, where such evidence was merely cumulative on question of notice, any reliance thereon by hearing judge was harmless error. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[14]**

Attorney could not be found culpable of violating probation by failing to respond to an inquiry from the State Bar Court, as required by conditions of his probation, where the notice to show cause in the probation revocation proceeding referred only to the requirement to file quarterly reports, an independent probation condition, and such charge would be factually duplicative of previously-adjudicated charge of failing to file quarterly report. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[2]**

Probation revocation proceedings are disciplinary proceedings, and no additional discipline can be imposed for a breach of probation absent proof of such violation in conformity with fundamental due process (notice and an opportunity to be heard), as set forth in rules 612-613, Trans. Rules Proc. of State Bar. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[4]**

1711.10 Interpretation of Rules of Procedure, Div. 5, Ch. 2 (rules 5.310-5.317)

1712 Wilfulness

Neither bad purpose nor intentional evil is required to establish willful violations of disciplinary probation. *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567. **[1]**

Wilfulness for purposes of probation revocation (and other disciplinary) proceedings is simply a general purpose or willingness to commit an act or to make an omission; it does not require any intent to violate the law or the probation condition and does not necessarily involve bad faith. Moreover, wilfulness does not require actual knowledge of the provision violated. Respondent admitted that he did not pay the restitution, and there was no evidence in the record suggesting that this omission was other than a purposeful act. Thus, the failure to pay the restitution was unquestionably wilful under the above definitions. Whether respondent believed that he had no obligation to pay the money because the restitution was discharged in his bankruptcy was simply not relevant to the issue of the wilfulness of his failure to pay, as it need not be shown that respondent intended the consequences of his omission or was even aware of the disciplinary provision he was violating. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[3]**

Wilfully failing to comply fully with a disciplinary probation condition constitutes a violation of the statute providing that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline. Wilfulness in this context requires merely that the person charged acted or omitted to act purposely, that is, knew what he was doing or not doing and intended either to commit the act or abstain from committing it. The violation must be proved by a preponderance of the evidence. Substantial compliance is insufficient to avoid culpability on this charge, and any good faith on the part of the attorney is relevant to mitigation rather than culpability. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[3]**

Where respondent's failure to make restitution payments required by disciplinary probation was due to lack of income, but respondent did not attempt to have restitution requirement modified, and did not demonstrate that he made sufficient good faith efforts to acquire resources to pay restitution, respondent was culpable of gross negligence which violated conditions of probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[5]**

Where respondent believed that after notice to show cause in disciplinary probation revocation proceeding had been filed, his probation was terminated and he no longer needed to comply with probation reporting requirement, but respondent took no steps to ascertain whether this belief was correct, respondent was grossly negligent in failing to file required probation report, and thereby violated probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[7]**

Where respondent on disciplinary probation filed a tardy quarterly probation report which failed to comply with requirements for such report, and did not present a complete report for over three months after it was due, respondent's failure to file the report timely was a wilful breach of probation. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[2]**

Where respondent had stipulated to discipline requiring restitution payments to be made by certain dates, and respondent did not set aside funds to make such restitution as soon as his own stipulation required first payment to be made, and where respondent had no credible excuse for failing to make at least first required payment at a time when respondent had significant income, respondent's failure to make at least partial restitution was a wilful violation of his probation. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[4]**

It is the responsibility of an attorney on probation to comply with a probation condition requiring the attorney to meet with an assigned probation monitor referee. Even if respondent encountered difficulty in setting up such a meeting, where respondent did not seek the assistance of the State Bar Court's clerk's office, and instead permitted a substantial delay to pass before the required meeting occurred, respondent's neglect constituted a wilful breach of his probation duties. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[13]**

It was unreasonable for respondent to believe that he had been excused by his probation monitor referee from filing one of the quarterly reports clearly required by his probation conditions, where respondent knew of his duty to file the quarterly reports timely and knew the exact dates on which those reports were due. Respondent therefore breached his probation duties by failing to file the report. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[14]**

Evidence needed to establish culpability of failure to comply with probation conditions regarding content of required quarterly reports was (1) text of probation conditions in question; (2) evidence that respondent had notice of such conditions; (3) text of quarterly reports at issue, and (4) evidence of wilful failure to comply with probation conditions, which was established by respondent's testimony that statement at issue was not included in reports due to respondent's interpretation of probation conditions. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[2]**

Violations of probation require the same mental state to justify discipline as violations of rule 955, Cal. Rules of Court. For such purposes, wilfulness need not involve bad faith; a general purpose or willingness to comment an act or permit an omission is sufficient. Accordingly, despite respondent's asserted good faith belief that probation reports were sufficient, respondent's intentional failure to include a required statement in such reports was wilful for purposes of a probation violation. Respondent's subjective intentions were relevant only with regard to aggravation and mitigation. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[6]**

Notwithstanding omission of term "wilful" from statute and rule governing imposition of discipline for probation violations, wilfulness is a necessary element to establish culpability in a probation revocation case alleging failure to pay restitution. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[6]**

Although attorney disciplinary proceedings are sui generis and not criminal in nature, rules of criminal law may provide guidance in appropriate circumstances; case law and statutes in criminal law indicate that lack of wilfulness constitutes a reason not to revoke probation. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[7]**

In disciplinary cases arising from violations of rule 955, Cal. Rules of Court, a showing of wilfulness requires only a "general purpose or willingness" to commit the act or suffer the omission, and need not involve bad faith. The same definition of wilfulness applies to the mental state required to justify discipline for violations of probation conditions. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[8]**

As with the treatment of failure to pay restitution in reinstatement and criminal probation cases, in a disciplinary proceeding for failure to make timely restitution as a condition of attorney disciplinary probation, due process requires an examination of the probationer's ability to make restitution and the sufficiency and good faith of the probationer's efforts to acquire the resources to pay. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[11]**

A wilful breach of respondent's restitution duty was established where respondent: (1) had the financial ability to make some restitution payments during the period when he had not done so; (2) repeatedly chose to pursue professional goals which foreseeably rendered him financially unable to make timely restitution; (3) failed to protect his funds from attachment by creditors; and (4) failed to seek an extension of time to make his restitution payments. His conduct showed a conscious disregard of his restitution obligations and a failure to make sufficient good faith efforts to acquire the resources to pay. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[12]**

1713 Standard of Proof

The review department rejected the argument that respondent was not culpable of violating probation conditions because he was actually suspended from the practice of law during the entire time that the probation conditions were in effect as a result of other disciplinary orders and therefore his probation was de facto revoked. The Supreme Court placed respondent on probation and the order was not revoked or modified. If respondent believed that subsequent events impacted the order, or if he was unclear of the requirements of the order, he could have raised the issue with the State Bar Court and the Supreme Court, which he did not do. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[1]**

The review department rejected the argument that substantial compliance with a probation condition was a defense to culpability. Disciplinary probation serves the critical function of protecting the public and rehabilitating the attorney. The importance of these goals makes distinctions between substantial and insubstantial or technical violations of probation inappropriate. However, for purposes of discipline, not every probation violation should be treated the same. Belated compliance with a probation condition may be considered as a mitigating factor in determining discipline. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[2]**

Wilfully failing to comply fully with a disciplinary probation condition constitutes a violation of the statute providing that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline. Wilfulness in this context requires merely that the person charged acted or omitted to act purposely, that is, knew what he was doing or not doing and intended either to commit the act or abstain from committing it. The violation must be proved by a preponderance of the evidence. Substantial compliance is insufficient to avoid culpability on this charge, and any good faith on the part of the attorney is relevant to mitigation rather than culpability. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[3]**

Where hearing judge viewed proceeding as one to revoke probation, not to impose added culpability or discipline, and recommended actual suspension would not exceed imposition of previously stayed suspension if respondent made restitution within such time, applicable standard of proof was preponderance of evidence standard applicable to probation revocation proceedings, even though notice to show cause also alleged violations of respondent's statutory oath and duties and of a court order. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[5]**

In original disciplinary proceedings for violation of statute requiring adherence to conditions of disciplinary probation, standard of proof is clear and convincing evidence, and discipline may be disbarment. In proceedings on motion to revoke probation, standard of proof is preponderance of evidence and recommended actual suspension may not exceed entire period of stayed suspension. (Trans. Rules Proc. of State Bar, rules 610-614 (eff. Jan. 1, 1993).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[4]**

Evidence needed to establish culpability of failure to comply with probation conditions regarding content of required quarterly reports was (1) text of probation conditions in question; (2) evidence that respondent had notice of such conditions; (3) text of quarterly reports at issue, and (4) evidence of wilful failure to comply with probation conditions, which was established by respondent's testimony that statement at issue was not included in reports due to respondent's interpretation of probation conditions. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[2]**

The question of how a court order should be interpreted is a question of law for the court, not a question of fact, and the parties' subjective beliefs as to its meaning are not relevant to the court's interpretation. Whether language of respondent's probation reports complied with requirements of probation conditions was a legal issue, not a factual one. Moreover, probation order was a Supreme Court order, not a contract, and rules of contract interpretation did not apply. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[4]**

For the purpose of determining culpability for violation of restitution requirement imposed as condition of disciplinary probation, it is inappropriate to distinguish between "substantial" and "insubstantial" or "technical" violations. Restitution conditions are as significant as the notification requirements in rule 955, Cal. Rules of Court, as to which the Supreme Court has declined to draw such a distinction. The importance of the goals of restitution makes distinctions between "substantial" and "insubstantial" or "technical" failures to make restitution inappropriate. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[9]**

1714 Issues re Degree of Discipline Available or Appropriate

In order to make a showing under standard 1.4(c)(ii), Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, and be relieved from suspension, an attorney can petition as early as six months before the earliest date that the actual suspension may terminate. Also, since these proceedings are expedited, an attorney could demonstrate rehabilitation, fitness to practice law and present learning and ability in the general law without necessarily extending his or her actual suspension period. In probation revocation proceedings, the rules of procedure limit the actual suspension that can be imposed to the total amount of stayed execution originally imposed. However, a standard 1.4(c)(ii) condition does not necessarily extend the actual suspension of a respondent where a showing can be made within the period of actual suspension. Therefore, the review department concluded that the State Bar Court was not prohibited from recommending such a condition in a probation revocation proceeding even though the condition could result in an actual suspension that exceeded the length of the originally imposed stayed suspension. To do otherwise would permit respondent to violate probation and resume the practice of law after being suspended for over five years, without ever making a showing of his rehabilitation, fitness to practice law or his learning and ability in the general law, thus defeating the important level of public protection regularly recommended in lengthy suspensions.*In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737.**[2 a-c]**

The hearing judge gave little weight to respondent's prior discipline because he found that the nature of the violations in this matter did not raise a serious concern about public protection or demonstrate that respondent had failed to undertake steps towards rehabilitation. The review department disagreed. This was the third matter that had been brought by the State Bar as the result of respondent's failure to make timely restitution to his client. At this point, respondent should have had a heightened awareness of his need for strict compliance with his reporting and payment obligations. The fact that his present probation violations were closely related to his past disciplinary infractions raised concerns about respondent's rehabilitation. Ordinarily, when there is a close nexus between previous misconduct and the present probation violation, a substantially greater degree of discipline is needed than would otherwise be necessary. The review department assigned significant weight in aggravation because of respondent's prior disciplinary record. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678.**[1]**

Although the review department was sympathetic with respondent's claim that if he was actually suspended from practice for an extended period he would be unable to make timely restitution payments, it could not excuse a degree of discipline that was otherwise warranted. If avoidance of actual suspension were a prerequisite for respondent's continued restitution payments, it would have been more appropriate for respondent to have resolved his restitution obligation, thereby obviating this very proceeding.*In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678.**[3]**

Protection of the public and rehabilitation of the attorney are the primary aims of disciplinary probation. It is for this reason that discipline imposed for the wilful violation of probation often calls for substantial discipline as a reflection of the seriousness with which compliance with probationary duties is held. An attorney who wilfully violates a significant condition of probation, such as restitution, can anticipate actual suspension as the expected result, absent compelling mitigating circumstances. Here, respondent should have recognized the serious consequences of his failures to timely pay restitution and file quarterly reports because of his previous encounters with the State Bar disciplinary system. Furthermore, when, as here, an attorney commits multiple violations of the same probation condition, the gravity of each successive violation increases, resulting in more severe discipline. Balancing all relevant facts and circumstances, the review department determined that the 90-day actual suspension recommended by the hearing judge was sufficient to achieve the goals of attorney disciplinary probation, but that an additional condition should be added that requires respondent's continued actual suspension until restitution was fully paid to his client. This was intended as an incentive to respondent to be pro-active in his efforts to satisfy his restitution obligations and bring to a conclusion this 10-year saga with the State Bar, and was necessary to ensure respondent's timely and full compliance. In reaching this conclusion, the review department took into account respondent's belated but complete satisfaction of his restitution and reporting conditions in the face of ongoing financial difficulties, the fact that all of the violations related to one client matter, and that the client testified that respondent had shown concern about his inability to pay and exhibited courteousness towards her. The need to protect the public by imposing a significantly longer period of stayed suspension was therefore diminished. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678.**[4 a, b]**

Even if attorney had properly supported claim that he would lose his employment as deputy district attorney if he were actually suspended for probation revocation, it would not have excused a different degree of discipline than that which would have otherwise been warranted.*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.**[3]**

More serious sanctions are assigned to probation violations closely related to reasons for imposition of previous discipline or to rehabilitation. Attorney's probation violation for not timely completing restitution to client was both centrally related to trust account violations underlying attorney's prior discipline and closely related to rehabilitation.*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.**[6 a-b]**

Discipline for willful violation of disciplinary probation often calls for actual suspension to reflect seriousness with which compliance with probation duties is held. Attorney who willfully violates a significant probation condition, such as restitution, can anticipate actual suspension in absence of compelling mitigating circumstances.*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.**[7]**

Where probation conditions in prior disciplinary proceeding were imposed as part of a stipulated disposition, appropriate level of discipline in probation revocation proceeding for respondent's admitted failure to complete restitution payments until nine months past the deadline and to complete ethics school until six weeks past the deadline included a 30-day period of actual suspension in addition to a period of stayed suspension and an extension of probation as the hearing judge recommended.*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.**[8]**

In probation revocation proceedings the greatest amount of discipline is warranted for violations which show a breach of a condition of probation significantly related to the misconduct for which probation was given, especially in circumstances raising a serious concern about the need for public protection or showing the probationer's failure to undertake rehabilitative steps. The significance of restitution is its probative value as an indicator of rehabilitation, not the repayment of the underlying indebtedness. Requiring restitution serves the rehabilitative and public protection goals of disciplinary probation by forcing attorneys to confront in concrete terms the consequences of the attorney's misconduct. Thus, a probationer's attitude toward the restitution is a significant factor to be weighed. In the stipulation to facts and disposition in the underlying disciplinary case, respondent asserted that he was financially unable to pay the sanctions. Yet, he agreed to pay restitution as a condition of probation. After the Supreme Court's order was filed and four days before its effective date, respondent sought to discharge the restitution in bankruptcy. Having received the benefit of the bargain provided by the stipulation, respondent promptly sought to relieve himself of one of the obligations of that bargain. In addition, even though respondent has asserted continued financial hardship since before the filing of the stipulation in underlying discipline case, he did not seek a modification of the restitution condition of probation until after he was charged with violating that probation. Further, respondent apparently made no attempt to inform himself of the effect of the bankruptcy discharge on his duty to comply with the Supreme Court's disciplinary order. Respondent's stated belief that the restitution issue was moot because the recipient of the money forgave the debt was also problematic. The important state interests accomplished by restitution are not rendered moot because the underlying indebtedness is forgiven by a private party. The goal is prophylactic, not pecuniary. Respondent's demonstrated failure to recognize these most fundamental concepts causes concern and increases the risk that future similar misconduct may occur. Respondent's attitude toward the restitution shows indifference and warrants increasing the recommended discipline and requiring that the restitution be paid prior to respondent's resumption of active practice. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.**[7]**

The greatest amount of discipline is warranted for violations of probation which show a breach of a condition of probation significantly related to the misconduct for which probation was given, especially in circumstances raising a serious concern about the need for public protection. Where the misconduct which gave rise to the probation involved failure to perform and communicate, the law office management plan, ethics school, and law office management course conditions of probation directly addressed the misconduct and were therefore significantly related to the underlying misconduct. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[4]**

Respondent's continued unwillingness or inability to comply with probation conditions demonstrated a lapse of character and a disrespect for the legal system that directly related to his fitness to practice. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[4]**

When an attorney commits multiple violations of the same probation condition, the gravity of each successive violation increases so that respondent's seventh successive failure to timely file his probation report warranted the greatest level of discipline. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[5]**

Because respondent had already been disciplined for not timely filing his probation reports in a previous probation revocation proceeding, respondent's failure to timely file his probation reports in the present probation revocation proceeding warranted the greatest level of discipline. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[6]**

Where respondent's first actual suspension ended in December 1991, and his second actual suspension, which was ordered to be "consecutive" to the first, did not take effect until June 1992, hearing judge did not err in finding that respondent could have practiced law during the interval, and fact that respondent did not in fact practice law during such time did not entitle him to "credit for time served" and was neither a mitigating nor an aggravating circumstance in subsequent proceeding for probation violation and failure to comply with rule 955, California Rules of Court. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[7]**

Greatest degree of discipline for violating probation conditions is merited for violation significantly related to attorney's prior misconduct, especially where violation raises serious concern about need for public protection or shows probationer's failure to undertake rehabilitative steps. Violation of probation which involved failing to comply with trust account audit condition was substantially related to respondent's underlying misconduct involving failure to keep accurate records of entrusted funds, failure to maintain sufficient funds in trust, and failure to account to clients and other persons to whom respondent had fiduciary duty. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[12]**

Respondent's unilateral and ill-conceived interpretations of disciplinary orders demonstrated tendency toward interpreting important and significant court orders in such a way as to fit his needs, which might negatively impact future clients and thus raised concern about need to protect public. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[13]**

Where respondent timely complied with disciplinary probation conditions for two years prior to violating them, and therefore had taken important steps toward rehabilitation, imposing entire period of stayed suspension was not necessary to achieve goals of attorney disciplinary probation. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[14]**

Where respondent requested "credit for time served" based on his having voluntarily limited his law practice to avoid misconduct, but cited no authority supporting such request, and where much of respondent's misconduct occurred after date he testified he terminated his practice, review department declined to give such credit. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[11]**

Protection of public and rehabilitation of attorney are chief aims of disciplinary probation. Violation of probation condition significantly related to attorney's prior misconduct merits greatest discipline, especially if such violation raises serious concern for public protection or shows attorney's failure to undertake rehabilitation. Where respondent was culpable of multiple probation violations reflecting adversely on his rehabilitation efforts, but showed substantial mitigating circumstances, appropriate discipline was three years stayed suspension and four years probation, conditioned on one year of actual suspension. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[12]**

Where hearing judge viewed proceeding as one to revoke probation, not to impose added culpability or discipline, and recommended actual suspension would not exceed imposition of previously stayed suspension if respondent made restitution within such time, applicable standard of proof was preponderance of evidence standard applicable to probation revocation proceedings, even though notice to show cause also alleged violations of respondent's statutory oath and duties and of a court order. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[5]**

Disbarment is a remedy generally available for statutory violations in original disciplinary proceedings, but not in probation revocation proceedings. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[6]**

Where respondent's probation violations (failure to file quarterly report and to pay restitution) and balance of aggravating and mitigating circumstances were comparable to those in another reported probation revocation matter, review department adopted hearing judge's essential discipline recommendation, based on discipline in comparable matter, of imposition of entire previously stayed one-year actual suspension, with suspension to continue until payment of restitution, and showing of rehabilitation and fitness to practice to be required if suspension lasted two years or more. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[9]**

In original disciplinary proceedings for violation of statute requiring adherence to conditions of disciplinary probation, standard of proof is clear and convincing evidence, and discipline may be disbarment. In proceedings on motion to revoke probation, standard of proof is preponderance of evidence and recommended actual suspension may not exceed entire period of stayed suspension. (Trans. Rules Proc. of State Bar, rules 610-614 (eff. Jan. 1, 1993).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[4]**

Primary aims of attorney disciplinary probation are protection of public and rehabilitation of attorney. Greatest amount of discipline for violating probation conditions is merited for breaches of probation conditions significantly related to misconduct for which probation was given, especially when circumstances raise serious concern about public protection or show probationer's failure to undertake rehabilitative steps. Where misconduct for which respondent was placed on probation included practicing law in violation of court order, and respondent's current misconduct also involved violating numerous court orders and was aggravated by failure to participate in disciplinary proceeding, and where respondent's probation violations involved two of very first steps required by probation conditions, these factors indicated that respondent had a persistent problem with conforming his conduct to requirements of law, raised serious concerns for need to protect public, and showed that respondent had failed to even begin to take steps to rehabilitate himself. Accordingly, imposition of entire period of stayed suspension was appropriate discipline for respondent's violation of probation. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[12]**

Where respondent violated conditions of disciplinary probation by failing to turn over former client's files and records, precluding accountant from assessing losses incurred due to respondent's misconduct so that determination could be made regarding restitution, such probation violations were serious and warranted lengthy actual suspension and requirement to prove rehabilitation, learning in the law, and fitness to practice before returning to law practice. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[4]**

Excessive delay in conducting disciplinary proceedings, not attributable to respondent and resulting in prejudice to respondent, should be taken into account in mitigation, especially in probation revocation proceedings which are required to be expedited. Where, due to delay in proceedings, actual suspension in probation matter would not commence until after start of actual suspension in separate matter which was supposed to be served concurrently with prior suspensions, review department modified recommended discipline in probation matter to provide for actual suspension to be served concurrently with previously ordered actual suspension to extent it was still in effect. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[16]**

The respondent in a probation revocation matter may not be subjected to greater discipline than imposition of the entire period of suspension previously stayed if the notice to show cause does not appropriately charge violations that could result in greater discipline. Where notice to show cause stated that respondent was to show cause why stay of suspension should not be set aside and stayed suspension imposed, imposing entire stayed suspension was maximum discipline that State Bar Court could recommend. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[18]**

Because of limitation on discipline available in probation revocation matter, disciplinary standard calling for disbarment in third disciplinary matter absent compelling mitigation did not apply. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[19]**

Maximum available discipline in probation revocation matter was appropriate where respondent's priors, which included a prior probation violation, combined with misconduct in current case, showed both a persistent problem with drugs and alcohol and a persistent problem with conforming conduct to requirements of law and court orders. Policy underlying disciplinary standard calling for disbarment after two priors, and standard calling for

increasing severity of discipline in successive matters, also militated toward imposing severe discipline given respondent's extensive prior record. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[20]**

Absence of evidence of rehabilitation from drug and alcohol problems was significant where respondent's probation violation involved failure to give adequate assurance of compliance with probation requirement of abstention from alcohol and drugs. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[21]**

Actual suspension imposed as sanction for violation of probation may include entire period of previously stayed suspension, or may give credit for actual suspension already served as condition of probation. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[1]**

In determining appropriate discipline for probation violations, respondent's original disciplinary matter, in which probation conditions were imposed, constituted a prior disciplinary record and was required to be treated as an aggravating circumstance. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[19]**

Where respondent's prior discipline arose from serious misconduct, and his subsequent breach of probation conditions arose after that prior discipline, it was appropriate to impose more actual suspension in probation revocation matter than in earlier disciplinary proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[21]**

Where it was unclear whether or not the former review department had considered respondent's delayed restitution in its assessment of the appropriate discipline in a prior probation revocation matter still pending before the Supreme Court, no significant aggravating weight was accorded that prior probation matter as prior discipline. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[23]**

The factors to be considered in weighing the recommended discipline in probation revocation matters should include the aims of attorney discipline: protection of the public and rehabilitation of the attorney. The greatest discipline should be imposed where there is a breach of a condition significantly related to the underlying misconduct, particularly when the circumstances raise concerns about the need for public protection or the attorney's failure to undertake rehabilitation. Less discipline is required where a less significant probation condition is at issue under circumstances which do not call into question public protection or the attorney's rehabilitation. The length of stayed suspension which could be imposed as a sanction, and the length of the actual suspension earlier imposed, should also be considered. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[24]**

1715 Inactive Enrollment Under Section 6007(d)

Respondent was not given credit for the period of time he was ineligible to practice law against the time period he must wait before he may petition for reinstatement. The ban on respondent's practice for which he sought credit resulted from other disciplinary proceedings, not from the present case and, therefore, was not a related interim ban on his practice. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[8]**

Before the State Bar Court orders that an attorney be involuntarily enrolled inactive under Business and Professions Code, section 6007, subdivision (d), it must weigh the need for public protection in light of the Supreme Court's inherent and plenary jurisdiction over attorney admissions and discipline. To order the involuntary inactive enrollment of an attorney under subdivision (d) any time its requirements are met without regard to whether there is an issue of public protection and to the length of the actual suspension recommended could conceivably defeat or materially impair the Supreme Court's inherent prerogatives. When measured against these criteria, the review department enrolled respondent inactive, concluding that respondent's four prior records of discipline and lack of any mitigating circumstances established a public protection issue, and that as the review department recommended an actual suspension of almost a year, there could be no reasonable expectation that the time elapsing between when respondent was enrolled inactive and the finality of the matter would equal or exceed the final actual suspension imposed by Supreme Court. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[7 a-e]**

In determining whether an attorney should be enrolled inactive under Business and Professions Code section 6007, subdivision (d), the record as a whole must be considered. However, when the State Bar Court seeks to estimate the time between its ruling and recommendation and when the Supreme Court can consider them, it may

ordinarily rely on the expedited nature of probation revocation proceedings. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[8]**

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

In probation revocation proceeding, where State Bar requested lengthy actual suspension for protection of public, and where all statutory requirements for involuntary inactive enrollment upon recommendation of actual suspension were met, and where in absence of inactive enrollment respondent could have resumed active practice of law without limitation or oversight by paying fees and passing professional responsibility examination, State Bar should have requested inactive enrollment in hearing department, as part of its responsibility for public protection. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[17]**

Where respondent in probation revocation matter was already precluded from practicing law for other reasons, review department ordered respondent's inactive enrollment effective immediately, without first issuing order to show cause. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[26]**

Where a respondent in a probation revocation matter is already on inactive enrollment at the time the review department concludes that the respondent has violated disciplinary probation, it is appropriate for the review department to order the respondent's immediate inactive enrollment pursuant to Business and Professions Code section 6007(d). However, where the respondent in a probation revocation matter is entitled to practice law at the time the review department's opinion finding a probation violation is filed, the review department's practice is to issue an order to show cause with a short response time regarding why the respondent should not be enrolled inactive. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 89. **[1]**

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

Where respondent had been given notice that if his disciplinary probation were revoked he could be placed on inactive enrollment, and where the Office of Trials expressed grave concerns as to the threat posed by respondent to clients and the public, the Office of Trials could have sought to have respondent placed on inactive enrollment at the time the hearing judge revoked probation. Where it did not do so, respondent was allowed to continued to practice pending review of the hearing judge's order. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[18]**

In probation revocation matter, where notice to show cause informed respondent who was subject to stayed suspension that he could be enrolled inactive upon finding of probation violation and recommendation of actual suspension therefor, it would have been appropriate for hearing judge to order such inactive enrollment with or without request from Office of Trial Counsel, and where hearing judge had not done so, review department made such order. Under statute providing that inactive enrollment for probation violation shall be credited against ensuing actual suspension, review department recommended that respondent's one-year actual suspension commence as of the date of his inactive enrollment. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[7]**

Review department, in recommending respondent's disbarment for failure to comply with rule 955, California Rules of Court, was not required to address issue whether time respondent had already spent on inactive enrollment due to probation violation, or on suspension due to failure to pass professional responsibility examination, should be counted toward required waiting period to apply for reinstatement. (Trans. Rules Proc. of State Bar, rule 662.) Respondent could raise those issues before a hearing judge at the time he wished to file a reinstatement petition. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[5]**

Where respondent in probation revocation matter had been continually suspended from practice of law for preceding four years, review department did not need to order that respondent be placed on inactive enrollment under Business and Professions Code section 6007(d) pending final Supreme Court order. (Trans. Rules Proc. of State Bar, rule 612(b).) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[23]**

1719 Miscellaneous Special Issues in Probation Revocation Cases

In probation revocation proceeding, while attorney's cooperation in stipulating to facts warranted some mitigative consideration, such consideration is not extended to either attorney's participation in prior disciplinary proceeding or in probation revocation proceeding, in which he had a statutory duty to participate.*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.**[2]**

In probation revocation proceeding, repeated reminders and pressure from State Bar needed to secure respondent's completion of restitution in accordance with the stipulated discipline imposed on attorney in prior disciplinary proceeding were aggravating factors and inconsistent with the self-governing nature of probation as a rehabilitative part of attorney discipline system.*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.**[4]**

Attorney's injection of the district attorney's office in which he worked into the defense in his disciplinary probation revocation proceeding, by using its name in caption of his pleadings, when that office had no role in his defense was, at very least, a misrepresentation of that office's official participation and an aggravating circumstance.*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.**[5]**

Considerations of due process and fundamental fairness require, under the circumstances presented in this case, an examination of both respondent's ability to pay the restitution and his efforts at acquiring the resources to pay. Respondent presented evidence of his income, but not of his assets and expenses. While respondent's income was not significant during the relevant period of time, it was not conclusive or persuasive when considered outside the context of total assets and expenses. The evidence presented regarding respondent's efforts at acquiring the resources to pay the restitution was also lacking. Based on the above, the review department concluded that no circumstances were presented showing that it would be fundamentally unfair to revoke respondent's probation in this case. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.**[4]**

Respondent's contention that revoking his probation was a violation of due process and equal protection, and was discriminatory based upon financial status was rejected. The premise upon which it was based, that respondent's probation was being revoked because of his financial condition, was flawed. The revocation was based on his wilful failure to pay the restitution coupled with his failure to make reasonable efforts to acquire the resources to pay or to make other good faith efforts to satisfy the restitution obligation. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.**[5]**

In probation revocation proceedings the greatest amount of discipline is warranted for violations which show a breach of a condition of probation significantly related to the misconduct for which probation was given, especially in circumstances raising a serious concern about the need for public protection or showing the probationer's failure to undertake rehabilitative steps. The significance of restitution is its probative value as an indicator of rehabilitation, not the repayment of the underlying indebtedness. Requiring restitution serves the rehabilitative and public protection goals of disciplinary probation by forcing attorneys to confront in concrete terms the consequences of the attorney's misconduct. Thus, a probationer's attitude toward the restitution is a significant factor to be weighed. In the stipulation to facts and disposition in the underlying disciplinary case, respondent asserted that he was financially unable to pay the sanctions. Yet, he agreed to pay restitution as a condition of probation. After the Supreme Court's order was filed and four days before its effective date, respondent sought to discharge the restitution in bankruptcy. Having received the benefit of the bargain provided by the stipulation, respondent promptly sought to relieve himself of one of the obligations of that bargain. In addition, even though respondent has asserted continued financial hardship since before the filing of the stipulation in underlying discipline case, he did not seek a modification of the restitution condition of probation until after he was charged with violating that probation. Further, respondent apparently made no attempt to inform himself of the effect of the bankruptcy discharge on his duty to comply with the Supreme Court's disciplinary order. Respondent's stated belief that the restitution issue was moot because the recipient of the money forgave the debt was also problematic. The important state interests accomplished by restitution are not rendered moot because the underlying indebtedness is forgiven by a private party. The goal is prophylactic, not pecuniary. Respondent's demonstrated failure to recognize these most fundamental concepts causes concern and increases the risk that future similar misconduct may occur. Respondent's attitude toward the restitution shows indifference and warrants increasing the recommended discipline and requiring that the restitution be paid prior to respondent's resumption of active practice. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.**[7]**

Under the current statutes and rules governing probation proceedings, the State Bar has the exclusive jurisdiction to conduct investigations and bring disciplinary charges. The State Bar may file disciplinary charges if it finds in its discretion that there is reasonable cause to believe that an attorney has violated the State Bar Act or Rules of Professional Conduct. Upon reasonable cause to believe that an attorney has violated a condition or conditions of probation, the State Bar may file either an original disciplinary proceeding based on the violation or a motion to revoke probation. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[1]**

Under the current statutes and rules governing probation proceedings, the State Bar has exclusive jurisdiction to supervise members placed on probation and exclusive authority to initiate probation revocation proceedings. Nevertheless, the Supreme Court retains plenary authority over the regulation and discipline of attorneys. Neither the statutes nor the rules of procedure limit the Supreme Court's plenary authority. The Supreme Court may, in the exercise of its plenary authority, impose a hearing judge supervised probation condition regardless of the statutes and rules covering disciplinary proceedings. By imposing such a probation condition, the Supreme Court would necessarily confer jurisdiction on the hearing judge to monitor compliance. Thus, the review department did not find persuasive the State Bar's argument that the hearing judge lacked jurisdiction to supervise probation conditions. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[2]**

The current procedures squarely place on the State Bar the responsibility of monitoring, investigating, and initiating proceedings alleging probation violations. Imposing a hearing judge supervised probation condition presented a number of problems under this structure. The review department declined to recommend such a condition, especially where, as here, there was no showing that the procedures in place for probation proceedings were not adequate to achieve the goals of attorney disciplinary probation. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[3]**

As respondent had a substance abuse problem, an appropriate substance abuse condition of probation was warranted. The review department did not have the entire record before it on summary review and was unable to determine a suitable condition. It therefore remanded the case to the hearing judge. As the modification of one probation condition may require the modification of other conditions, the review department did not limit the hearing judge on remand to reconsideration of the substance abuse condition alone. The hearing judge could reconsider the entire discipline recommendation, including the probation conditions. *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747. **[4]**

The review department rejected the argument that respondent was not culpable of violating probation conditions because he was actually suspended from the practice of law during the entire time that the probation conditions were in effect as a result of other disciplinary orders and therefore his probation was de facto revoked. The Supreme Court placed respondent on probation and the order was not revoked or modified. If respondent believed that subsequent events impacted the order, or if he was unclear of the requirements of the order, he could have raised the issue with the State Bar Court and the Supreme Court, which he did not do. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[1]**

The review department rejected the argument that substantial compliance with a probation condition was a defense to culpability. Disciplinary probation serves the critical function of protecting the public and rehabilitating the attorney. The importance of these goals makes distinctions between substantial and insubstantial or technical violations of probation inappropriate. However, for purposes of discipline, not every probation violation should be treated the same. Belated compliance with a probation condition may be considered as a mitigating factor in determining discipline. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[2]**

The State Bar can prosecute a probation violation by way of a motion to revoke probation, or by way of an original disciplinary proceeding based on a violation of the Business and Professions Code section 6068, subdivision (k). It was not error to charge a violation of Business and Professions Code section 6103 in this original disciplinary proceeding. The gravamen of this case was respondent's failure to comply with the conditions of his probation. Regardless of the statute charged, the proceeding was based on a violation of section 6068, subdivision (k). *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[3]**

Tardy compliance with conditions of probation after being notified by the probation unit of the failure to comply is not a mitigating circumstance as it is not a "spontaneous" recognition of wrongdoing. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[6]**

Respondent's participation in probation revocation proceeding was not a mitigating circumstance because his participation was mandated by Business and Professions Code section 6068, subdivision (i). *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[2]**

Respondent's belated filing of probation reports was not a mitigating circumstance as an objective step promptly taken spontaneously demonstrating remorse or recognition of wrongdoing where he filed the reports after he had knowledge of the probation revocation proceeding. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[3]**

Respondent's continued unwillingness or inability to comply with probation conditions demonstrated a lapse of character and a disrespect for the legal system that directly related to his fitness to practice. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[4]**

When an attorney commits multiple violations of the same probation condition, the gravity of each successive violation increases so that respondent's seventh successive failure to timely file his probation report warranted the greatest level of discipline. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[5]**

Because respondent had already been disciplined for not timely filing his probation reports in a previous probation revocation proceeding, respondent's failure to timely file his probation reports in the present probation revocation proceeding warranted the greatest level of discipline. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[6]**

Before the State Bar Court orders that an attorney be involuntarily enrolled inactive under Business and Professions Code, section 6007, subdivision (d), it must weigh the need for public protection in light of the Supreme Court's inherent and plenary jurisdiction over attorney admissions and discipline. To order the involuntary inactive enrollment of an attorney under subdivision (d) any time its requirements are met without regard to whether there is an issue of public protection and to the length of the actual suspension recommended could conceivably defeat or materially impair the Supreme Court's inherent prerogatives. When measured against these criteria, the review department enrolled respondent inactive, concluding that respondent's four prior records of discipline and lack of any mitigating circumstances established a public protection issue, and that as the review department recommended an actual suspension of almost a year, there could be no reasonable expectation that the time elapsing between when respondent was enrolled inactive and the finality of the matter would equal or exceed the final actual suspension imposed by Supreme Court. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[7 a-e]**

In determining whether an attorney should be enrolled inactive under Business and Professions Code section 6007, subdivision (d), the record as a whole must be considered. However, when the State Bar Court seeks to estimate the time between its ruling and recommendation and when the Supreme Court can consider them, it may ordinarily rely on the expedited nature of probation revocation proceedings. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523. **[8]**

Respondent was not entitled to finding in mitigation based on asserted good faith belief that reports required by disciplinary probation conditions were due only during actual suspension, where hearing judge did not find respondent's testimony regarding his belief credible; where language of probation conditions at best established ambiguity; where respondent did not research the issue, did not seek clarification, and did not consult with anyone regarding his interpretation of disciplinary order; and where probation department informed respondent that reports were due during entire period of probation. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[3]**

Respondent was not entitled to finding in mitigation based on asserted reliance on advice of probation clerk regarding due date of probation reports, where hearing judge found clerk's testimony denying such advice credible; where any confusion respondent may have had regarding due date of reports was not reasonable; and where letter sent to respondent by probation department contained information which should have dispelled any confusion respondent may have had regarding due dates of reports. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[4]**

Where, in a particular case involving violation of rule 955, California Rules of Court, and of disciplinary probation reporting requirements, there was no evidence to support a finding of significant harm to the administration of justice, separate and apart from evidence that supported culpability for charged violations, no finding in aggravation based on such harm was appropriate. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[6]**

A disciplinary probationer's belated filing of required probation reports could, under appropriate circumstances, demonstrate recognition of wrongdoing, even if such reports were technically defective. However, where respondent did not file late reports until after he learned probation revocation proceeding was pending against him, his actions were not a spontaneous recognition of wrongdoing and thus were not a mitigating circumstance. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[8]**

The Supreme Court order in a probation revocation matter can become effective earlier than the Supreme Court order in an original discipline matter. (Cal. Rules of Court, rule 952(a), (b).) Accordingly, where a probation revocation matter and an original discipline matter were consolidated, the review department made a separate disciplinary recommendation for each matter. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[1]**

Statutes providing (1) that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline; (2) that attorneys have duty to comply with disciplinary probation conditions, and (3) that wilful disobedience of court orders constitutes cause for disbarment or suspension are all statutes that can be violated. The determination that an attorney violated the statute making probation violations cause for revocation of probation means that the attorney failed to comply with a probation condition. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[2]**

Wilfully failing to comply fully with a disciplinary probation condition constitutes a violation of the statute providing that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline. Wilfulness in this context requires merely that the person charged acted or omitted to act purposely, that is, knew what he was doing or not doing and intended either to commit the act or abstain from committing it. The violation must be proved by a preponderance of the evidence. Substantial compliance is insufficient to avoid culpability on this charge, and any good faith on the part of the attorney is relevant to mitigation rather than culpability. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[3]**

Where respondent on disciplinary probation made no required restitution payments to former clients, but made some payments to State Bar in belief that probation monitor or other authority had so instructed, and where respondent had insufficient reason for such belief, respondent was grossly negligent in failing to make such payments to clients, and thereby violated probation. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[4]**

Where attorney violated statute providing that violating disciplinary probation conditions constitutes cause for probation revocation and possibly discipline, and where misconduct underlying such charge was same as misconduct underlying charges of violating statutes providing that attorneys have duty to comply with disciplinary probation conditions and that wilful disobedience of court orders constitutes cause for disbarment or suspension, latter two charges were given no additional weight in determining appropriate discipline. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[6]**

Substantial compliance with a disciplinary probation requirement is not a defense to violation of the requirement. Where respondent's probation conditions required that he obtain therapy from licensed practitioner, and where respondent made efforts to obtain therapy but did not seek to have probation conditions modified to include therapy provided by unlicensed practitioner, respondent's uncharged probation violation of failing to comply with therapy requirement was aggravating circumstance in probation revocation proceeding. However, respondent's efforts to comply constituted significant mitigating circumstance. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138. **[9]**

Where respondent's probation monitor placed calls to respondent and respondent did attempt to reply to such calls, and hearing judge found that although respondent did not respond promptly, he could not be said to have failed to comply with his duty, respondent was not culpable of violating condition of probation requiring him to meet with monitor to review probation terms. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[3]**

Where respondent had stipulated to discipline requiring restitution payments to be made by certain dates, and respondent did not set aside funds to make such restitution as soon as his own stipulation required first payment to be made, and where respondent had no credible excuse for failing to make at least first required payment at a time when respondent had significant income, respondent's failure to make at least partial restitution was a wilful violation of his probation. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[4]**

Claim of selective prosecution in probation revocation proceeding was without merit, where such claim was based on asserted failure to give respondent same opportunity as other lawyers to cure defects in probation report, but revocation proceeding was also based on failure to pay restitution due ten months earlier; respondent's subsequent probation reports were also inadequate; and respondent failed to connect cited authorities on doctrine of selective enforcement to facts of proceeding. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81. **[8]**

Because time to seek Supreme Court review is shorter for probation revocation matters than for original disciplinary matters, it is necessary to make separate discipline recommendations when such cases are consolidated. (Cal. Rules of Court, rule 952(a), (b).) *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[1]**

Where harm to administration of justice was inherent in respondent's probation violation, it would be duplicative to find such harm as an aggravating circumstance. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63. **[5]**

Respondent's partial restitution and attempts to obtain an accountant in order to file his quarterly probation reports were not entitled to any mitigating weight, because he did not complete restitution until the eve of his disciplinary hearing, and failed to notify his probation monitor of his difficulty in complying with the disciplinary order requiring him to have an accountant certify his trust account records. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. **[14]**

It is the responsibility of an attorney on probation to comply with a probation condition requiring the attorney to meet with an assigned probation monitor referee. Even if respondent encountered difficulty in setting up such a meeting, where respondent did not seek the assistance of the State Bar Court's clerk's office, and instead permitted a substantial delay to pass before the required meeting occurred, respondent's neglect constituted a wilful breach of his probation duties. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[13]**

Respondent's bitterness and disaffection over his prior disciplinary suspension might explain some misconduct toward his clients thereafter, but it could not excuse his misconduct, especially since the suspension and its terms were designed to seek respondent's rehabilitation. Also, respondent's evidence of rehabilitation was depreciated by his inability to comply with his probation conditions, which was relatively recent and occurred after respondent had time to become familiar with his responsibilities. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[21]**

The primary goal of disciplinary probation is the protection of the public and rehabilitation of the attorney. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[3]**

In probation revocation matter, where order imposing probation had also required that respondent pass professional responsibility examination and respondent had not yet done so, review department recommended that this provision of original discipline order remain in effect notwithstanding revocation of probation. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[8]**

As a matter of law, probation condition requiring respondent to include statement regarding abstinence from alcohol and drugs in any report required under probation conditions required respondent to include such statement in all required reports, including quarterly reports. Statement in quarterly reports that respondent had complied with all "valid, legally reasonable and enforceable" probation conditions did not comply with such requirement, because it was not a clear and unequivocal statement of respondent's compliance with the abstinence condition. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[3]**

Where probation conditions required that respondent abstain from intoxicants and non-prescribed drugs, and respondent stated under penalty of perjury that respondent had complied with all "valid, legally reasonable and

enforceable" probation conditions, then even if State Bar proved respondent had consumed alcohol, respondent could have avoided perjury conviction by contending he did not consider abstinence condition to be valid, legally reasonable, and/or enforceable. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[5]**

Respondent's belief that he had not violated probation in framing his probation reports was unreasonable, at least once respondent was advised by probation department that his interpretation of probation conditions was incorrect. Hearing judge was therefore correct in treating respondent's failure to file corrected reports as a failure to rectify his misconduct and therefore an aggravating factor. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[8]**

Where respondent unreasonably persisted in refusing to include certain language in probation reports even after being informed by probation department employees that his interpretation of probation conditions as not requiring such language was incorrect, this effectively refuted respondent's contention that he acted in good faith, which would have constituted a mitigating factor if factually correct. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[12]**

A past revocation of probation is viewed as a prior disciplinary proceeding. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[5]**

1750 Probation Revocation

1751 Probation Revoked

In the Matter of Luis (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737. **[1 a-b]**

In the Matter of Laden (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678.

In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Howard (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

In the Matter of Grueneich (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439.

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244.

A wilful breach of respondent's restitution duty was established where respondent: (1) had the financial ability to make some restitution payments during the period when he had not done so; (2) repeatedly chose to pursue professional goals which foreseeably rendered him financially unable to make timely restitution; (3) failed to protect his funds from attachment by creditors; and (4) failed to seek an extension of time to make his restitution payments. His conduct showed a conscious disregard of his restitution obligations and a failure to make sufficient good faith efforts to acquire the resources to pay. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[12]**

1755 Probation Not Revoked

Note: For Aggravation, Mitigation, and Application of Standards, see those headings under Substantive Issues in Disciplinary Matters Generally, topic numbers 500 et seq., 700 et seq., and 800 et seq.

1800 Discipline Imposed Upon Revocation or for Probation Violation

1810 Disbarment

Respondent's extensive record of prior discipline demonstrated that probation and suspension have proven inadequate in the past to protect against future misconduct, and the record in the current proceeding did not give assurance that such a sanction would ensure that future misconduct would not occur. Accordingly, the review department concluded that disbarment was appropriate to protect the public, courts, and legal profession. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[7]**

Respondent was not given credit for the period of time he was ineligible to practice law against the time period he must wait before he may petition for reinstatement. The ban on respondent's practice for which he sought credit resulted from other disciplinary proceedings, not from the present case and, therefore, was not a related interim ban on his practice. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. **[8]**

In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Grueneich (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439.

1813 Additional Stayed Suspension

1813.01 One month or less

1813.02 Two months (incl. between 1 and 3 mos.)

1813.03 Three months (incl. between 3 and 6 mos.)

1813.04 Six months (incl. between 6 and 9 mos.)

1813.05 Nine months (incl. between 9 mos. and 1 year)

1813.06 One year (incl. between 1 yr. & 18 mos.)

In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.

1813.07 18 months (incl. between 18 mos. & 2 yrs.)

1813.08 Two years (incl. between 2 & 3 yrs.)

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.

1813.09 Three years (incl. between 3 & 4 yrs.)

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

1813.10 Four years (incl. between 4 & 5 yrs.)

1813.11 Five years or more

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

1815 (Additional) Actual Suspension

1815.01 One month or less

In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567.

1815.02 Two months (incl. between 1 and 3 mos.)

1815.03 Three months

In the Matter of Laden (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678.**[1]**

1815.04 Six months (incl. between 6 and 9 mos.)

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.

1815.05 Nine months (incl. between 9 mos. & 1 year)

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

1815.06 One year (incl. between 1 yr. & 18 mos.)

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

In the Matter of Howard (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

In the Matter of Potack (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525.

1815.07 8 months (incl. between 18 mos. and 2 yrs.)

1815.08 Two years (incl. between 2 & 3 yrs.)

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244.

In the Matter of Potack (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525.

1815.09 Three years (incl. between 3 & 4 yrs.)

In the Matter of Luis (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737. **[1 a-b]**

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

1815.10 Four years (incl. between 4 & 5 yrs.)

1815.11 Five years or more

1817 Additional Probation

1817.01 One month or less

1817.02 Two months (incl. between 1 and 3 mos.)

1817.03 Three months (incl. between 3 and 6 mos.)

1817.04 Six months (incl. between 6 and 9 mos.)

1817.05 Nine months (incl. between 9 mos. and 1 yr.

1817.06 One year (incl. between 1 yr. and 18 mos.)

1817.07 18 months (incl. between 18 mos. and 2 yrs.)

1817.08 Two years (incl. between 2 and 3 yrs.)

1817.09 Three years (incl. between 3 & 4 yrs.)

1817.10 Four years (incl. between 4 & 5 yrs.)

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

1817.11 Five years or more

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

1820 Additional/Modified Probation Conditions (for conditions see topic numbers 1020 et seq.)

In the Matter of Tiernan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 523.

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

1830 Standard 1.2(c)(i) Rehabilitation Requirement (1986 Standard 1.4(c)(ii))

In In the Matter of Luis (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81.

In the Matter of Howardd (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244.

1840 Public Reproval (for conditions see topic numbers 1020 et seq.)

1850 Private Reproval (for conditions see topic numbers 1020 et seq.)

1880 Modification/Early Termination of Probation

1881 Special Procedural Issues

1881.10 Interpretation of Rules of Procedure, Div. 5, Ch. 1 (rules 5.300-5.306)

1882 Special Substantive Issues

1885 Petition for Modification/Early Termination

1885.10 Granted

1885.50 Denied

1889 Miscellaneous Issues in Probation Modification/Early Termination Cases

The hearing judge did not abuse his discretion or make an error of law in denying respondent's motion to modify his probation on the ground that respondent was dilatory in bringing the motion where respondent was aware or should have been aware of both the factual and legal need to modify the probation long before the motion was filed. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[1]**

Respondent's argument that the State Bar should be estopped from raising the timeliness of his motion to modify the probation was rejected. It is not at all clear that estoppel is applicable in this disciplinary proceeding. Estoppel will not ordinarily lie against a governmental agency if the result will be the frustration of a strong public

policy. The goals of attorney discipline - protection of the public, courts and legal profession - are strong public policy considerations that militate against applying the doctrine. Even if estoppel were applicable, respondent failed to demonstrate a factual basis for the claim as he failed to show that the State Bar's actions were intended to be acted upon by him to his injury and that he was ignorant of the true state of facts. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302. **[2]**

1900 Other Special Disciplinary Matters

1910 Cal. Rules of Ct., Rule 9.20 (formerly Rule 955) Violation Proceedings

1911 Special Procedural Issues

1911.05 Interpretation of Rules of Procedure, Div. 6, Ch. 1 (rules 5.330-5.337)

1911.10 Initiation of Proceeding

Where a proceeding under rule 955 of the California Rules of Court was started by an order of referral rather than the issuance of formal charges, culpability could be based on all evidence introduced. Thus, where the evidence demonstrated that respondent failed to give timely notices of her suspension to her clients, opposing counsel, and courts in which her clients' cases were pending, she wilfully violated rule 955, subdivision (a), and the review department considered that violation as substantive and not just an aggravating circumstance as found by the hearing judge. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[5]**

1911.20 Failure to Appear in Proceeding

Disbarment is generally the appropriate sanction for a wilful violation of rule 955, California Rules of Court. Where respondent not only failed to notify courts and file timely affidavit of compliance as required by rule 955, but also had wilfully failed to comply with other stipulated conditions of prior discipline; respondent had injured a number of clients, and posed substantial risk of continuing to do so; respondent's participation in rule 955 proceeding was sporadic; respondent provided evidence of personal problems but no evidence that he was likely to overcome them, organize his practice, and comply with prior disciplinary probation; and respondent provided no evidence of rehabilitation, but rather evidence that his problems had increased, then despite respondent's history of pro bono work, idealism, honesty, and altruism, disbarment recommendation was required for public protection. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[2]**

Because there was no procedure for entering a default in a referral proceeding for alleged wilful violation of rule 955, the respondent was not precluded by lack of participation in the hearing department from filing an opposition brief on review. However, when respondent failed to file such a brief, the review department issued an order precluding respondent from appearing at oral argument. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[1]**

A short delay in compliance with rule 955, by itself, would not necessitate disbarment. However, where respondent also had failed to appear in the rule 955 violation proceeding, had failed to appear in two prior disciplinary proceedings, and had continued to ignore her obligations thereafter, showing a clear pattern of failure to participate in the disciplinary process and to comply with requirements of Supreme Court, disbarment was clearly appropriate. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[2]**

Attorneys who engage in an extended practice of inattention to official actions should not be allowed to create the risk that it will extend to clients resulting in inevitable and grievous harm to them. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[10]**

1911.30 Scope of Record

It was appropriate for both the hearing judge and the review department to take judicial notice of the status, at the time of their respective decisions, of a separate pending disciplinary matter involving the same respondent. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[5]**

Fact that respondent's failure to take responsibility for substituting out of two cases properly had not been the subject of respondent's prior disciplinary matter did not preclude Office of Trials from raising such incidents in subsequent proceeding against respondent for failure to comply with rule 955. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[6]**

1911.40 Relation to Criminal Proceeding under Section 6126(c)

1911.90 Other Procedural Issues

Because the review department must review the record independently and is not bound by the hearing judge's findings or recommendation (Trans. Rules Proc. of State Bar, rule 453(a)), the issue of appropriate discipline in a matter involving violation of rule 955, California Rules of Court and other misconduct did not turn on the one narrow issue argued on review by the parties regarding the appropriateness of a retroactive suspension. The review department therefore considered whether any form of suspension was adequate discipline given Supreme Court precedent generally ordering disbarment for rule 955 violations. Although the State Bar's declination to recommend disbarment was accorded considerable weight, it could not be reconciled with the precedent making disbarment the appropriate discipline. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[1]**

Where review department recommended respondent's disbarment, issue of whether respondent should be given credit toward required waiting period to apply for reinstatement (Trans. Rules Proc. of State Bar, rule 662), on account of time spent on continuous suspension prior to disbarment, was properly reserved for consideration by a hearing judge on an appropriate petition following the disbarment. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[7]**

Claim that respondent's failure to give required notice of suspension in four different client matters should not have been charged as four separate violations was relevant to degree of discipline but not to culpability. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[8]**

Review department, in recommending respondent's disbarment for failure to comply with rule 955, California Rules of Court, was not required to address issue whether time respondent had already spent on inactive enrollment due to probation violation, or on suspension due to failure to pass professional responsibility examination, should be counted toward required waiting period to apply for reinstatement. (Trans. Rules Proc. of State Bar, rule 662.) Respondent could raise those issues before a hearing judge at the time he wished to file a reinstatement petition. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[5]**

1913 Special Substantive Issues

1913.10 Wilfulness

1913.11 Definition

Respondent's carelessness and confusion concerning the requirements of rule 955 did not obviate culpability of wilful failure to file a rule 955 affidavit timely, where respondent did not seek relief based on good cause for his late filing. All that is necessary for a wilful violation of rule 955 is a general purpose or willingness to commit the act or make the omission. However, respondent's credible evidence of carelessness was properly considered in considering respondent's good faith attempts at timely compliance. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[4]**

Bad faith is not a prerequisite to a finding of wilful failure to comply with rule 955. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[4]**

Violations of probation require the same mental state to justify discipline as violations of rule 955, Cal. Rules of Court. For such purposes, wilfulness need not involve bad faith; a general purpose or willingness to comment an act or permit an omission is sufficient. Accordingly, despite respondent's asserted good faith belief that probation reports were sufficient, respondent's intentional failure to include a required statement in such reports was wilful for purposes of a probation violation. Respondent's subjective intentions were relevant only with regard to aggravation and mitigation. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[6]**

1913.12 Lack of Notice of Underlying Order

1913.13 Timeliness of Notice of Underlying Order

In the Matter of Babero (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.

1913.14 Inability to Comply

In the Matter of Babero (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.

1913.19 Other Issues re Wilfulness

Respondent's unilateral and ill-conceived interpretations of disciplinary orders demonstrated tendency toward interpreting important and significant court orders in such a way as to fit his needs, which might negatively impact future clients and thus raised concern about need to protect public. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[13]**

Disbarment is generally ordered for wilful breach of rule 955, and is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[8]**

Respondent's contention that he detrimentally relied on advice from his probation monitor and counsel regarding compliance with rule 955 might have been persuasive as mitigation if respondent had raised it at the hearing level and produced supporting evidence. However, where record did not support and even contradicted such contention, review department rejected respondent's attempt to argue it as mitigation. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[3]**

Respondent's failure to comply with rule 955 was not excused by criticism of its wording as complex. The mandate of rule 955 is clear and requires little if any assistance to fulfill its requirements. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[11]**

1913.20 Delay in Compliance

1913.22 Delay in Giving Required Notice

Where a proceeding under rule 955 of the California Rules of Court was started by an order of referral rather than the issuance of formal charges, culpability could be based on all evidence introduced. Thus, where the evidence demonstrated that respondent failed to give timely notices of her suspension to her clients, opposing counsel, and courts in which her clients' cases were pending, she wilfully violated rule 955, subdivision (a), and the review department considered that violation as substantive and not just an aggravating circumstance as found by the hearing judge. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[5]**

1913.24 Delay in Filing Affidavit of Compliance

Where, in a particular case involving violation of rule 955, California Rules of Court, and of disciplinary probation reporting requirements, there was no evidence to support a finding of significant harm to the administration of justice, separate and apart from evidence that supported culpability for charged violations, no finding in aggravation based on such harm was appropriate. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[6]**

Where respondent was not aware of pendency of rule 955 violation proceeding when he belatedly attempted to file affidavit required by rule 955(c), California Rules of Court, respondent's attempted untimely filing was basis for mitigation as spontaneous recognition of wrongdoing. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[9]**

Where respondent attempted to file required affidavit of compliance with rule 955, California Rules of Court, within two weeks after it was due and before he was aware of initiation of rule 955 violation proceeding, and no clients were harmed, but respondent had also violated probation and had substantial prior discipline record, nine months actual suspension was appropriate discipline for respondent's wilful failure to comply with rule 955(c). *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[15]**

Wilful violation of rule 955 deserves strong disciplinary measures because of the rule's critical prophylactic function. Disbarment is the usual discipline ordered by the Supreme Court for such violations. Where respondent not only filed his affidavit of compliance late, itself a cause for discipline, but also completed the affidavit shortly after improperly contacting an insurer while on suspension and without client authorization, as well as falsely reporting his compliance with the rule, respondent's violation of rule 955 was a serious one. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[4]**

Respondent's carelessness and confusion concerning the requirements of rule 955 did not obviate culpability of wilful failure to file a rule 955 affidavit timely, where respondent did not seek relief based on good cause for his late filing. All that is necessary for a wilful violation of rule 955 is a general purpose or willingness to commit the act or make the omission. However, respondent's credible evidence of carelessness was properly considered in considering respondent's good faith attempts at timely compliance. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[4]**

The fact that an attorney's untimely affidavit under rule 955 is accepted for filing is not evidence of the attorney's compliance with the rule. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[5]**

Where respondent had awakened to his responsibilities to the discipline system and participated in rule 955 proceeding, had produced evidence that he posed less risk to clients than suggested by his prior disciplinary record, gave proper notice in compliance with rule 955(a), and filed the required affidavit only 14 days late and before referral order was issued or formal disciplinary proceedings initiated, respondent's very brief failure to comply with rule 955 warranted a very modest sanction. However, even given the wide range of discipline available for a rule 955 violation, it would require an extraordinary case where no discipline of any form was merited. Considering the emphasis placed by the Supreme Court on strict compliance with rule 955, as well as considerations of attorney discipline, maintenance of the standards of the profession, and respondent's rehabilitation, some discipline was required. A 30-day suspension would serve to underline to respondent the seriousness of his duty to comply with all aspects of court orders. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[7]**

Where respondent had filed his required rule 955 affidavit prior to the initiation of rule 955 proceedings by referral order, had met the notice requirements of the rule timely, had taken responsibility for his own errors, and, because of other discipline, might remain on actual suspension for over two years, a six-month actual suspension for respondent's untimely filing of his rule 955 affidavit would be excessive. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[9]**

Disbarment is generally the appropriate sanction for a wilful violation of rule 955, California Rules of Court. Where respondent not only failed to notify courts and file timely affidavit of compliance as required by rule 955, but also had wilfully failed to comply with other stipulated conditions of prior discipline; respondent had injured a number of clients, and posed substantial risk of continuing to do so; respondent's participation in rule 955 proceeding was sporadic; respondent provided evidence of personal problems but no evidence that he was likely to overcome them, organize his practice, and comply with prior disciplinary probation; and respondent provided no evidence of rehabilitation, but rather evidence that his problems had increased, then despite respondent's history of pro bono work, idealism, honesty, and altruism, disbarment recommndation was required for public protection. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[2]**

A short delay in compliance with rule 955, by itself, would not necessitate disbarment. However, where respondent also had failed to appear in the rule 955 violation proceeding, had failed to appear in two prior disciplinary proceedings, and had continued to ignore her obligations thereafter, showing a clear pattern of failure to participate in the disciplinary process and to comply with requirements of Supreme Court, disbarment was clearly appropriate. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[2]**

Respondent's declaration presented in an attempt to comply with rule 955 bore little mitigating weight when it was submitted almost two months after respondent's rule 955 affidavit was due to be filed with the Supreme Court, contained inaccurate information and misrepresented a hearing date in one case. The inaccurate declaration raised serious doubts as to respondent's credibility and was an aggravating circumstance. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[8]**

1913.29 Delay in Compliance Generally

Where respondent's untimely compliance with rule 955 of the California Rules of Court formed a basis for her culpability for violating the rule, and delay in complying with the rule was also found to be an aggravating circumstance because it reflected respondent's indifference toward rectification of her misconduct, the latter finding was duplicative. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[6]**

Where respondent had been ordered to give notice of prior disciplinary suspension and to file affidavit of compliance with such order, and respondent failed to give timely notice and failed to notify opposing counsel in three matters, and respondent's affidavit of compliance was filed late and incorrectly stated that all courts and opposing counsel had been notified of his suspension, respondent's gross neglect and lack of diligence in complying with the order to give notice violated the statute requiring respect for courts, but did not constitute an intentional misrepresentation of facts to the Supreme Court in violation of statute prohibiting acts of moral turpitude and dishonesty. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[9]**

Respondent's miscalculation of the time deadlines for compliance with rule 955 and failure to file his affidavit for other reasons were neither reasonable nor mitigating given respondent's failure to consult the applicable court rules or contact his former counsel, the Supreme Court's clerk's office, or the State Bar for clarification in a timely fashion. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[9]**

1913.40 Adequacy of Compliance

1913.42 Adequacy of Notice Given

Wilful violation of rule 955 deserves strong disciplinary measures because of the rule's critical prophylactic function. Disbarment is the usual discipline ordered by the Supreme Court for such violations. Where respondent not only filed his affidavit of compliance late, itself a cause for discipline, but also completed the affidavit shortly after improperly contacting an insurer while on suspension and without client authorization, as well as falsely reporting his compliance with the rule, respondent's violation of rule 955 was a serious one. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[4]**

Where respondent had been ordered to give notice of prior disciplinary suspension and to file affidavit of compliance with such order, and respondent failed to give timely notice and failed to notify opposing counsel in three matters, and respondent's affidavit of compliance was filed late and incorrectly stated that all courts and opposing counsel had been notified of his suspension, respondent's gross neglect and lack of diligence in complying with the order to give notice violated the statute requiring respect for courts, but did not constitute an intentional misrepresentation of facts to the Supreme Court in violation of statute prohibiting acts of moral turpitude and dishonesty. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[9]**

Disbarment is generally the appropriate sanction for a wilful violation of rule 955, California Rules of Court. Where respondent not only failed to notify courts and file timely affidavit of compliance as required by rule 955, but also had wilfully failed to comply with other stipulated conditions of prior discipline; respondent had injured a number of clients, and posed substantial risk of continuing to do so; respondent's participation in rule 955 proceeding was sporadic; respondent provided evidence of personal problems but no evidence that he was likely to overcome them, organize his practice, and comply with prior disciplinary probation; and respondent provided no evidence of rehabilitation, but rather evidence that his problems had increased, then despite respondent's history of pro bono work, idealism, honesty, and altruism, disbarment recommendation was required for public protection. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[2]**

Where an attorney, while winding up his law practice before resigning with disciplinary charges pending, told clients that he was "retiring" but made clear that he would not be practicing law, this notification did not violate rule 955 of the California Rules of Court because it was given while the attorney was still an active member of the bar. While the evasiveness of the notification was relevant to the attorney's rehabilitation and moral qualifications for subsequent reinstatement, it did not mandate an adverse conclusion on those issues. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[13]**

Respondent's failure to notify a client of respondent's disciplinary suspension was not justified by respondent's belief that he had been retained only for limited services, where respondent had accepted a retainer

fee and filed a civil complaint listing himself as the plaintiff's attorney. There was no legal support for the distinction respondent attempted to draw between being attorney of record and "attorney in fact." *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[4]**

Where respondent in a rule 955 matter gave different explanations at the hearing and on review for his failure to advise eight clients of his disciplinary suspension, and had not taken responsibility for making sure that substitutions of counsel he executed in the clients' cases had been filed, his attempted explanations constituted questionable mitigation. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[5]**

1913.44 Adequacy of Affidavit of Compliance

Wilful violation of rule 955 deserves strong disciplinary measures because of the rule's critical prophylactic function. Disbarment is the usual discipline ordered by the Supreme Court for such violations. Where respondent not only filed his affidavit of compliance late, itself a cause for discipline, but also completed the affidavit shortly after improperly contacting an insurer while on suspension and without client authorization, as well as falsely reporting his compliance with the rule, respondent's violation of rule 955 was a serious one. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[4]**

Respondent's declaration presented in an attempt to comply with rule 955 bore little mitigating weight when it was submitted almost two months after respondent's rule 955 affidavit was due to be filed with the Supreme Court, contained inaccurate information and misrepresented a hearing date in one case. The inaccurate declaration raised serious doubts as to respondent's credibility and was an aggravating circumstance. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[8]**

1913.49 Adequacy of Compliance Generally

For purposes of rule 9.20 of California Rules of Court, requiring attorneys to give advance notice of impending disciplinary suspension, notice is required for all cases pending as of filing date of suspension order, not effective date. Where respondent's declaration of compliance with rule 9.20 stated that respondent had given required notice in all cases pending as of suspension order's filing date, but State Bar alleged that respondent failed to do so in one client matter, respondent's having given informal notice of impending suspension and having substituted out of case prior to suspension order's effective date was not a defense. Notice of disciplinary charges thus properly alleged both violation of rule 9.20 and act of moral turpitude in filing false declaration. *In the Matter of Eldridge* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 413 **[2 a, b]**

For purpose of determining whether an attorney has violated rule 9.20 of California Rules of Court, requiring attorneys to give advance notice of impending disciplinary suspension, strict compliance is required. Compliance with prophylactic effect of rule is not a defense. *In the Matter of Eldridge* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 413 **[3]**

In determining appropriate discipline to recommend for respondent found culpable of violating statute requiring respect for courts based on respondent's violation of Supreme Court order requiring him to give notice of his prior disciplinary suspension under rule 955, review department noted that respondent's failure to give timely and complete notice of suspension, and his filing of an affidavit which was untimely and inaccurate, would have warranted a recommendation of disbarment, absent strong mitigating circumstances, in a referral proceeding for violation of rule 955. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[15]**

In rule 955 proceeding, respondent's claim that his failure to withdraw from one matter after suspension resulted from an oversight in transferring over 200 files to successor counsel was not a factor in mitigation. Respondent's conduct in connection with such transfer constituted evidence in aggravation, because respondent irresponsibly executed in blank hundreds of substitution association or substitution of counsel forms and relinquished of the client files to successor counsel without obtaining the clients' consent, safeguarding their interests, or even keeping a list of the clients or case names transferred. This conduct posed a significant potential harm to the clients and to the public interest generally. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[7]**

Respondent's miscalculation of the time deadlines for compliance with rule 955 and failure to file his affidavit for other reasons were neither reasonable nor mitigating given respondent's failure to consult the applicable court rules or contact his former counsel, the Supreme Court's clerk's office, or the State Bar for clarification in a timely fashion. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[9]**

In rule 955 matter, where respondent did not present any evidence of remedial steps to assist clients in four cases in which he had failed to substitute out when suspended, and remained attorney of record in three of such cases in which litigation was still pending, respondent's inaction indicated indifference to the consequences of his misconduct and was an aggravating circumstance, as was his continued failure to file an affidavit conforming to the requirements of rule 955. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[13]**

Recent Supreme Court decisions reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule 955. One of the primary reasons for the adoption of the Standards for Attorney Sanctions for Professional Misconduct was to achieve greater consistency in disciplinary sanctions for similar offenses. Any reason for deviating from the standards or established case law must be clearly stated. Accordingly, where respondent participated in the rule 955 proceeding, but did not present a convincing case of mitigation, diligence, and rectification of misconduct, and instead demonstrated a pattern of inattention to important duties, an inability to conform to professional norms, and a lack of concern for potential harm to his clients and the public, the public interest and the administration of justice would be served by respondent's disbarment. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[15]**

Wilful breach of a Supreme Court order is by definition deserving of strong disciplinary measures, and the sanction generally imposed for wilful violation of rule 955 is disbarment. When disbarment has not been imposed, the attorneys involved had complied with the notification requirement, orally or in writing, to all their clients, participated in the disciplinary process, and presented substantial mitigating evidence regarding the noncompliance and their present good character. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[16]**

1913.50 Complete Failure to Comply

1913.60 Respondent Not in Active Practice

Even though respondent had no clients or opposing counsel to notify of his disciplinary suspension under rule 955(a), California Rules of Court, he was still required to file the affidavit required by subdivision (c) of that rule. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[2]**

Where respondent's first actual suspension ended in December 1991, and his second actual suspension, which was ordered to be "consecutive" to the first, did not take effect until June 1992, hearing judge did not err in finding that respondent could have practiced law during the interval, and fact that respondent did not in fact practice law during such time did not entitle him to "credit for time served" and was neither a mitigating nor an aggravating circumstance in subsequent proceeding for probation violation and failure to comply with rule 955, California Rules of Court. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[7]**

An attorney who is ordered to comply with rule 955 is required to file an affidavit under the rule whether or not the attorney has clients. *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. **[3]**

Respondent's claim of lack of harm to his clients in mitigation of rule 955 violation overlooked fact that parties protected by rule 955 include not only clients, but co-counsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending. Moreover, nothing in rule 955 or case law distinguishes between a substantial or insubstantial violation of the rule, and respondent would have been required to comply with rule 955 whether or not he had any clients. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[10]**

1913.70 Lesser Sanction than Disbarment for Violation

Absent strong mitigating circumstances, a violation of rule 955 of the California Rules of Court warrants disbarment. Thus, where serious and extensive aggravating circumstances outweighed strongly very modest mitigating circumstances, disbarment was appropriate despite respondent's lack of any prior disciplinary record. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[10]**

Where respondent attempted to file required affidavit of compliance with rule 955, California Rules of Court, within two weeks after it was due and before he was aware of initiation of rule 955 violation proceeding, and no clients were harmed, but respondent had also violated probation and had substantial prior discipline record, nine months actual suspension was appropriate discipline for respondent's wilful failure to comply with rule 955(c). *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[15]**

Period of stayed suspension was required for respondent's wilful failure to comply with rule 955(c), California Rules of Court, so as to provide enforcement mechanism for compliance with terms and conditions of probation. *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. **[16]**

A respondent's substantial compliance with rule 955 is mitigating evidence which can influence the determination whether to impose discipline less than disbarment, the generally imposed sanction for a wilful violation of the rule. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[6]**

Where respondent had awakened to his responsibilities to the discipline system and participated in rule 955 proceeding, had produced evidence that he posed less risk to clients than suggested by his prior disciplinary record, gave proper notice in compliance with rule 955(a), and filed the required affidavit only 14 days late and before referral order was issued or formal disciplinary proceedings initiated, respondent's very brief failure to comply with rule 955 warranted a very modest sanction. However, even given the wide range of discipline available for a rule 955 violation, it would require an extraordinary case where no discipline of any form was merited. Considering the emphasis placed by the Supreme Court on strict compliance with rule 955, as well as considerations of attorney discipline, maintenance of the standards of the profession, and respondent's rehabilitation, some discipline was required. A 30-day suspension would serve to underline to respondent the seriousness of his duty to comply with all aspects of court orders. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[7]**

Where respondent had filed his required rule 955 affidavit prior to the initiation of rule 955 proceedings by referral order, had met the notice requirements of the rule timely, had taken responsibility for his own errors, and, because of other discipline, might remain on actual suspension for over two years, a six-month actual suspension for respondent's untimely filing of his rule 955 affidavit would be excessive. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[9]**

1913.90 Other Substantive Issues

Where respondent misrepresented facts regarding her interim suspension to superior court; deliberately sought to mislead State Bar Court Review Department regarding facts supporting motion for modification of interim suspension order; and intentionally tried to deceive State Bar Court hearing judge regarding correctness of transcript offered as evidence by State Bar, respondent's acts of dishonesty to courts constituted aggravating circumstances surrounding her failure to comply with rule 955 of the California Rules of Court in connection with interim suspension. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287. **[7]**

Where an attorney failed to advise a client, the insurer-defendant or the superior court in which the client's lawsuit was filed of his disciplinary suspension, but filed an affidavit with the Supreme Court declaring under penalty of perjury that he had complied with the rule requiring him to notify all clients, courts, and opposing parties of his suspension, his false affidavit constituted an act of moral turpitude and dishonesty, and his failure to comply with the rule violated the statute requiring respect for courts and judges. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[2]**

Respondent's carelessness and confusion concerning the requirements of rule 955 did not obviate culpability of wilful failure to file a rule 955 affidavit timely, where respondent did not seek relief based on good cause for his late filing. All that is necessary for a wilful violation of rule 955 is a general purpose or willingness to commit the act or make the omission. However, respondent's credible evidence of carelessness was properly considered in considering respondent's good faith attempts at timely compliance. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[4]**

The fact that an attorney's untimely affidavit under rule 955 is accepted for filing is not evidence of the attorney's compliance with the rule. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[5]**

Any reasons for deviations from the standards or case law should be set forth clearly. A rigid application in rule 955 cases of the standard requiring that the degree of discipline should be greater than that imposed in any prior proceeding would result in a minimum actual suspension of 90 days in every rule 955 violation proceeding where there was prior discipline, since rule 955 obligations are not required for actual suspensions under 90 days. The standards should not be applied in such talismanic fashion, particularly where there is not a common thread or course of conduct through past and present misconduct to justify increased discipline. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. **[8]**

Respondent's claim of lack of harm to his clients in mitigation of rule 955 violation overlooked fact that parties protected by rule 955 include not only clients, but co-counsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending. Moreover, nothing in rule 955 or case law distinguishes between a substantial or insubstantial violation of the rule, and respondent would have been required to comply with rule 955 whether or not he had any clients. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[10]**

Respondent's failure to comply with rule 955 was not excused by criticism of its wording as complex. The mandate of rule 955 is clear and requires little if any assistance to fulfill its requirements. *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322. **[11]**

1915 Culpability of Violation

1915.10 Found

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Grueneich (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439.

In the Matter of Pierce (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382.

In the Matter of Babero (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.

1915.30 Found But Substantial Compliance

In the Matter of Friedman (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.

1915.50 Not Found

Note: For Aggravation, Mitigation, and Application of Standards, see those headings under Substantive Issues in Disciplinary Matters Generally, topic numbers 500 et seq., 700 et seq., and 800 et seq.

1920 Discipline Imposed in Rule 955 Matters

1921 Disbarment

In the Matter of Lynch (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

In the Matter of Snyder (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

In the Matter of Rodriguez (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.

In the Matter of Grueneich (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439.

In the Matter of Pierce (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382.

In the Matter of Babero (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.

1923 Stayed Suspension

1923.01 One month or less

1923.02 Two months (incl. anything between 1 and 3 mos.)

1923.03 Three months (incl. anything between 3 and 6 mos.)

1923.04 Six months (incl. anything between 6 and 9 mos.)

1923.05 Nine months (incl. anything between 9 mos. & 1 yr.)

1923.06 One year (incl. anything between 1 yr. & 18 mos.)

1923.07 18 months (incl. anything between 18 mos. & 2 yrs.)

1923.08 Two years (incl. anything between 2 & 3 yrs.)

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

1923.09 Three years (incl. anything between 3 & 4 yrs.)

1923.10 Four years (incl. anything between 4 & 5 yrs.)

1923.11 Five years or more

1924 Actual Suspension

1924.01 One month or less

In the Matter of Friedman (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.

1924.02 Two months (incl. anything between 1 and 3 mos.)

1924.03 Three months (incl. anything between 3 and 6 mos.)

1924.04 Six months (incl. anything between 6 and 9 mos.)

1924.05 Nine months (incl. anything between 9 mos. & 1 year)

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

1924.06 One year (incl. anything between 1 yr. & 18 mos.)

1924.07 18 months (incl. anything between 18 mos. & 2 yrs.)

1924.08 Two years (incl. anything between 2 & 3 yrs.)

1924.09 Three years (incl. anything between 3 & 4 yrs.)

1924.10 Four years (incl. anything between 4 & 5 yrs.)

1924.11 Five years or more

1925 Probation (for conditions see topic number 1020 et seq.)

1925.01 One month or less

1925.02 Two months (incl. anything between 1 and 3 mos.)

1925.03 Three months (incl. anything between 3 and 6 mos.)

1925.04 Six months (incl. anything between 6 and 9 mos.)

1925.05 Nine months (incl. anything between 9 mos. & 1 year)

1925.06 One year (incl. anything between 1 yr. & 18 mos.)

1925.07 18 months (incl. anything between 18 mos. & 2 yrs.)

1925.08 Two years (incl. anything between 2 & 3 yrs.)

In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.

1925.09 Three years (incl. anything between 3 & 4 yrs.)

1925.10 Four years (incl. anything between 4 & 5 yrs.)

1925.11 Five years or more

1926 Standard 1.2(c)(i) Rehabilitation Requirement (1986 Standard 1.4(c)(ii))

In the Matter of Friedman (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.

1927 Public Reproval

1927.10 With conditions (for conditions see topic number 1020 et seq.)

1927.50 Without conditions

1928 Private Reproval

1928.10 With conditions (for conditions see topic number 1020 et seq.)

1928.50 Without conditions

1930 Discipline in Other Jurisdictions (Section 6049.1)

1931 Special Procedural Issues

1931.05 Interpretation of Rules of Procedure (Div. 6, Ch. 3 (rules 5.350-5.354))

1931.10 Initiation of Proceeding (rule 5.351(A), (B))

1931.20 Responsive Pleading (rule 5.351(C)

1931.30 Expedited Proceeding (rule 5.350)

Business and Professions Code section 6049.1 provides an expedited, streamlined disciplinary proceeding in this state when an attorney has been disciplined by another state or federal jurisdiction. A certified copy of another jurisdiction's final attorney disciplinary order conclusively establishes that a California attorney is culpable of professional misconduct in California, except where, as a matter of law, the misconduct found in the other jurisdiction would not warrant discipline in California or the other jurisdiction's proceedings lacked fundamental constitutional protection. The attorney bears the burden to establish that the exceptions do not warrant imposing discipline. The statute also provides that discovery need not be afforded unless the State Bar Court so orders on a showing of good cause, and that a certified copy of any part of the record of the other jurisdiction's proceedings may be admitted in evidence in this proceeding. Reviewing the applicable law as a whole, there are two issues in this expedited proceeding: 1) whether the California attorney has sustained his or her burden to establish that final attorney discipline in another state, territory or the federal system should not result in finding culpability in this proceeding; and 2) the appropriate degree of discipline. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[1 a-c]**

1931.40 Limitations on Discovery (rule 5.352)

1931.50 Use of Record from Foreign Proceeding (rule 5.353)

A certified copy of a final disciplinary order of the State of Michigan finding respondent culpable of misconduct conclusively established that respondent was culpable of professional misconduct in California. Such misconduct, which included misappropriation of client funds, failure to account, failure to respond to a client's reasonable

inquiries, failure to pay to a client funds to which she was entitled, moral turpitude, failure to take necessary legal action to protect a client's interest, failure to respond to a client's inquiries concerning the status of her funds, and failure to respond to investigations, warranted discipline in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[3]**

In a proceeding under Business and Professions Code section 6049.1, once it had been conclusively established that respondent was culpable of professional misconduct in California, the remaining issue for consideration in California was the degree of discipline. Where the only evidence in the record consisted of the final record of discipline in Michigan, no portion of the underlying evidentiary record from the Michigan proceedings was placed in evidence, and the Michigan final record of discipline indicated that each of the findings of fact in Michigan was made under a preponderance of the evidence standard of proof, a purported showing of the facts and circumstances found in Michigan to surround the misconduct could not be weighed under the required California standard of clear and convincing evidence. Instead, the misconduct found in Michigan was weighed with only the aggravation and mitigation separately shown in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[4]**

Business and Professions Code section 6049.1 provides an expedited, streamlined disciplinary proceeding in this state when an attorney has been disciplined by another state or federal jurisdiction. A certified copy of another jurisdiction's final attorney disciplinary order conclusively establishes that a California attorney is culpable of professional misconduct in California, except where, as a matter of law, the misconduct found in the other jurisdiction would not warrant discipline in California or the other jurisdiction's proceedings lacked fundamental constitutional protection. The attorney bears the burden to establish that the exceptions do not warrant imposing discipline. The statute also provides that discovery need not be afforded unless the State Bar Court so orders on a showing of good cause, and that a certified copy of any part of the record of the other jurisdiction's proceedings may be admitted in evidence in this proceeding. Reviewing the applicable law as a whole, there are two issues in this expedited proceeding: 1) whether the California attorney has sustained his or her burden to establish that final attorney discipline in another state, territory or the federal system should not result in finding culpability in this proceeding; and 2) the appropriate degree of discipline. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[1 a-c]**

1931.60 Applicability of Other Rules of Procedure (rule 5.354)

1931.90 Other Special Procedural Issues

The State Bar was not barred from relying on Michigan proceedings to impose discipline in California under the authority of Business and Professions Code section 6049.1 notwithstanding that, at the time of a prior California disciplinary case in which the State Bar and respondent entered into a stipulation disposing of the charges, the State Bar knew of disciplinary proceedings pending in Michigan but nevertheless advised respondent in writing pursuant to Rules of Procedure of the State Bar, rule 133(a)(12) that there were no additional State Bar investigations pending against him. The clear purpose of Rules of Procedure of the State Bar, rule 133(a)(12) is to require the State Bar to give notice to respondents before the State Bar Court or to attorneys being investigated by the State Bar of the pendency of other complaints lodged with the State Bar against such attorneys, and to expand that requirement to include complaints lodged in other jurisdictions would impose a far greater burden than that contemplated. At the time of the stipulation, both respondent and the State Bar knew of the Michigan proceedings, yet the stipulation did not in any way deal with the California consequences of the Michigan matter, there was no evidence that the Michigan proceedings were included in discussions leading to the stipulation, respondent entered into the stipulation without inquiring about including the Michigan matter in the stipulation, and the State Bar had no way to evaluate the seriousness of the Michigan proceedings. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[1]**

Where respondent asserted for the first time at oral argument that Business and Professions Code section 6049.1 was being unconstitutionally applied because a Michigan disciplinary action required only a preponderance of the evidence for a finding of culpability and that California reliance on that lower standard deprived him of due process and equal protection of the law, respondent's failure to have raised the issue before the hearing department or in his briefs on review constituted a waiver of the issue. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[2]**

In a proceeding under Business and Professions Code section 6049.1, neither the law nor the facts supported respondent's contention that his suspension in California should be retroactive to the time of his suspension in Illinois. The policy of imposing an actual suspension retroactive to the start of interim suspension or inactive enrollment is to avoid a lengthier disqualification from practice than warranted, but unlike those situations, respondent had not yet been barred from practicing in California. Further, although there was a significant delay in implementing an agreement between respondent and the California State Bar for a stipulated disposition, there was no clear evidence that delay was the fault of the State Bar, and respondent's evidence showed that an increase in his legal malpractice premium, which might be considered prejudicial, would likely have occurred even if his California discipline had become effective earlier. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213. **[4]**

Since over a year of respondent's Michigan misconduct was committed after the 1986 effective date of Business and Professions Code section 6049.1, that statute was not retroactively applied to respondent. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[3]**

Attorney's out-of-state discipline was not entitled to preclusive effect under California statute providing for expedited disciplinary proceeding based on discipline in other jurisdictions where State Bar did not proceed pursuant to procedures set forth in such statute. *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211. **[9]**

1933 Special Substantive Issues

1933.10 Respondent's Burden of Proof

Business and Professions Code section 6049.1 provides an expedited, streamlined disciplinary proceeding in this state when an attorney has been disciplined by another state or federal jurisdiction. A certified copy of another jurisdiction's final attorney disciplinary order conclusively establishes that a California attorney is culpable of professional misconduct in California, except where, as a matter of law, the misconduct found in the other jurisdiction would not warrant discipline in California or the other jurisdiction's proceedings lacked fundamental constitutional protection. The attorney bears the burden to establish that the exceptions do not warrant imposing discipline. The statute also provides that discovery need not be afforded unless the State Bar Court so orders on a showing of good cause, and that a certified copy of any part of the record of the other jurisdiction's proceedings may be admitted in evidence in this proceeding. Reviewing the applicable law as a whole, there are two issues in this expedited proceeding: 1) whether the California attorney has sustained his or her burden to establish that final attorney discipline in another state, territory or the federal system should not result in finding culpability in this proceeding; and 2) the appropriate degree of discipline. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[1 a-c]**

Respondent objects to giving conclusive weight to the Michigan proceedings, since they were adjudicated under a lower standard of proof than that required in California. Respondent's license revocation and judicial removal were judged under standards requiring only a preponderance of evidence to find him culpable of judicial misconduct. However, the Michigan Supreme Court considered the evidence of respondent's culpability overwhelming; and, in any event, the record of this proceeding contains ample evidence that was received in the Michigan proceedings to permit us to independently determine that sufficient evidence is present to clearly and convincingly establish respondent's culpability in California. Respondent's argument lacks merit. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[2]**

1933.20 Conduct Culpable Under California Law

Order issued by federal bankruptcy court in California suspending respondent from practice for misconduct was conclusive evidence that respondent was culpable of professional misconduct in California. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[1]**

Respondent's Illinois misconduct, involving misappropriation of client funds, repeated commingling of trust funds with personal funds, settling a case without authority, issuing an insufficiently funded check, and forging a client's name to settlement documents, was serious and a clear ground for imposing lawyer discipline in California. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213. **[2]**

Business and Professions Code section 6049.1 provides an expedited, streamlined disciplinary proceeding in this state when an attorney has been disciplined by another state or federal jurisdiction. A certified copy of another jurisdiction's final attorney disciplinary order conclusively establishes that a California attorney is culpable of professional misconduct in California, except where, as a matter of law, the misconduct found in the other jurisdiction would not warrant discipline in California or the other jurisdiction's proceedings lacked fundamental constitutional protection. The attorney bears the burden to establish that the exceptions do not warrant imposing discipline. The statute also provides that discovery need not be afforded unless the State Bar Court so orders on a showing of good cause, and that a certified copy of any part of the record of the other jurisdiction's proceedings may be admitted in evidence in this proceeding. Reviewing the applicable law as a whole, there are two issues in this expedited proceeding: 1) whether the California attorney has sustained his or her burden to establish that final attorney discipline in another state, territory or the federal system should not result in finding culpability in this proceeding; and 2) the appropriate degree of discipline. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[1 a-c]**

Respondent's claims that Business and Professions Code section 6049.1 unconstitutionally infringes on judicial power and is otherwise beyond legislative power are without merit. Respondent was given a full opportunity to litigate the issue of whether the Michigan discipline should be conclusive of his culpability in this proceeding. The Supreme Court is never bound by a legislative enactment in exercising its inherent functions in attorney discipline. However, the Supreme Court has upheld section 6007(c) authorizing an expedited proceeding to enroll an attorney inactive prior to the adjudication of the merits of disciplinary charges. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[4]**

Respondent was not found guilty of criminal charges in Michigan based on the identical facts underlying his Michigan discipline. However, it is well settled in California that dismissal or acquittal of criminal charges does not bar disciplinary proceedings covering the same facts. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[5]**

1933.30 Constitutionality of Foreign Proceeding

Business and Professions Code section 6049.1 provides an expedited, streamlined disciplinary proceeding in this state when an attorney has been disciplined by another state or federal jurisdiction. A certified copy of another jurisdiction's final attorney disciplinary order conclusively establishes that a California attorney is culpable of professional misconduct in California, except where, as a matter of law, the misconduct found in the other jurisdiction would not warrant discipline in California or the other jurisdiction's proceedings lacked fundamental constitutional protection. The attorney bears the burden to establish that the exceptions do not warrant imposing discipline. The statute also provides that discovery need not be afforded unless the State Bar Court so orders on a showing of good cause, and that a certified copy of any part of the record of the other jurisdiction's proceedings may be admitted in evidence in this proceeding. Reviewing the applicable law as a whole, there are two issues in this expedited proceeding: 1) whether the California attorney has sustained his or her burden to establish that final attorney discipline in another state, territory or the federal system should not result in finding culpability in this proceeding; and 2) the appropriate degree of discipline. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[1 a-c]**

1933.40 Limitation of Issues

A certified copy of a final disciplinary order of the State of Michigan finding respondent culpable of misconduct conclusively established that respondent was culpable of professional misconduct in California. Such misconduct, which included misappropriation of client funds, failure to account, failure to respond to a client's reasonable inquiries, failure to pay to a client funds to which she was entitled, moral turpitude, failure to take necessary legal action to protect a client's interest, failure to respond to a client's inquiries concerning the status of her funds, and failure to respond to investigations, warranted discipline in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[3]**

Business and Professions Code section 6049.1 provides that, with exceptions not applicable here, the Illinois Supreme Court disciplinary order imposed on respondent conclusively established his culpability in California. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213. **[1]**

Business and Professions Code section 6049.1 provides an expedited, streamlined disciplinary proceeding in this state when an attorney has been disciplined by another state or federal jurisdiction. A certified copy of another jurisdiction's final attorney disciplinary order conclusively establishes that a California attorney is culpable of professional misconduct in California, except where, as a matter of law, the misconduct found in the other jurisdiction would not warrant discipline in California or the other jurisdiction's proceedings lacked fundamental constitutional protection. The attorney bears the burden to establish that the exceptions do not warrant imposing discipline. The statute also provides that discovery need not be afforded unless the State Bar Court so orders on a showing of good cause, and that a certified copy of any part of the record of the other jurisdiction's proceedings may be admitted in evidence in this proceeding. Reviewing the applicable law as a whole, there are two issues in this expedited proceeding: 1) whether the California attorney has sustained his or her burden to establish that final attorney discipline in another state, territory or the federal system should not result in finding culpability in this proceeding; and 2) the appropriate degree of discipline. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[1 a-c]**

1933.50 Relevance/Effect of Degree of Foreign Discipline

In a proceeding under Business and Professions Code section 6049.1, once it had been conclusively established that respondent was culpable of professional misconduct in California, the remaining issue for consideration in California was the degree of discipline. Where the only evidence in the record consisted of the final record of discipline in Michigan, no portion of the underlying evidentiary record from the Michigan proceedings was placed in evidence, and the Michigan final record of discipline indicated that each of the findings of fact in Michigan was made under a preponderance of the evidence standard of proof, a purported showing of the facts and circumstances found in Michigan to surround the misconduct could not be weighed under the required California standard of clear and convincing evidence. Instead, the misconduct found in Michigan was weighed with only the aggravation and mitigation separately shown in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[4]**

In a proceeding under Business and Professions Code section 6049.1, the appropriate degree of discipline is not presumed by the other state's discipline, but is open for determination in this state. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213. **[3]**

Respondent's claims that Business and Professions Code section 6049.1 unconstitutionally infringes on judicial power and is otherwise beyond legislative power are without merit. Respondent was given a full opportunity to litigate the issue of whether the Michigan discipline should be conclusive of his culpability in this proceeding. The Supreme Court is never bound by a legislative enactment in exercising its inherent functions in attorney discipline. However, the Supreme Court has upheld section 6007(c) authorizing an expedited proceeding to enroll an attorney inactive prior to the adjudication of the merits of disciplinary charges. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[4]**

1933.90 Other Special Substantive Issues

Respondent's claims that Business and Professions Code section 6049.1 unconstitutionally infringes on judicial power and is otherwise beyond legislative power are without merit. Respondent was given a full opportunity to litigate the issue of whether the Michigan discipline should be conclusive of his culpability in this proceeding. The Supreme Court is never bound by a legislative enactment in exercising its inherent functions in attorney discipline. However, the Supreme Court has upheld section 6007(c) authorizing an expedited proceeding to enroll an attorney inactive prior to the adjudication of the merits of disciplinary charges. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157. **[4]**

1935 Disciplinable Misconduct

1935.10 Found

Order issued by federal bankruptcy court in California suspending respondent from practice for misconduct was conclusive evidence that respondent was culpable of professional misconduct in California. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. **[1]**

A certified copy of a final disciplinary order of the State of Michigan finding respondent culpable of misconduct conclusively established that respondent was culpable of professional misconduct in California. Such misconduct, which included misappropriation of client funds, failure to account, failure to respond to a client's reasonable inquiries, failure to pay to a client funds to which she was entitled, moral turpitude, failure to take necessary legal action to protect a client's interest, failure to respond to a client's inquiries concerning the status of her funds, and failure to respond to investigations, warranted discipline in California. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349. **[3]**

Respondent's Illinois misconduct, involving misappropriation of client funds, repeated commingling of trust funds with personal funds, settling a case without authority, issuing an insufficiently funded check, and forging a client's name to settlement documents, was serious and a clear ground for imposing lawyer discipline in California. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213. **[2]**

1935.50 Not Found

Note: For Aggravation, Mitigation, and Application of Standards, see those headings under Substantive Issues in Disciplinary Matters Generally, topic numbers 500 et seq., 700 et seq., and 800 et seq.

2000 Regulatory Proceedings

2050 Issues in Section 6007(b)(1) Proceedings

2051 Special Procedural Issues

2051.05 Interpretation of Rules of Procedure (Div. 4, Ch. 1 (rules 5.170-5.177))

2051.10 Appointment and Compensation of Counsel (rule 5.174)

2051.20 Initiation of Proceeding (rule 5.171(A))

2051.21 By Motion

2051.25 By Order to Show Cause

2051.30 Mental or Physical Examination

2051.40 Admissibility of Evidence

2051.50 Sufficiency of Evidence/Burden of Proof

A member of the State Bar is required by statute to be enrolled inactive upon the assertion of a claim of insanity or mental incompetence made in any pending proceeding, alleging inability to understand the proceeding's nature or to assist counsel. Where the member intentionally asserts such a claim, no further showing is required and the State Bar Court has no discretion not to enroll the member inactive. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[3]**

Given the severe consequences of inactive enrollment, public protection supports inactive enrollment of an attorney who intentionally makes a claim of mental incompetence, even if the attorney was actually rational and was misguidedly making the claim as a strategy to impede disciplinary prosecution. Any issue of bad faith may be addressed in the context of the requested abatement of the disciplinary case. The mere enrollment of the attorney inactive does not dictate abatement of the underlying disciplinary proceeding. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[4]**

2051.60 Abatement of Other Proceedings

Given the severe consequences of inactive enrollment, public protection supports inactive enrollment of an attorney who intentionally makes a claim of mental incompetence, even if the attorney was actually rational and was misguidedly making the claim as a strategy to impede disciplinary prosecution. Any issue of bad faith may be addressed in the context of the requested abatement of the disciplinary case. The mere enrollment of the attorney

inactive does not dictate abatement of the underlying disciplinary proceeding. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[4]**

A determination whether a disciplinary proceeding should be abated on the ground of inability of the respondent to assist in the defense resembles a competency hearing in a criminal matter. In the law of attorney discipline, the respondent is presumed competent. Inability to assist in the defense of a disciplinary proceeding suggests a more serious form or degree of mental illness than inability to practice competently without endangering clients or the public. Therefore, facts sufficient to institute inactive status proceedings under section 6007(b) may not be sufficient to support abatement of a disciplinary proceeding. The appropriate standard for abatement is proof by a preponderance of the evidence that the attorney is incompetent to assist in the defense. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[6]**

The respondent in a disciplinary proceeding has a right to a fair hearing. The State Bar's interest in protecting the public and maintaining integrity and public confidence in the legal profession would not be served by disciplining an attorney who is mentally incompetent to the degree that she or he cannot assist in a defense against disciplinary charges. Therefore, if an attorney is unable to assist in his or her own defense, due process requires that the disciplinary proceeding be abated. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[7]**

A motion supported by written submissions, including a detailed psychiatric report, could, if unopposed, be sufficient evidence to warrant abating a disciplinary proceeding due to the respondent's inability to assist in the defense. However, where the adequacy of the respondent's showing is questioned, the respondent's evidence may be weighed in the context of the whole record in the disciplinary proceeding. Any proffered medical submission regarding the respondent's mental competency should address the nature of the medical examination or tests conducted; the attorney's symptoms; the diagnosis and cause of the condition, and any past or proposed treatment. The report should note whether the illness raises doubts about the respondent's ability to assist in the defense, and should relate the respondent's condition to a recognized legal definition of competency. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[9]**

Medical evidence regarding an attorney's competency to assist in the defense of a disciplinary proceeding should be submitted to the State Bar Court at the hearing level. The reliability of evidence concerning a person's mental state is virtually impossible to test in the absence of cross-examination. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[10]**

Where it was unclear what evidence hearing judge considered in deciding to abate disciplinary proceeding due to respondent's claimed inability to assist counsel, and where respondent's medical evidence lacked important elements and was conclusory, and respondent's counsel's declaration was undermined by contrast with earlier declaration regarding respondent's superior performance of paralegal tasks, review department concluded that hearing judge failed to exercise her discretion properly in abating proceeding without holding hearing to allow presentation and resolution of conflicting evidence. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[11]**

2051.70 Effective Date of Inactive Enrollment Order (rule 5.175)

2051.80 Applicability of Other Rules of Procedure (rule 5.177)

2051.90 Other Procedural Issues

Because hearings and records regarding inactive enrollment under Business and Professions Code section 6007(b) are confidential, respondent was not identified in review department's opinion regarding issues raised by such inactive enrollment. However, where such issues arose during a disciplinary proceeding, the record in that proceeding remained public, subject to the hearing judge's discretion to seal specific portions of the record where proper grounds appeared. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[1]**

Orders for inactive enrollment under section 6007(b)(1), like those under section 6007(b)(3), are subject to independent review pursuant to rule 450 of the Transitional Rules of Procedure. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[2]**

2052 Inactive Enrollment Under Section 6007(b)(1)

2052.10 Ordered

In the Matter of Respondent L (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454.

2052.11 Without Hearing (rules 5.172(A), 5.173(A))

2052.13 After Hearing (rule 5.172(B)(2), 5.173(B)(2))

2052.50 Not Ordered

2054 Petition to End Section 6007(b)(1) Inactive Enrollment

2054.05 Interpretation of Rules of Procedure (Div. 4, ch. 4 (rules 5.205-5.212))

2054.10 Granted

2054.50 Denied

2054.90 Other Issues re Termination of Section 6007(b)(1) Inactive Enrollment

2059 Miscellaneous Issues in Section 6007(b)(1) Cases

2070 Issues in Section 6007(b)(2) Proceedings

2070.05 Interpretation of Rules of Procedure (Div. 4, Ch. 2 (rules 5.180-5.186)

2071.10 Special Procedural Issues

2071.20 Initiation of Proceeding (rule 5.181)

2071.30 Limitation of Issues (rule 5.182(B)(2))

2051.40 Effective Date of Inactive Enrollment Order (rule 5.184)

2071.80 Applicability of Other Rules of Procedure (rule 5.186)

2071.90 Other Procedural Issues

2072 Inactive Enrollment under Section 6007(b)(2)

2072.10 Ordered

2072.11 Without Hearing (rules 5.182(A))

2072.13 After Hearing (rule 5.182(B)(2))

2072.20 Exceptions to Order (rule 5.183)

2072.21 Granted

2072.25 Denied

2072.50 Not Ordered

2074 Petition to End Section 6007(b)(2) Inactive Enrollment

2074.05 Interpretation of Rules of Procedure (Div. 4, ch. 4 (rules 5.205-5.212))

2074.10 Granted

2074.50 Denied

2074.90 Other Issues re Termination of Section 6007(b)(2) Inactive Enrollment

2079 Miscellaneous Issues in Section 6007(b)(2) Cases

2100 Issues in Section 6007(b)(3) Proceedings

2105 Interpretation of Rules of Procedure (Div. 4, Ch. 3 (rules 5.190-5.199)

2110 Special Procedural Issues

2111 Appointment and Compensation of Counsel (rule 5.192)

2112 Probable Cause Determination (rule 5.191)

2113 Mental or Physical Examination (rule 5.193)

The test for the constitutional validity of a mental examination order is whether the mental examination serves a compelling government interest and constitutes the least intrusive means of accomplishing that interest. Mere convenience or avoidance of administrative costs does not make a means the least intrusive; otherwise the overriding value would be expediency, not the compelling government interest. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[4]**

Section 6053, which allows the State Bar Court to order a mental examination when an attorney's mental condition is a material issue in a State Bar proceeding, does not violate the California constitutional right of privacy, because section 6053 serves a compelling government interest in protecting the public, courts, and profession from mentally incompetent attorneys and because section 6053's grant of discretion to order a mental examination may be construed so as to allow such examinations to be ordered only when they are the least intrusive means to satisfy the compelling government interest. In addition, the limited distribution of the mental examination report and the confidentiality of the proceeding serve as further protections of the attorney's privacy and thereby bolster the constitutionality of section 6053. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[6]**

The rules governing the proceedings for the transfer of an attorney to inactive status incorporate by reference Code of Civil Procedure section 2032(d). (Rules 315, 321, 643, Trans. Rules Proc. of State Bar.) Proceedings to obtain an order for a mental examination under section 6053 must comply with the procedural and substantive requirements of Code of Civil Procedure section 2032(d). *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[7]**

Where no evidence or finding indicated that a compulsory mental examination constituted the least intrusive means of determining a respondent's mental condition, the issuance of mental examination orders violated not only the applicable statutory requirements but also the respondent's California constitutional right of privacy. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[8]**

The probable cause determination necessary for the initiation of an involuntary inactive enrollment proceeding pursuant to section 6007(b)(3) does not suffice to order a mental examination pursuant to section 6053. Such an order necessitates the much stronger procedural and constitutional safeguards afforded by showings from the State Bar of "good cause" and "least intrusive means." *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[9]**

A determination of mental incompetency does not require a psychiatric examination. Witness testimony regarding a respondent's behavior and documents allegedly reflecting the respondent's mental infirmity may be introduced as evidence of incompetency, and a qualified psychiatrist may be appointed to render an opinion about the respondent's mental condition on the basis of such testimonial and documentary evidence. Then, if the judge remains unable to make the necessary determination without a mental examination of the respondent and the respondent refuses to consent to such an examination, an order for a compulsory mental examination may be justified as the least intrusive means of accomplishing the government's compelling interest in protecting the public, courts, and profession from mentally incompetent attorneys. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[10]**

Although rule 644 of the Transitional Rules of Procedure purports to allow a presumption affecting the burden of proof if an attorney fails without good cause to undergo an ordered mental examination, rule 644 must be interpreted as merely allowing a permissive inference of mental infirmity, in order to ensure due process. Rule 644 would not be valid if it operated to relieve the examiner of the burden of proving mental incompetence by clear and convincing evidence. The presumption authorized by rule 644, if applied, would conflict with the appropriate presumption that an attorney remains mentally competent to practice law in the absence of proof to the contrary, and would be tantamount to the imposition of a default judgment for failure to obey a discovery order, in violation of rule 321 of the Transitional Rules of Procedure. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[11]**

2114 Admissibility of Evidence

2114.10 Evidence from Probable Cause Hearing (rule 5.195(C))

2115 Sufficiency of Evidence/Burden of Proof

Business and Professions Code section 6007 (b)(3) provides that, if a member of the State Bar suffers from mental illness or infirmity, he or she may be enrolled as an inactive member if either the member is unable or habitually fails to perform his or her duties or undertakings competently, or is unable to practice law without substantial threat of harm to the interests of his or her clients or the public. The review department held that the grounds for inactive enrollment were met where respondent was undergoing serious thought disorganization and possessed of an unstable mental state; was unable to sift out the irrelevant and properly think and reason; suffered from depression not adequately treated; was unable to calendar court and document due dates, keep a file system or find his papers; was emotionally drained by his battles with the judiciary and was habitually unable to concentrate on many significant matters, letting many go unattended; was unable to demonstrate emotional control in courtroom or other settings; and became violent or threatened to do so in his dealings with others. *In the Matter of Wolfgram* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355. **[2]**

In a proceeding to involuntarily enroll an attorney inactive because of mental infirmity or illness, the burden is on the State Bar to prove by clear and convincing evidence that the statutory grounds for inactive enrollment have been met. *In the Matter of Wolfgram* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355. **[3]**

Ordinarily, the standard of proof in disciplinary proceedings is by clear and convincing evidence, and that standard has been applied in involuntary inactive enrollment proceedings under both section 6007(c) and section 6007(b)(3). *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[8]**

Like the standard of proof in disciplinary proceedings and in proceedings under section 6007(c), the standard of proof in involuntary inactive enrollment proceedings under section 6007(b)(3) is clear and convincing evidence. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[2]**

The probable cause determination necessary for the initiation of an involuntary inactive enrollment proceeding pursuant to section 6007(b)(3) does not suffice to order a mental examination pursuant to section 6053. Such an order necessitates the much stronger procedural and constitutional safeguards afforded by showings from the State Bar of "good cause" and "least intrusive means." *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[9]**

A determination of mental incompetency does not require a psychiatric examination. Witness testimony regarding a respondent's behavior and documents allegedly reflecting the respondent's mental infirmity may be introduced as evidence of incompetency, and a qualified psychiatrist may be appointed to render an opinion about the respondent's mental condition on the basis of such testimonial and documentary evidence. Then, if the judge remains unable to make the necessary determination without a mental examination of the respondent and the respondent refuses to consent to such an examination, an order for a compulsory mental examination may be justified as the least intrusive means of accomplishing the government's compelling interest in protecting the public, courts, and profession from mentally incompetent attorneys. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[10]**

Although rule 644 of the Transitional Rules of Procedure purports to allow a presumption affecting the burden of proof if an attorney fails without good cause to undergo an ordered mental examination, rule 644 must be interpreted as merely allowing a permissive inference of mental infirmity, in order to ensure due process. Rule 644 would not be valid if it operated to relieve the examiner of the burden of proving mental incompetence by clear and convincing evidence. The presumption authorized by rule 644, if applied, would conflict with the appropriate presumption that an attorney remains mentally competent to practice law in the absence of proof to the contrary, and would be tantamount to the imposition of a default judgment for failure to obey a discovery order, in violation of rule 321 of the Transitional Rules of Procedure. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[11]**

An attorney's license to practice law creates a continuing presumption, in the absence of proof to the contrary, that the attorney is not only morally fit but also mentally competent to practice law. This presumption underlies the rule in disciplinary proceedings that all reasonable doubts are to be resolved in favor of respondents and that, if equally reasonable inferences may be drawn from a fact, the inference to be accepted is the one leading to a conclusion of innocence. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[13]**

2116 Abatement of Other Proceedings

A determination whether a disciplinary proceeding should be abated on the ground of inability of the respondent to assist in the defense resembles a competency hearing in a criminal matter. In the law of attorney discipline, the respondent is presumed competent. Inability to assist in the defense of a disciplinary proceeding suggests a more serious form or degree of mental illness than inability to practice competently without endangering clients or the public. Therefore, facts sufficient to institute inactive status proceedings under section 6007(b) may not be sufficient to support abatement of a disciplinary proceeding. The appropriate standard for abatement is proof by a preponderance of the evidence that the attorney is incompetent to assist in the defense. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[6]**

2117 Stipulation for Inactive Enrollment (rule 5.194)

2118 Hearing on Merits (rule 5.195)

2119 Other Procedural Issues

Proceedings in the State Bar Court to involuntarily enroll an attorney inactive because of mental infirmity or illness are confidential. However, respondent waived confidentiality and the hearing judge ordered that the proceeding be public. Accordingly, the review proceeding is public as well. *In the Matter of Wolfgram* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355. **[1]**

Review department is very reluctant to consider a legal theory raised by an appellant for the first time on review. *In the Matter of Wolfgram* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355. **[4]**

An attorney involuntarily enrolled inactive because of a mental infirmity or illness may file an application for transfer to active status whenever the attorney is able to show that there is no longer a statutory basis for the inactive enrollment. *In the Matter of Wolfgram* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355. **[6]**

Because hearings and records regarding inactive enrollment under Business and Professions Code section 6007(b) are confidential, respondent was not identified in review department's opinion regarding issues raised by such inactive enrollment. However, where such issues arose during a disciplinary proceeding, the record in that proceeding remained public, subject to the hearing judge's discretion to seal specific portions of the record where proper grounds appeared. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[1]**

Orders for inactive enrollment under section 6007(b)(1), like those under section 6007(b)(3), are subject to independent review pursuant to rule 450 of the Transitional Rules of Procedure. *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[2]**

Disciplinary proceedings and involuntary inactive enrollment proceedings are not related so as to require consolidation, and may be conducted on simultaneous, parallel tracks. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[3]**

Decisions in involuntary inactive enrollment proceedings under section 6007(b) are reviewable by the review department pursuant to rules 450-453, Trans. Rules Proc. of State Bar. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[1]**

2119.10 Applicability of Other Rules of Procedure (rule 5.199)

2120 Inactive Enrollment under Section 6007(b)(3)

2121 Ordered (rule 5.196(A))

In the Matter of Wolfgram (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355.

2121.10 Effective Date of Inactive Enrollment Order (rule 5.197)

2125 Not Ordered (rule 5.196(B))

2125.10 Effect of Dismissal on Future Proceedings (rule 5.196(B))

In the Matter of Respondent B (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424.

2130 Interim Remedies under Section 6007(h) in Section 6007(b) cases

2130.10 Interpretation of Rules of Procedure (Div. 4, Ch. 9, rules 5.255-5.265)

2131 Imposed

2135 Not Imposed

2140 Petition to End Inactive Enrollment/Modify Interim Remedies in Section 6007(b)(3) cases

2140.10 Interpretation of Rules of Procedure (Div. 4, Ch. 4, rules 5.205-5.212)

2140.20 Interpretation of Rules of Procedure (Div. 4, Ch. 10, rules 5.270-5.278)

2141 Granted

2142 Denied

2143 Interim Remedies Substituted for Inactive Enrollment

2144 Interim Remedies Modified

2190 Miscellaneous Issues in Section 6007(b)(3) Cases

The only subchapter of the Americans with Disabilities Act that the State Bar could be subject to is the public entities subchapter, which provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity. Under that subchapter, a qualified individual with a disability is one who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. In this proceeding to enroll an attorney inactive because of a mental infirmity or illness, respondent is not being enrolled inactive merely because he has a mental infirmity or illness. Rather, required clear and convincing evidence has shown that respondent is unable to or habitually fails to perform his duties or undertakings competently or that he is unable to practice law without substantial threat of harm to his clients or the public. Such a person is clearly not qualified to practice law in this State, not because of illness, but because of proven habitual failure to perform the duties of an attorney competently or proven substantial risk of harm to clients or the public. *In the Matter of Wolfgram* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 355. **[5]**

A proceeding for involuntary inactive enrollment is not disciplinary in nature. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[3]**

The facts of each case will determine whether a particular rule of civil or criminal law should be applied in State Bar proceedings to ensure due process. This principle applies in involuntary inactive enrollment proceedings as well as disciplinary proceedings. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[12]**

2200 Issues in Section 6007(c) Involuntary Inactive Enrollment Proceedings

2201 Special Procedural Issues in Section 6007(c)(1) Address of Record Cases

2203 Interpretation of Rules of Procedure (Div. 4, ch. 5, rules 5.215-5.221)

2205 Inactive Enrollment under Section 6007(c)(1) Address of Record Provision

2205.10 Ordered

2205.50 Not Ordered

2210 Special Procedural Issues in Section 6007(c)(2) Threat of Harm Cases

2210.05 Interpretation of Rules of Procedure (Div. 4, ch. 6, rules 5.225-5.238)

2210.10 Shifting burden of proof under Section 6007(c)(2)(B)

2210.20 Necessity of hearing

2210.30 Use of declarations as evidence

Declarations offered in support of application for involuntary inactive enrollment did not provide an evidentiary basis to find clear and convincing evidence of respondent's likelihood of causing substantial harm, where declarants simply identified themselves as authors of unverified reports without vouching for the truth of the reports or establishing a business records exception to the hearsay rule. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[4]**

2210.40 Underlying proceeding must be expedited

Because of due process concerns, time spent on involuntary inactive enrollment pending disciplinary proceedings is limited to one year absent proof of delay by respondent or respondent's counsel or other circumstances justifying lack of compliance. (See rules 799, 799.8, Trans. Rules Proc. of State Bar.) Where review department had ruled on earlier appeal that respondent would receive credit against final discipline for time spent on involuntary inactive enrollment, and respondent had not sought to terminate inactive enrollment during pendency of proceedings on remand and second appeal, respondent would be prejudiced if period of over five years spent on inactive enrollment were not credited against waiting period to apply for reinstatement. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[7]**

Where lapse of time between sessions of hearing in disciplinary matter resulted from respondent's own actions, and respondent never complained about delay, respondent waived right to speedy determination of charges underlying involuntary inactive enrollment. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[1]**

Upon respondent's application for retransfer to active status from involuntary inactive enrollment under section 6007(c), based on delay in processing of disciplinary proceeding on underlying charges, hearing judge must determine to what extent respondent or respondent's counsel was responsible for such delays, and whether circumstances otherwise justified any delays. (Trans. Rules Proc. of State Bar, rules 799, 799.7, 799.8.) *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[26]**

2210.90 Other special procedural issues

In order to impose involuntary inactive enrollment on an attorney pursuant to Business and Professions Code section 6007 (c), the court must find that the attorney poses a substantial threat of harm to the attorney's clients

or the public. The following elements must be shown by clear and convincing evidence: that the attorney has caused or is causing substantial harm to clients or the public; that clients or the public are likely to suffer greater injury from denial of inactive enrollment than the attorney is likely to suffer if it is granted or there is a reasonable likelihood that the harm will reoccur and continue; and that there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[2]**

It would have been inappropriate in involuntary inactive enrollment proceeding for judge to draw any inference from pending criminal charges in and of themselves. However, testimony offered under oath and subject to cross-examination in preliminary hearings on such criminal charges supported judge's findings regarding facts of respondent's criminal conduct. This evidence was sufficient to demonstrate a reasonable probability that State Bar would prevail on merits of disciplinary charges brought thereon. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[3]**

Ordinarily, the standard of proof in disciplinary proceedings is by clear and convincing evidence, and that standard has been applied in involuntary inactive enrollment proceedings under both section 6007(c) and section 6007(b)(3). *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454. **[8]**

Disciplinary proceedings and involuntary inactive enrollment proceedings are not related so as to require consolidation, and may be conducted on simultaneous, parallel tracks. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[3]**

Like the standard of proof in disciplinary proceedings and in proceedings under section 6007(c), the standard of proof in involuntary inactive enrollment proceedings under section 6007(b)(3) is clear and convincing evidence. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[2]**

Where respondent had been placed on involuntary inactive enrollment pursuant to section 6007(c) prior to hearing on underlying charges, and after review, proceeding on underlying charges was remanded for partial rehearing and new discipline recommendation, review department directed that on remand, whether suspension or disbarment was recommended, respondent should receive credit for time spent on inactive enrollment. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[25]**

2220 Inactive Enrollment under Section 6007(c)(2)

2221 Ordered

Where respondent had missed a court appearance on behalf of a client shortly after stipulating to discipline based in part on similar past conduct; had brought an illegal drug to court, attempted to visit an incarcerated client with the drug in his possession, and thrown the drug on the floor after refusing to be searched; had been stopped on another occasion with the drug in his car; and had been observed to be under the influence of a controlled substance while with a client, there was a clear likelihood of harm to both respondent's clients and the public if respondent were allowed to practice law pending adjudication of criminal and State Bar proceedings, and hearing judge erred in focusing exclusively on threat of harm to clients and finding insufficient evidence thereof to justify inactive enrollment. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[5]**

Where there was uncontroverted evidence of repeated client harm and other violations of law by respondent, and no evidence of recognition by respondent of substance abuse problem, hearing judge erred in denying involuntary inactive enrollment of respondent without considering substantial harm which public was likely to suffer from such denial. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[8]**

In the Matter of Heiner (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301.

2225 Not Ordered

2225.10 Insufficient showing of harm

2225.20 Insufficient showing re balance of harm (public/attorney)

2225.30 Insufficient showing that harm likely to recur

2225.40 Insufficient showing re State Bar prevailing on merits

2225.50 Procedural error

2225.90 Other reason

In the Matter of Wyshak (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70.

2230 Interim Remedies under Section 6007(h) in Section 6007(c) Cases

2231 Imposed

2235 Not Imposed

2240 Petition to Terminate Inactive Enrollment/Modify Interim Remedies in Section 6007(c) Cases

2140.10 Interpretation of Rules of Procedure, Div. 4, Ch. 7 (rules 5.240-5.245)

2140.20 Interpretation of Rules of Procedure, Div. 4, Ch. 10 (rules 5.270-5.278)

2241 Granted

2245 Denied

2247 Interim Remedies Substituted for Inactive Enrollment

2248 Interim Remedies Modified

2290 Miscellaneous Issues in Section 6007(c)(2) Cases

Respondent's record of prior discipline did not warrant great weight in involuntary inactive enrollment proceeding, where respondent's first prior disciplinary matter was unrelated to present conduct, and State Bar had stipulated in second prior matter that respondent's misconduct was only worthy of a short suspension not requiring client notification. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[6]**

In involuntary inactive enrollment proceeding, evidence showing very substantial likelihood that respondent had substance abuse problem could be considered as risk to the public of future professional misconduct even absent evidence of current client harm. *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658. **[7]**

The Supreme Court has expressly approved retroactive disciplinary suspension. *In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571. **[9]**

Both the Legislature, by statute, and the Supreme Court, by case law, have recognized that the Supreme Court has inherent authority over regulation of the practice of law. The Supreme Court has not felt constrained by lack of authorizing legislation to exercise this inherent power, and has concerned itself with comparable treatment of respondents in comparable situations. Accordingly, Supreme Court case law constituted appropriate authority for review department recommendation that a disbarred respondent be permitted to credit time spent on inactive enrollment toward waiting period to apply for reinstatement, just as an interimly suspended attorney-felon can do by rule (rule 662, Trans. Rules Proc. of State Bar). *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[5]**

By rule, convicted felons are always entitled to credit for time spent on interim suspension against the waiting period for seeking reinstatement. (Rule 662, Trans. Rules Proc. of State Bar.) Inactive enrollment has the same effect as interim suspension in banning the practice of law pending a final order of discipline, and is similarly designed to protect the public during the pendency of a disciplinary case against the malfeasant attorney. Giving credit for interim suspension against the waiting period for reinstatement reflects the decision that five years removal from practice is a sufficient minimum opportunity for rehabilitation, even if the time period precedes the order of disbarment. No policy interest would be served by treating inactively enrolled attorneys differently from interimly suspended attorneys in this regard. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[6]**

Because of due process concerns, time spent on involuntary inactive enrollment pending disciplinary proceedings is limited to one year absent proof of delay by respondent or respondent's counsel or other circumstances justifying lack of compliance. (See rules 799, 799.8, Trans. Rules Proc. of State Bar.) Where review department had ruled on earlier appeal that respondent would receive credit against final discipline for time spent on involuntary inactive enrollment, and respondent had not sought to terminate inactive enrollment during pendency of proceedings on remand and second appeal, respondent would be prejudiced if period of over five years spent on inactive enrollment were not credited against waiting period to apply for reinstatement. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[7]**

A proceeding for involuntary inactive enrollment is not disciplinary in nature. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[3]**

The facts of each case will determine whether a particular rule of civil or criminal law should be applied in State Bar proceedings to ensure due process. This principle applies in involuntary inactive enrollment proceedings as well as disciplinary proceedings. *In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424. **[12]**

Neither a respondent's section 6007(c) inactive enrollment itself nor the unproven charges underlying it should be relied upon as aggravation in a subsequent disciplinary proceeding. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301. **[24]**

2300 Issues in Other Section 6007 Proceedings

Note: For inactive enrollment of probationers under § 6007(d), see topic number 1715.

2310 Inactive Enrollment After Disbarment Recommendation (Section 6007(c)(4))

2311 Imposed

In the Matter of Wittenberg (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418

In the Matter of Romano (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391

In the Matter of Kinney (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360.

In the Matter of Tishgart (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338

In the Matter of Guzman (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308.

In the Matter of Song (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273

In the Matter of Lenard (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250

In the Matter of Reiss (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206

In the Matter of Sullivan (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

In the Matter of Blum (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170.

In the Matter of Mapps (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.

2315 Not Imposed

2315.10 Presumption of harm rebutted

In reviewing hearing department decision in disciplinary proceeding, review department took judicial notice that in separate involuntary inactive enrollment proceeding, respondent had been found to have rebutted the presumption, arising from hearing department's disbarment recommendation, that respondent's conduct posed a continuing threat of harm to clients and the public. However, the findings in the involuntary inactive enrollment proceeding were not binding in the disciplinary matter, nor did they have any probative value. *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676. **[4]**

2315.20 Procedural error

In the Matter of Phillips (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.47.

2315.90 Other reason

In the Matter of Phillips (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.47.

2319 Miscellaneous Issues re Section 6007(c)(4)

In the Matter of Torres (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138.

To apply amendments to Business and Professions Code section 6007, subdivision (c)(4), effective January 1, 1997, against an attorney whose disciplinary proceeding began before January 1, 1997, effective date of amendments would be impermissible retroactive application of amendments. That is because amendments had dramatic effect on attorney's legal ability to practice law and deprived attorney of right to request hearing on inactive enrollment and because amendments neither clarified prior law nor merely changed procedure of trial. *In the Matter of Phillips* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.47.**[1 a-f]**

Even though respondent received extensive trial on disciplinary charges, he was never formally notified that outcome of trial could result in his immediate and automatic inactive enrollment under amendments to Business and Professions Code section 6007, subdivision (c)(4), effective January 1, 1997. Reasonable notice is crucial to a meaningful hearing. Thus, disciplinary trial itself could not have provided respondent with minimal protection on issue of inactive enrollment because issues can differ from case to case between the appropriate level of discipline for misconduct compared to the need for immediate public protection to protect existing or future clients from additional risk of harm. And disciplinary hearing did not fulfill explicitly recognized right to request hearing on the propriety of inactive enrollment provided for under former version of section 6007, subdivision (c)(4) before its amendment effective January 1, 1997. *In the Matter of Phillips* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.47.**[2 a-b]**

Where respondent had been placed on inactive enrollment based on hearing judge's disbarment recommendation, review department recommended that if respondent provided proof of compliance with State Bar Court's notification rule (Trans. Rules Proc. of State Bar, rule 795.5) at time of inactive enrollment, respondent be excused from complying with Supreme Court's notification rule (rule 955, Cal. Rules of Court) upon disbarment, and also that respondent receive credit for time on inactive enrollment toward waiting period to apply for reinstatement. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[9]**

Both the Legislature, by statute, and the Supreme Court, by case law, have recognized that the Supreme Court has inherent authority over regulation of the practice of law. The Supreme Court has not felt constrained by lack of authorizing legislation to exercise this inherent power, and has concerned itself with comparable treatment of respondents in comparable situations. Accordingly, Supreme Court case law constituted appropriate authority for review department recommendation that a disbarred respondent be permitted to credit time spent on inactive enrollment toward waiting period to apply for reinstatement, just as an interimly suspended attorney-felon can do by rule (rule 662, Trans. Rules Proc. of State Bar). *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[5]**

By rule, convicted felons are always entitled to credit for time spent on interim suspension against the waiting period for seeking reinstatement. (Rule 662, Trans. Rules Proc. of State Bar.) Inactive enrollment has the same effect as interim suspension in banning the practice of law pending a final order of discipline, and is similarly designed to protect the public during the pendency of a disciplinary case against the malfeasant attorney. Giving credit for interim suspension against the waiting period for reinstatement reflects the decision that five years removal from practice is a sufficient minimum opportunity for rehabilitation, even if the time period precedes the order of disbarment. No policy interest would be served by treating inactively enrolled attorneys differently from interimly suspended attorneys in this regard. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[6]**

Because of due process concerns, time spent on involuntary inactive enrollment pending disciplinary proceedings is limited to one year absent proof of delay by respondent or respondent's counsel or other circumstances justifying lack of compliance. (See rules 799, 799.8, Trans. Rules Proc. of State Bar.) Where review department had ruled on earlier appeal that respondent would receive credit against final discipline for time spent

on involuntary inactive enrollment, and respondent had not sought to terminate inactive enrollment during pendency of proceedings on remand and second appeal, respondent would be prejudiced if period of over five years spent on inactive enrollment were not credited against waiting period to apply for reinstatement. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[7]**

Where attorney had been placed on involuntary inactive enrollment following disbarment recommendation by hearing department, but on review, discipline recommendation was decreased to suspension and probation, review department recommended that period of involuntary inactive enrollment already served by attorney, and any additional period served thereafter, be credited towards period of actual suspension. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[24]**

If order placing attorney on inactive enrollment was predicated solely on hearing department's disbarment recommendation, which was later superseded by review department's recommendation of suspension, parties could stipulate, pursuant to rule 799 of the Rules of Procedure, to permit attorney's retransfer to active status pending the finality of disciplinary proceedings. Attorney also retained option of stipulating to continued inactive enrollment, in which case review department recommended that such inactive enrollment be credited toward period of actual suspension. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[25]**

2320 Inactive Enrollment for Failure to Answer (Section 6007(e))

2320.10 Interpretation of Rules of Procedure, Div. 4, ch. 8 (rules 5.250-5.253)

2321 Imposed

In the Matter of Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348

In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.

2325 Not Imposed

2329 Miscellaneous Issues re Section 6007(e)

Hearing judge erred in recommending that respondent receive credit toward his period of actual suspension for the time he had been on involuntary inactive enrollment pursuant to section 6007(e). Neither the statute nor the case law authorizes the State Bar Court to credit a member's period of involuntary inactive enrollment, under subdivision (e), toward a period of actual suspension. *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. **[9]**

Normally, the requirement that a disciplined attorney show rehabilitation, fitness to practice, and learning in the law prior to returning to practice is imposed where the attorney's actual suspension is two years or greater. However, where period of time that attorney was enrolled inactive on account of failure to answer notice to show cause, coupled with one-year actual suspension recommended by review department, resulted in attorney being continuously ineligible to practice law for greater than two years, it was appropriate to recommend compliance with such requirement. *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. **[5]**

2340 Petitions to Terminate Inactive Enrollment under Section 6007(c)(4) or (e)

Note: For Petitions to terminate inactive enrollment under section 6007(b), see topic numbers 2054 et seq., 2074 et seq., and 2140 et seq.; under section 6007(c)(1) or (c)(2), see topic number 2240 et seq.

2340.10 Interpretation of Rules of Procedure, rules 5.251, 5.315

2341 Granted

2345 Denied

In the Matter of Dixon (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.23.

2347 Interim Remedies Substituted for Inactive Enrollment

2349 Miscellaneous Issues re Termination of Inactive Enrollment

Because of due process concerns, time spent on involuntary inactive enrollment pending disciplinary proceedings is limited to one year absent proof of delay by respondent or respondent's counsel or other circumstances justifying lack of compliance. (See rules 799, 799.8, Trans. Rules Proc. of State Bar.) Where review department had ruled on earlier appeal that respondent would receive credit against final discipline for time spent on involuntary inactive enrollment, and respondent had not sought to terminate inactive enrollment during pendency of proceedings on remand and second appeal, respondent would be prejudiced if period of over five years spent on inactive enrollment were not credited against waiting period to apply for reinstatement. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[7]**

2400 Issues in Standard 1.2(c)(i) Rehabilitation Proceedings (1986 Standard 1.4(c)(ii))

2401 Special Procedural Issues

2401.10 Interpretation of Rules of Procedure (Div. 7, Ch. 1 (rules 5.400-5.411)

2401.20 Petition and Response (rules 5.401, 5.403)

2410.30 Earliest Time to File Petition (rule 5.402)

2402 Burden of Proof/Showing Required (rule 5.404)

In proceedings for relief from actual suspension, an attorney's compliance with the terms of suspension and conditions of probation does not create a presumption of the attorney's rehabilitation; instead, in addition to such compliance, the attorney must show by a preponderance of the evidence his rehabilitation, present fitness to practice, and present learning and ability in the general law to be relieved of actual suspension under Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii). *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867. **[7]**

In a proceeding to be relieved of actual suspension, the numerous declarations presented by the attorney from his family, friends, and colleagues attesting to his good character and exemplary conduct were insufficient as a matter of law to establish rehabilitation. While many of the declarations contained laudatory descriptions of the attorney's capabilities and effectiveness in resolving difficult problems, a close reading of the declarations showed that with few exceptions, the declarants were unaware of the specific nature of the attorney's wrongdoing, and almost all were under the misapprehension that the attorney's tumor operation in 1996–1997 was the cause of his misconduct resulting in prior discipline. Therefore, the declarations did not constitute substantial evidence to support the finding of exemplary conduct. *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867. **[2]**

The standard of proof in standard 1.4(c)(ii) proceedings for relief from actual suspension is preponderance of the evidence. (Rules Proc. of State Bar, rule 634.) Thus, to be entitled to relief from actual suspension, petitioners must prove, by a preponderance of the evidence, their rehabilitation, present fitness to practice, and present learning and ability in the general law. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[1]**

In standard 1.4(c)(ii) proceeding for relief from actual suspension, hearing judge did not abuse his discretion in determining that State Bar's evidence establishing that Client Security Fund had previously paid one of petitioner's former clients more than $3,400 based on the client's claim that petitioner improperly failed to pay that sum to the client's medical care providers did not prevent petitioner from showing his rehabilitation because hearing judge based that determination on his findings that petitioner did not know (1) of the client's claim or (2) of Client Security Fund's actions until petitioner's deposition was taken in standard 1.4(c)(ii) proceeding and because those two findings are supported by substantial evidence consisting of petitioner's own testimony, which was supported with a number of letters from the client's file demonstrating that medical providers had been paid. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[4]**

In comparison to a disbarred attorney, who has been found unfit to practice law and whose name has been stricken from the roll of attorneys, the suspended attorney in standard 1.4(c)(ii) proceeding for relief from actual

suspension has suffered a more modest negative evaluation of his character by virtue of his prior misconduct. Thus, in marked contrast to the disbarred attorney whose showing of rehabilitation must be made with stronger proof of present honesty and integrity than one seeking admission for the first time and with proof of a sustained period of exemplary conduct, the suspended attorney in standard 1.4(c)(ii) proceeding may show his rehabilitation, even before the completion of the term of his actual suspension, with proof overcoming a reduced prior finding of a danger to the public and with a relaxed showing of exemplary conduct. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[6]**

Even though moral shortcomings that previously resulted in discipline of the suspended attorney in standard 1.4(c)(ii) proceeding for relief from actual suspension are proportionally less than moral shortcomings that would result in disbarment, the suspended attorney must still show, by a preponderance of the evidence, that he meets the same high moral standards required of all attorneys in this state. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[7]**

Because record in standard 1.4(c)(ii) proceeding for relief from actual suspension established (1) that, when petitioner committed the misconduct in his prior record that resulted in his actual suspension, he was abusing and addicted to alcohol and cocaine, (2) that his abuses of and addictions to alcohol and cocaine causally contributed to his prior misconduct, (3) that he had undergone a meaningful and sustained period of rehabilitation from his abuses and addictions, (4) that, when the discipline was imposed on him in his prior record, these facts were not known to State Bar, State Bar Court, the Supreme Court, and (5) that when discipline was imposed in prior proceeding, petitioner was in denial regarding his abuses of and addictions to alcohol and cocaine, review department found, when it reviewed record to determine whether hearing judge's findings of rehabilitation and present fitness were supported by substantial evidence, that petitioner's addictions were not excuses for, but explanations of his prior misconduct. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[9]**

The State Bar Court determines whether a petitioner seeking relief from actual suspension has met the requirements of standard 1.4(c)(ii) without reevaluating the petitioner's prior discipline, whether perceived as lenient or harsh. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[2]**

The State Bar Court considers the prior misconduct of a petitioner seeking relief from actual suspension under standard 1.4(c)(ii), as well as the aggravating and mitigating circumstances surrounding such misconduct, to determine the amount and nature of the required rehabilitation. In addition, other misconduct that predates the last discipline and was not considered in the underlying disciplinary matters should be considered in weighing the starting point for measuring discipline. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[3]**

Compliance with the terms of actual suspension and probation presumptively satisfies the discipline required for a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) to become a productive attorney. However, the petitioner must also show rehabilitation, present fitness to practice law, and present learning and ability in the general law. That showing must be measured from the time of the last prior discipline. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[4]**

Where a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) had been disciplined several times, the misconduct underlying that discipline could not be used to rebut the petitioner's showing of rehabilitation, but can be used as a point from which to measure rehabilitation. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[5]**

Where a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) had not been disciplined for failing to file income tax returns, it was proper to consider this failure, as well as the petitioner's indebtedness to the Internal Revenue Service and other unpaid obligations, in measuring the petitioner's rehabilitation. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[6]**

Stipulations about culpability, aggravation, and mitigation provide a starting point to determine whether a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) has shown rehabilitation and is unlikely to repeat misconduct. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[7]**

The evidence of rehabilitation required to relieve a petitioner from actual suspension in a proceeding under standard 1.4(c)(ii) varies according to the seriousness of the petitioner's misconduct. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[9]**

A petitioner seeking relief from actual suspension under standard 1.4(c)(ii) must show compliance with the terms of probation. Also, the petitioner must show by a preponderance of the evidence that (1) his conduct has been exemplary from the time of the imposition of the last prior discipline and (2) the conduct evidencing rehabilitation is such that the court may make a determination that the conduct leading to the discipline or other need for rehabilitation is not likely to recur. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[10]**

In determining whether a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) is likely to commit further misconduct, the State Bar Court should look to the nature of the petitioner's underlying offense or offenses; any aggravation, other misconduct, or mitigation that may have been considered; and any evidence about elimination of the cause or causes of such misconduct. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[11]**

Substantial evidence supported a decision relieving a petitioner from actual suspension under standard 1.4(c)(ii) where the petitioner had eliminated the medical, emotional, and financial problems underlying his misconduct; had been disciplined for violating probation conditions and eventually had complied with the terms of his probation; had provided 13 declarations attesting to his major life changes and to his good character; had suffered from undiagnosed diabetes when he had been administratively suspended for failing to take the California Professional Responsibility *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[12]**

Examination within the time prescribed by a Supreme Court order; had paid a great many debts; had reached an agreement with the Internal Revenue Service about failing to file federal income tax returns and was paying the outstanding tax debt; had only three other debts, which were unrelated to the practice of law and which totalled $2,800 to $3,200; and had received and later paid a traffic ticket for speeding. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[12]**

In hearing to establish fitness to return to practice after suspension, respondent could either show that restitution had been completed or that restitution had been made to the best of respondent's financial ability. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[14]**

Where time period between effective date of discipline and eligibility to apply to return to active practice would not necessarily be long enough for respondent to take and pass professional responsibility examination before hearing on fitness to practice, review department did not recommend that respondent be given less than the normal one-year period to pass such examination. Passage of the examination would be relevant evidence at fitness hearing but was not a condition precedent to return to practice. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297. **[15]**

Where attorney had committed extremely serious misconduct over long period of time, and questions remained concerning attorney's rehabilitation, requiring standard 1.4(c)(ii) showing in lieu of disbarment would not be sufficient to protect the public and maintain the integrity of the profession. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[15]**

Where examiner was concerned to obtain detailed, complete information regarding respondent's anticipated application to resume practice pursuant to standard 1.4(c)(ii), review department recommended that respondent follow same format in application as in an application for reinstatement; otherwise, examiner could seek such information by a discovery request which would be more time consuming. (Trans. Rules Proc. of State Bar, rules 810-826.) *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[14]**

Passage of the Professional Responsibility Examination would be relevant evidence in a hearing pursuant to standard 1.4(c)(ii), but is not a condition precedent. Accordingly, respondent ordered to take PRE was given the standard period of one year to do so even though respondent's standard 1.4(c)(ii) hearing might occur sooner. *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[15]**

For an egregious rule violation, the State Bar may seek suspension of at least two years and application of standard 1.4(c)(ii); an attorney who can satisfy the showing required by standards 1.4(c)(ii) poses no continuing threat to the public warranting disbarment. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. **[11]**

Procedural rules proposed by State Bar which would permit attorney in standard 1.4(c)(ii) hearing to make required showing by preponderance of evidence; would allow stipulation that attorney meets conditions; would guarantee opportunity to make required showing before expiration of two-year actual suspension; and would provide for expedited review, appeared to answer Supreme Court's concerns regarding conduct of such hearings. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[22]**

2403 Expedited Proceeding (rule 5.400)

Procedures for ruling on standard 1.4(c)(ii) petitions for relief from actual suspension (Rules Proc. of State Bar, rules 630-641) are expedited to avoid procedural delays that might effectively create a far longer period of actual suspension than that originally ordered by the Supreme Court. Proceedings on standard 1.4(c)(ii) petitions are summary in nature, not full-fledged reinstatement proceedings in which disbarred attorneys seek to be reinstated to the practice of law. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[3]**

Given the summary nature and expedited schedule of a proceeding under standard 1.4(c)(ii), the petitioner remains on actual suspension until the finality of the decision in the State Bar Court, including review. (See Rules Proc. of State Bar, title II, State Bar Court Proceedings, rules 632, 633, 635, 638, 639, 640.) *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[13]**

Under applicable expedited hearing procedures, a respondent may apply for a hearing pursuant to standard 1.4(c)(ii) up to 150 days before the respondent's actual suspension is set to expire. (Rules 810-826, Trans. Rules Proc. of State Bar.) *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[15]**

Procedural rules proposed by State Bar which would permit attorney in standard 1.4(c)(ii) hearing to make required showing by preponderance of evidence; would allow stipulation that attorney meets conditions; would guarantee opportunity to make required showing before expiration of two-year actual suspension; and would provide for expedited review, appeared to answer Supreme Court's concerns regarding conduct of such hearings. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1. **[22]**

2404 Discovery (rule 5.405)

2405 Documentary Evidence (rule 5.406)

2409 Other Procedural Issues

In reviewing a hearing judge's decision on a standard 1.4(c)(ii) petition for relief from actual suspension, the standards of review are abuse of discretion and error of law. (Rules Proc. of State Bar, rules 300(k), 639.) Under abuse of discretion standard, review department does not review hearing judge's decision with the intention of substituting its view for that of hearing judge, but rather with the intention of employing the equivalent of the substantial evidence test by accepting hearing judge's resolution of credibility and conflicting evidence and hearing judge's choice of possible reasonable inferences. Review department reviews the record to determine if hearing judge's findings are supported by substantial evidence and whether any errors of law were committed. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[2]**

State Bar Court does not have authority to conditionally grant standard 1.4(c)(ii) petitions for relief from actual suspension or to impose probation type conditions on attorneys when granting such petitions. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[5]**

The State Bar Court determines whether a petitioner seeking relief from actual suspension has met the requirements of standard 1.4(c)(ii) without reevaluating the petitioner's prior discipline, whether perceived as lenient or harsh. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[2]**

A petitioner seeking relief from actual suspension is not ordinarily required to complete probation before he or she may present meaningful evidence of rehabilitation in a proceeding under standard 1.4(c)(ii). Rehabilitative sanctions in the form of continuing probation conditions may remain in place after a petitioner's relief from actual

suspension. A disciplined attorney may show rehabilitation before his or her actual suspension expires in a proper proceeding under standard 1.4(c)(ii). (Rules Proc. of State Bar, title II, State Bar Court Proceedings, rules 632, 640.) *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[8]**

Given the summary nature and expedited schedule of a proceeding under standard 1.4(c)(ii), the petitioner remains on actual suspension until the finality of the decision in the State Bar Court, including review. (See Rules Proc. of State Bar, title II, State Bar Court Proceedings, rules 632, 633, 635, 638, 639, 640.) *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[13]**

Nothing in lengthy pendency of probation revocation proceeding delayed or prevented respondent's filing of application for termination of suspension pursuant to standard 1.4(c)(ii). (Trans. Rules Proc. of State Bar, rules 810-826.) *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[17]**

Where respondent was still on suspension in prior matter due to failure to make showing under standard 1.4(c)(ii), hearing judge's recommendation that actual suspension in current matter be consecutive to such suspension was inconsistent with recommendation that only one 1.4(c)(ii) hearing be required to terminate both suspensions. Review department therefore recommended that actual suspension in current matter be prospective to Supreme Court's order, but concurrent with balance of all suspensions in effect as of entry of such order. *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244. **[22]**

Under applicable expedited hearing procedures, a respondent may apply for a hearing pursuant to standard 1.4(c)(ii) up to 150 days before the respondent's actual suspension is set to expire. (Rules 810-826, Trans. Rules Proc. of State Bar.) *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552. **[15]**

Where examiner was concerned to obtain detailed, complete information regarding respondent's anticipated application to resume practice pursuant to standard 1.4(c)(ii), review department recommended that respondent follow same format in application as in an application for reinstatement; otherwise, examiner could seek such information by a discovery request which would be more time consuming. (Trans. Rules Proc. of State Bar, rules 810-826.) *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. **[14]**

2410 Actual Suspension Lifted

In the Matter of Terrones (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289.

Substantial evidence supported a decision relieving a petitioner from actual suspension under standard 1.4(c)(ii) where the petitioner had eliminated the medical, emotional, and financial problems underlying his misconduct; had been disciplined for violating probation conditions and eventually had complied with the terms of his probation; had provided 13 declarations attesting to his major life changes and to his good character; had suffered from undiagnosed diabetes when he had been administratively suspended for failing to take the California Professional Responsibility *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[12]**

Examination within the time prescribed by a Supreme Court order; had paid a great many debts; had reached an agreement with the Internal Revenue Service about failing to file federal income tax returns and was paying the outstanding tax debt; had only three other debts, which were unrelated to the practice of law and which totalled $2,800 to $3,200; and had received and later paid a traffic ticket for speeding. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[12]**

2450 Actual Suspension Not Lifted

2451 Inadequate Showing of Rehabilitation

In a proceeding to be relieved of actual suspension, in view of the hearing judge's findings that the attorney had engaged in an objectively unsupportable crusade to discredit State Bar employees, consciously embarked on a baseless campaign against the State Bar Court's jurisdiction, and asserted numerous other meritless challenges to the disciplinary process, it was an abuse of discretion for the hearing judge to find that the attorney's conduct was exemplary. Because the attorney's prior misconduct involved pursuing meritless claims and showing disrespect for the interests of his clients and the judicial system by filing frivolous objections and appeals and disregarding lawful court orders, the attorney's actions since the imposition of discipline showed that the attorney's conduct was not aberrational. *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867. **[1a, b]**

In a proceeding to be relieved of actual suspension, the numerous declarations presented by the attorney from his family, friends, and colleagues attesting to his good character and exemplary conduct were insufficient as a matter of law to establish rehabilitation. While many of the declarations contained laudatory descriptions of the attorney's capabilities and effectiveness in resolving difficult problems, a close reading of the declarations showed that with few exceptions, the declarants were unaware of the specific nature of the attorney's wrongdoing, and almost all were under the misapprehension that the attorney's tumor operation in 1996–1997 was the cause of his misconduct resulting in prior discipline. Therefore, the declarations did not constitute substantial evidence to support the finding of exemplary conduct. *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867. **[2]**

In a proceeding for relief from actual suspension, where (1) the attorney continued to reject the truth of the facts and legal conclusions contained in his stipulation in a prior disciplinary case, claiming that trial counsel had illegally coerced him to sign it; (2) the attorney had testified recently in a deposition that he was not culpable of prior misconduct because an illness precluded a finding that he had acted willfully, although much of his wrongdoing either pre–dated or post–dated his health problems; and (3) there was no basis for the attorney's assertion of a good faith belief in his innocence, the attorney showed an unwillingness to accept responsibility for his prior misconduct that rendered unreasonable a finding that he was rehabilitated. The attorney's ongoing lack of accountability for his previous wrongdoing was particularly troubling because it mirrored the aggravating circumstances found in prior disciplinary proceedings that he was indifferent toward the consequences of his misconduct. *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867. **[3a–c]**

2452 Inadequate Showing of Fitness to Practice

In a proceeding for relief from actual suspension, where the attorney mounted a relentless and meritless offensive against certain State Bar employees, indiscriminately making baseless charges against them in letters, e–mails, facsimiles, pleadings filed with the Supreme Court and the State Bar Court, and telephone calls to various individuals and departments of the State Bar, his behavior rose to the level of harassment and was indicative of his lack of respect for State Bar employees and for the disciplinary process. Moreover, the attorney's censure of the State Bar extended beyond specific employees to the judicial branch itself. These actions demonstrated that the attorney was unable or unwilling to conduct himself in a manner consistent with the settled definition of good moral character. Under these facts, the hearing judge abused his discretion when he found that the attorney established by a preponderance of the evidence his present fitness to practice. *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867. **[4a–d]**

2453 Inadequate Showing of Learning and Ability in Law

Where the attorney (1) repeatedly attempted to challenge his membership status; (2) repeatedly challenged the constitutionality of Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii) proceedings based on his faulty legal analysis of his own membership status; (3) made jurisdictional challenges first to the Supreme Court and then to the State Bar Court on the same grounds; and (4) made meritless attempts to remove his disciplinary record from the State Bar's website, his behavior demonstrated an inability to evaluate facts and the law competently and to draw appropriate inferences and conclusions from them. In view of these facts, despite the attorney's having completed more than 100 hours of continuing legal education, the hearing judge abused his discretion when he found that the attorney possessed learning and ability in the general law. *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867. **[5a–f]**

2490 Miscellaneous Issues in Standard 1.2(c)(i) Rehabilitation Proceedings

Even though petitioner in a standard 1.4(c)(ii) proceeding for relief from actual suspension did not know that Client Security Fund had previously paid one of his former clients more than $3,400 based on the client's claim that petitioner improperly failed to pay that sum to the client's medical care providers and even though letters from the client's file demonstrated that medical providers had been paid, petitioner must still reimburse Client Security Fund for the monies it paid the client. (Bus. & Prof. Code, § 6140.5, subd. (c).) *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[5]**

In comparison to a disbarred attorney, who has been found unfit to practice law and whose name has been stricken from the roll of attorneys, the suspended attorney in standard 1.4(c)(ii) proceeding for relief from actual suspension has suffered a more modest negative evaluation of his character by virtue of his prior misconduct. Thus, in marked contrast to the disbarred attorney whose showing of rehabilitation must be made with stronger proof of present honesty and integrity than one seeking admission for the first time and with proof of a sustained period of exemplary conduct, the suspended attorney in standard 1.4(c)(ii) proceeding may show his rehabilitation, even before the completion of the term of his actual suspension, with proof overcoming a reduced prior finding of a danger to the public and with a relaxed showing of exemplary conduct. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[6]**

In standard 1.4(c)(ii) proceeding for relief from actual suspension, State Bar Court presumes that the prior discipline imposed on petitioner was, based on the facts as shown in the prior record of discipline, appropriate to accomplish the goals of attorney discipline to protect the public, the courts, and the profession. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[8]**

Substantial evidence supported hearing judge's findings in standard 1.4(c)(ii) proceeding for relief from actual suspension that petitioner established his rehabilitation and present fitness to practice where petitioner proved (1) that he eliminated his abuses of alcohol and cocaine that causally contributed to his prior misconduct; (2) that he openly described his prior misconduct to an insurance company for whom he worked and to his church, Cocaine Anonymous group, friends, and relatives and to the five character witnesses who convincingly testified as to his rehabilitation and good moral character; and (3) that he became a leader in Cocaine Anonymous and president of his church. State Bar did not impeach petitioner's showings of rehabilitation and present fitness with the incomplete copy of petitioner's application for license to act as a life insurance agent to which State Bar alleged, but did not prove, petitioner attached an addendum that contained a false and misleading description of his prior record of discipline. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[10]**

Hearing judge did not abuse his discretion in finding that petitioner in standard 1.4(c)(ii) proceeding for relief from actual suspension established his present learning and ability in the general law where petitioner proved that he recently (1) completed 100 hours of classes dealing with insurance contracts, claims, procedures, and ethics; (2) spent more than 200 hours studying estate planning and taxation for small business; (3) litigated his personal bankruptcy and his own child custody case; (4) obtained a dismissal of criminal charges his child's mother brought against him regarding visitation rights with his daughter; and (5) two attorneys testified that he had extensive knowledge of laws regarding estate and business taxation. *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289. **[11]**

State Bar Court does not have authority to conditionally grant standard 1.4(c)(ii) petitions for relief from actual suspension or to impose probation type conditions on attorneys when granting such petitions. *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220. **[5]**

Where a petitioner seeking relief from actual suspension under standard 1.4(c)(ii) had not been disciplined for failing to file income tax returns, it was proper to consider this failure, as well as the petitioner's indebtedness to the Internal Revenue Service and other unpaid obligations, in measuring the petitioner's rehabilitation. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[6]**

A petitioner seeking relief from actual suspension is not ordinarily required to complete probation before he or she may present meaningful evidence of rehabilitation in a proceeding under standard 1.4(c)(ii). Rehabilitative sanctions in the form of continuing probation conditions may remain in place after a petitioner's relief from actual suspension. A disciplined attorney may show rehabilitation before his or her actual suspension expires in a proper proceeding under standard 1.4(c)(ii). (Rules Proc. of State Bar, title II, State Bar Court Proceedings, rules 632, 640.) *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[8]**

A petitioner seeking relief from actual suspension under standard 1.4(c)(ii) must show compliance with the terms of probation. Also, the petitioner must show by a preponderance of the evidence that (1) his conduct has been exemplary from the time of the imposition of the last prior discipline and (2) the conduct evidencing rehabilitation is such that the court may make a determination that the conduct leading to the discipline or other need for rehabilitation is not likely to recur. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[10]**

Substantial evidence supported a decision relieving a petitioner from actual suspension under standard 1.4(c)(ii) where the petitioner had eliminated the medical, emotional, and financial problems underlying his misconduct; had been disciplined for violating probation conditions and eventually had complied with the terms of his probation; had provided 13 declarations attesting to his major life changes and to his good character; had suffered from undiagnosed diabetes when he had been administratively suspended for failing to take the California Professional Responsibility *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[12]**

Examination within the time prescribed by a Supreme Court order; had paid a great many debts; had reached an agreement with the Internal Revenue Service about failing to file federal income tax returns and was paying the outstanding tax debt; had only three other debts, which were unrelated to the practice of law and which totalled $2,800 to $3,200; and had received and later paid a traffic ticket for speeding. *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[12]**

Given the summary nature and expedited schedule of a proceeding under standard 1.4(c)(ii), the petitioner remains on actual suspension until the finality of the decision in the State Bar Court, including review. (See Rules Proc. of State Bar, title II, State Bar Court Proceedings, rules 632, 633, 635, 638, 639, 640.) *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571. **[13]**

Where an attorney previously involved in serious drug abuse had ceased such abuse unilaterally and did not present any expert evidence of current freedom from substance abuse, and the attorney did not submit any evidence of present learning and ability in the law following an interim suspension the length of which exceeded the attorney's prior period of licensure, public protection would be served by continuing the attorney's actual suspension until the attorney established freedom from drug dependency and present learning and ability in the general law. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[4]**

2500 Issues in Reinstatement Proceedings

2501 Special Procedural Issues

2502 Waiting Period to Apply for Reinstatement

The earliest time that respondent can petition for reinstatement if he is disbarred is five years after the effective date of his interim suspension. (Rules Proc. for State Bar Ct. Proceedings (eff. Jan. 1, 1995), rule 662(b).) Where the order placing respondent on interim suspension provided that he had to stop providing legal services for any paying clients by one date, but could perform legal services for preexisting pro bono clients until a later date, the earlier date was the effective date of the interim suspension because by obtaining an exception for completion of the pro bono cases, respondent acted for the benefit of his pro bono clients, the courts in which their cases were pending, and the justice system, conduct which would be discouraged if he was denied credit for the entire time he was prohibited from earning his living from the practice of law by reason of the interim suspension order resulting from his felony conviction. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310. **[2]**

In the Matter of Brazil (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679.

Both the Legislature, by statute, and the Supreme Court, by case law, have recognized that the Supreme Court has inherent authority over regulation of the practice of law. The Supreme Court has not felt constrained by lack of authorizing legislation to exercise this inherent power, and has concerned itself with comparable treatment of respondents in comparable situations. Accordingly, Supreme Court case law constituted appropriate authority for review department recommendation that a disbarred respondent be permitted to credit time spent on inactive enrollment toward waiting period to apply for reinstatement, just as an interimly suspended attorney-felon can do by rule (rule 662, Trans. Rules Proc. of State Bar). *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[5]**

By rule, convicted felons are always entitled to credit for time spent on interim suspension against the waiting period for seeking reinstatement. (Rule 662, Trans. Rules Proc. of State Bar.) Inactive enrollment has the same effect as interim suspension in banning the practice of law pending a final order of discipline, and is similarly designed to protect the public during the pendency of a disciplinary case against the malfeasant attorney. Giving credit for interim suspension against the waiting period for reinstatement reflects the decision that five years removal from practice is a sufficient

minimum opportunity for rehabilitation, even if the time period precedes the order of disbarment. No policy interest would be served by treating inactively enrolled attorneys differently from interimly suspended attorneys in this regard. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[6]**

Because of due process concerns, time spent on involuntary inactive enrollment pending disciplinary proceedings is limited to one year absent proof of delay by respondent or respondent's counsel or other circumstances justifying lack of compliance. (See rules 799, 799.8, Trans. Rules Proc. of State Bar.) Where review department had ruled on earlier appeal that respondent would receive credit against final discipline for time spent on involuntary inactive enrollment, and respondent had not sought to terminate inactive enrollment during pendency of proceedings on remand and second appeal, respondent would be prejudiced if period of over five years spent on inactive enrollment were not credited against waiting period to apply for reinstatement. *In the Matter of Heiner* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 559. **[7]**

The required five-year waiting period before a disbarred attorney can apply for reinstatement may be shortened to three years for good cause. By rule, the five-year and three-year periods run from the date of any interim suspension, and Supreme Court precedent has given the same effect to inactive enrollment. (Trans. Rules Proc. of State Bar, rule 662.) The issue whether the waiting period may run from the start of a suspension other than an interim suspension has not been decided, and did not need to be addressed by the review department in recommending disbarment, but could be raised by respondent before a hearing judge if respondent wished to seek reinstatement at the earliest possible time. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[22]**

A petition for reinstatement may be filed five years after the effective date of interim suspension, disbarment, or resignation. For good cause, reinstatement may be sought three years after disbarment. (Trans. Rules Proc. of State Bar, rule 602.) *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[9]**

To be accurate, petitioner should have stated that the minimum waiting period to apply for reinstatement is five years (Trans. Rules Proc. of State Bar, rule 662), rather than stating that he had been disbarred for five years. Nonetheless, petitioner's statement as a whole clearly indicated that petitioner was not then licensed to practice law, so misstatement was not serious. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[12]**

2503 Burden of Proof/Showing Required to Shorten Waiting Period

Where respondent had been placed on inactive enrollment based on hearing judge's disbarment recommendation, review department recommended that if respondent provided proof of compliance with State Bar Court's notification rule (Trans. Rules Proc. of State Bar, rule 795.5) at time of inactive enrollment, respondent be excused from complying with Supreme Court's notification rule (rule 955, Cal. Rules of Court) upon disbarment, and also that respondent receive credit for time on inactive enrollment toward waiting period to apply for reinstatement. *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170. **[9]**

The required five-year waiting period before a disbarred attorney can apply for reinstatement may be shortened to three years for good cause. By rule, the five-year and three-year periods run from the date of any interim suspension, and Supreme Court precedent has given the same effect to inactive enrollment. (Trans. Rules Proc. of State Bar, rule 662.) The issue whether the waiting period may run from the start of a suspension other than an interim suspension has not been decided, and did not need to be addressed by the review department in recommending disbarment, but could be raised by respondent before a hearing judge if respondent wished to seek reinstatement at the earliest possible time. *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480. **[22]**

Review department, in recommending respondent's disbarment for failure to comply with rule 955, California Rules of Court, was not required to address issue whether time respondent had already spent on inactive enrollment due to probation violation, or on suspension due to failure to pass professional responsibility examination, should be counted toward required waiting period to apply for reinstatement. (Trans. Rules Proc. of State Bar, rule 662.) Respondent could raise those issues before a hearing judge at the time he wished to file a reinstatement petition. *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. **[5]**

A petition for reinstatement may be filed five years after the effective date of interim suspension, disbarment, or resignation. For good cause, reinstatement may be sought three years after disbarment. (Trans. Rules Proc. of State Bar, rule 602.) *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[9]**

2504 Burden of Proof/Showing Required for Reinstatement

A strict and unyielding interpretation of rule 662(c) of the Rules of Procedure of the State Bar mandating that costs be paid prior to filing a reinstatement petition is more restrictive than the requirement of Business and Professions Code section 6140.7 that costs be paid as a condition of reinstatement of active membership. A strict interpretation is also inconsistent with the State Bar Court's delegated authority to give relief from costs in whole or in part or to extend the time to pay costs. If a resigned or disbarred attorney were completely relieved of the obligation to pay costs or were provided an extension of time to pay, it would be impossible to provide proof that all discipline costs have been paid prior to filing a reinstatement petition. If the rule were interpreted to be mandatory, it would render relevant costs provisions irrelevant; but the finding that the rule is directory harmonizes all provisions and avoids an unnecessary and impermissible conflict with state statutes and other rules of procedure of the State Bar. Also, such a construction is consistent with the rehabilitative goals of the discipline system by maintaining the court's discretion to consider the timely payment of costs as a factor in determining a petitioner's rehabilitation. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[3a-e]**

The statutory intent that discipline costs are penalties payable to and for the benefit of the State Bar of California to promote rehabilitation and to protect the public supports the position that nonpayment of these costs should not be construed as an absolute roadblock to a reinstatement proceeding in every case, but a factor in determining overall rehabilitation during the proceeding. Rule 9.10(f) of the California Rules of Court does not require or address payment of costs, and the long–standing procedure for dealing with outstanding discipline costs has been to order reinstatement upon payment of all fees and costs. If Rules of Procedure of the State Bar, rule 662(c) is construed as directory, it allows timely payment of costs to be a relevant factor in determining whether a petitioner has been rehabilitated, which is the very essence of a reinstatement proceeding and consistent with rehabilitative goals. Conversely, if the rule were interpreted to be mandatory, the court would be precluded from considering all relevant factors regarding efforts toward rehabilitation, including the timing and efforts at paying costs. Such an interpretation would effectively change the reinstatement requirements, inadvertently rendering the timing of the payment of costs to be a conclusive determination of rehabilitation. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[4a-d]**

In construing statutes, a practical construction is preferred. A construction of Rules of Procedure of the State Bar, rule 662(c) which permits the State Bar Court to retain jurisdiction is manifestly more practical than one which cuts off the court's jurisdiction regardless of the time and resources the parties have already expended in the court proceedings. Where a reinstatement proceeding had been pending for almost a year at the time a motion to dismiss was filed, the State Bar's investigation period and the discovery period for both parties had expired, and the trial was set to commence in approximately one month, dismissal was a severe remedy for noncompliance with payment of costs, and denial of a motion to set aside the dismissal was draconian. If a petitioner fails to pay the disciplinary costs prior to filing his reinstatement petition, the hearing judge has discretion to dismiss the reinstatement proceeding rather than to undertake a lengthy trial. But the hearing judge may also consider the failure to timely pay costs as a negative factor in petitioner's showing of rehabilitation or condition a petitioner's return to active status on the payment of some or all of the costs. Finally, if a disbarred or resigned attorney has failed to pay costs, the State Bar may enforce an order imposing costs as a money judgment. Construing Rules of Procedure of the State Bar, rule 662(c) as directory will continue to promote timely payment of costs, while not mandating unreasonable consequences in pending proceedings. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[5a b, c]**

Where the underlying misconduct involves the theft of client trust funds, restitution is fundamental to rehabilitation. The weight attached to whether restitution has been undertaken in whole or in part depends on the ability to restore the misappropriated funds as well as the attitude expressed regarding the matter. Thus, the petitioner must provide a factual showing that he understands the extent of the harm his misconduct caused, as well as proof of his willingness to remedy it. Where petitioner engaged in a repeated pattern of theft of client funds for three years, but petitioner was unable to identify with any certainty the number of clients harmed or the amounts misappropriated, and the record lacked specificity as to how long clients had to wait for payment, the specific harm they incurred and its effect or petitioner's attitude in rectifying the harm, petitioner's assertion that all clients were repaid lacked conviction, and the evidence of rehabilitation was inadequate. *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27 **[1 a–i]**

Where some clients were repaid amounts misappropriated from them during petitioner's cycle of theft and repayment, paying one client with another client's money, and no evidence was presented to show that petitioner repaid any of the identified or unidentified clients guided by a moral imperative consistent with the duties of an attorney, or merely to perpetuate his ongoing scheme or to satisfy terms of his probation, the review department could not conclude that the manner of restitution was consistent with rehabilitation. *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27 **[2]**

Petitioner's misappropriations occurred because he found himself overcome by the stresses of his increased financial obligations, and petitioner still had outstanding loan obligations. Thus, given the utter lack of evidence showing his comprehension of the magnitude of harm, or his attitude of mind regarding repayment, his assurances at trial that he would no longer resort to unethical means to pay his debts constituted insufficient evidence of rehabilitation. *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27 **[3]**

While an omission is not necessarily fatal to a petition for reinstatement, if an omitted claim is significant or misleading, or conceals derogatory information, reinstatement may be denied. Where petitioner failed to disclose nine lawsuits to which he was a party, regardless of the reasons for the omissions, the omissions left it to chance whether the bar's investigation process would uncover the lawsuits. Even if petitioner omitted the lawsuits as a result of hurrying to meet a deadline, he had ample time to correct his omission well before he did so, and his lack of care and the expedited manner in which he handled the disclosure of his lawsuits, coupled with a lack of evidence to show rehabilitation, was troubling and further demonstrated petitioner's failure to understand the seriousness of his misconduct. *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27 **[4 a–d]**

In instances where significant weight has been afforded to character declarations or testimony, the evidence has been complementary to other probative evidence of the petition. Where letters in support of petitioner's reinstatement described him as a man of personal integrity, described his involvement in charitable activities, asserted that petitioner's misconduct was aberrant behavior traceable to financial stresses, and stated that the declarants were aware of petitioner's misconduct, yet petitioner had not accounted for the full financial extent of the harm to his clients, nor the manner in which he made restitution, it was unclear how the witnesses could fully understand the magnitude of petitioner's misconduct or how he made up for it. *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27 **[5 a, b]**

The fact that pretrial statements and a stipulation were used to apprise petitioner's character witnesses of the acts that led to his resignation is not a basis for discounting the weight given to the testimony of such witnesses, particularly when no formal charges were ever filed against petitioner. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[1]**

The fact that petitioner's character witnesses did not know petitioner before he entered recovery from his alcoholism was not a reason to discount the weight given to their testimony because they all had recent, close contact with petitioner which qualifies them to reflect on his present moral qualifications. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[2]**

The fact that petitioner waited almost ten years after he resigned before he made restitution did not detract from petitioner's showing of rehabilitation since he demonstrated a proper attitude and sincerity toward restitution by voluntarily choosing not to discharge debts owed to creditors who were former clients or lienholders and by fully reimbursing all but one of his victims. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[3a, b]**

Where petitioner completed a structured recovery program, increased his self–esteem, terminated friendships with others who drink, and led a stable life since entering sobriety evidenced by consistent employment, the purchase of a new home and reconciliation with his wife and parents, and where the State Bar's and petitioner's experts both testified that petitioner's addictions are in sustained full remission, there is a substantial likelihood that petitioner's sobriety from his alcohol and gambling addictions will continue. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[4]**

Since petitioner's post–resignation misconduct related to his gambling and alcohol abuse negatively reflected on his moral character, petitioner's first day of sobriety is the point when he began his rehabilitation in earnest insofar as the practice of law is concerned. It is from this point that petitioner's overall rehabilitation in light of his

past wrongdoing is measured. Therefore the question was not whether the passage of time since petitioner failed to file a rule 955 affidavit after resignation should be considered in establishing his rehabilitation but whether petitioner's 39–month period of sustained exemplary conduct from the date of sobriety to the date of trial is sufficient to demonstrate his overall rehabilitation given the seriousness of his past misconduct. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[5]**

Where petitioner's gambling and alcoholism resulted in ethical breaches that involved misappropriation of entrusted funds, multiple acts of deceit which continued post–resignation, and repeated disregard for court orders, including one from the Supreme Court, and that caused harm to multiple clients due to incompetent performance or abandonment, petitioner's period of exemplary conduct was insufficient to establish his overall rehabilitation given the extent of his prior wrongdoing and addictions. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[6a, b]**

Since petitioner presented no medical or expert evidence supporting his course of recovery and the State Bar offered expert testimony in rebuttal, the credibility determinations of the hearing judge are particularly important because reformation is a state of mind which may be difficult to establish affirmatively and may not be disclosed by any certain or unmistakable outward sign. Where there is not sufficient basis to overturn the hearing judge's findings of fact with respect to the testimonial evidence offered by petitioner, the question upon independent review is to determine if the quality and quantity of petitioner's evidence are sufficient to meet his heavy burden of proof. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[1]**

Where petitioner's testimony that he had not used methamphetamine for over seventeen years was uncontroverted and where there was no evidence that petitioner's weekly drink of alcohol led to alcohol abuse or ever caused him to relapse into methamphetamine use and where petitioner participated in a professional in–house substance abuse treatment program, participated in after–care group therapy, maintained ongoing participation in A.A. and supplemented his showing of recovery with favorable testimony from several, critical character witnesses, petitioner established his rehabilitation from his methamphetamine addiction. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[4 a, b]**

Petitioner's acknowledgment of his drug abuse, his commitment to abstinence, and his active and regular participation in his personal recovery program positively reflect his sustained rehabilitation. Petitioner's nontraditional recovery program and the absence of independent medical or psychological evidence regarding petitioner's recovery from methamphetamine addiction do not outweigh petitioner's clear and convincing proof of rehabilitation and sustained exemplary conduct over an extended period of time. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[5]**

Since petitioners have the heavy burden of proof in reinstatement proceedings they are looked upon to amass and present the evidence necessary to sustain their evidentiary burden. Thus petitioners failing to introduce expert evidence or an independent evaluation, when it appears to be important, bear the risk of failing to sustain their evidentiary burden. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[9]**

Reinstatement petitioner established requisite learning in law by passing California Bar Examination, Attorneys' Examination. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[1 a,b]**

Although earlier admissions cases do not consider the time a petitioner is in custody or under court or State Bar supervision to be particularly weighty in assessing rehabilitation, the petitioner in each of those cases had engaged in extremely serious misconduct for an extensive time and had not adequately shown rehabilitation in light of the seriousness of the offenses. In contrast, in this case, petitioner's misconduct, though clearly serious, spanned four years, but there was no evidence that petitioner acted in less than an exemplary fashion while on probation. Further, some of petitioner's positive conduct, notably his cooperation with the State Bar, occurred despite his understanding that he would get no benefit from it. The review department therefore concluded that it was appropriate in this case to accord some weight to petitioner's activities while on probation, but it gave far greater weight to the last four years of petitioner's showing, which were after he completed his criminal probation. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[2 a,b]**

Concern in reinstatement proceeding is not just in counting correct number of years for measuring petitioner's rehabilitation, but is to assess quality of petitioner's rehabilitation showing in light of prior very serious misconduct. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[3]**

In the very heavy burden a reinstatement petitioner must surmount in proving his rehabilitation, character evidence alone, no matter how positive, is not determinative. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[4]**

Opinion testimony of an attorney as to the ultimate issue that petitioner was qualified for reinstatement was not precluded, although that ultimate issue was for the State Bar Court and the Supreme Court to decide. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[6 a,b]**

Negative testimony regarding petitioner's rehabilitation did not rebut petitioner's favorable testimony for a very important reason: the negative testimony was based solely on the severity of petitioner's earlier misconduct and not on his rehabilitative steps since resignation. The witnesses had no personal observation of petitioner for most, if not all, of the 10 years that elapsed between the time petitioner resigned and the State Bar Court hearings. Thus, while the negative testimony of each of these witnesses was relevant on the issues of the seriousness and the nature and extent of petitioner's prior misconduct, it was of little relevance on the issues of petitioner's present character and of whether petitioner has maintained a sustained period of unblemished and exemplary conduct. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[7 a-c]**

Reinstatement petitioner's outstanding income tax delinquencies of $458,000 and his offer to compromise and settle the delinquency with Internal Revenue Service for $50,000 did not show adverse moral character. This was not a case where petitioner concealed assets or his delinquencies. Nor was this a case where petitioner failed to file tax returns. Further, petitioner should not be deprived of the ability to take advantage of the offer in compromise procedures open to any citizen seeking to resolve a large delinquency, particularly when that delinquency consists of sizeable penalties and interest. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[8 a-d]**

The sole issue raised is whether the requirement set forth in Business and Professions Code section 6140.5, subdivision (c), that an attorney who resigns with disciplinary charges pending reimburse the Client Security Fund (CSF) for all sums paid out as a result of the former attorney's misconduct together with interest and costs, is a condition precedent to the former attorney's filing of a petition for reinstatement. The issue is not whether, at the time he filed his petition, petitioner was eligible for reinstatement, but rather whether he had a right to file his petition for reinstatement. Section 6140.5, subdivision (c) mandates that the amount paid out by CSF because of the dishonest conduct of a lawyer, plus applicable interest and costs, shall be paid as a condition of reinstatement of membership. There is no language in that section that precludes or purports to preclude the filing of a petition for reinstatement without including a showing of repayment to the CSF. And the review department was unaware of any law, rule of court, or rule of procedure that required an affirmative showing that reimbursement has been made to CSF before or at the time of filing a petition for reinstatement. Moreover, there was no dispute that reinstatement occurs only when the Supreme Court so directs after State Bar Court proceedings, not when a petition for reinstatement is filed. Accordingly, the State Bar failed to establish either an abuse of discretion or error of law. *In the Matter of Jaurequi* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.56.**[1 a-c]**

Petitioner's failure to comply timely with the provisions of rule 955, California Rules of Court, was not, in itself, grounds for denying petition for reinstatement. Essentially, petitioner followed the suggestion of her former counsel in the disbarment proceeding to allow him (counsel) to take care of the filing of the required affidavit of compliance with rule 955. Petitioner's former counsel did not follow through and petitioner did not comply with the rule until about eight months after filing her petition for reinstatement. The hearing judge expressed "some reservations" about petitioner's testimony concerning her belated compliance with rule 955, yet chose to resolve the issue in her favor. The review department upheld the hearing judge's decision. In doing so, the department noted, as did the hearing judge, that at the time of her disbarment, petitioner had no clients, co-counsel or pending cases and was not obligated to return any client property covered by the rule. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1. **[1 a-b]**

A close reading of the hearing judge's conclusion that petitioner had proven rehabilitation, together with several adverse findings of petitioner's actions regarding her former husband led the review department to support the judge's positive recommendation. Regarding petitioner's testimony about the restraining orders she attempted to obtain in the State Bar Court against her former husband, the judge found it either negligent or intentionally misleading. However, he did not specify at which end of that wide range petitioner's testimony rested. Certainly, if petitioner's understanding of restraining orders was simply careless, no adverse conclusions were justified. The

review department found no basis for a conclusion of dishonesty on petitioner's part regarding the status of the restraining orders. The review department also drew no adverse moral conclusions from petitioner's frequent litigation in the State Bar Court over a protective order. Petitioner had a right of reasonable access to this court to seek judicial remedies. Her contact of members of the Board of Governors and senior State Bar staff was also within her rights and she did not pursue inappropriate means to influence judicial decisions. The review department also concluded that petitioner disclosed adequate facts about the matter in her communications. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1. **[2 a-b]**

The hearing judge's discussion of his concerns over petitioner's actions in terms of according her a "reasonable doubt" made review somewhat difficult. It is clear that in a disciplinary proceeding, where the State Bar has the burden of proving charges by clear and convincing evidence, the accused is entitled to the exercise of reasonable doubts. However, in a reinstatement proceeding, where the petitioner unquestionably has the burden of presenting clear and convincing evidence of her qualifications, petitioner can not be given the benefit of reasonable doubts. However, by reading the decision in its entirety, the review department construed the hearing judge's decision finding reasonable doubts in favor of petitioner to not invoke the normal meaning of the term "reasonable doubt" as used in this area of law, but rather, such narrow doubt that would be acceptable in a satisfactory showing for reinstatement. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1. **[3 a-b]**

Reinstatement requires the passage of a professional responsibility examination and a showing of rehabilitation, present moral qualifications for readmission, and present ability and learning in the general law. (Cal. Rules of Court, rule 951(f); Rules Proc. of State Bar, rule 665(a), (b).) *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[2]**

A petitioner for reinstatement must show by clear and convincing evidence that he or she has met the requirements for readmission. OCTC need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence. Instead, OCTC need only proffer sufficient adverse evidence to lower the persuasiveness of a petitioner's evidence so that he or she does not meet the burden to prove his or her case by clear and convincing evidence. Nor is a petitioner entitled to the benefit of the doubt if equally reasonable inferences may be drawn from a proven fact. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[3]**

A lack of rehabilitation was found where petitioner mischaracterized his prior misconduct as mere mistakes and continued to attack the findings of misconduct by filing numerous petitions for writs and supplemental pleadings challenging the disbarment decision. Rehabilitation often requires a lengthy period of exemplary conduct. An erring attorney who seeks readmission must understand his or her professional responsibilities and must show a proper attitude toward his or her misconduct. The review department affirmed the finding that petitioner had not shown rehabilitation. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[4]**

The basis of the hearing judge's finding of present moral fitness was character evidence and petitioner's testimony about his volunteer work and his assistance to relatives. However, in determining present moral qualifications, testimony by character witnesses and letters of reference are not conclusive. Similarly, volunteer work and care of relatives are factors to be considered, but are not dispositive. The review department reversed the finding of present moral fitness, finding that by minimizing and denying his serious misconduct, petitioner revealed a failure to appreciate the responsibilities of an attorney and the gravity of his ethical violations. This failure undermined his attempt to prove his present moral qualifications for readmission, as well as his attempt to show rehabilitation. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[5]**

Although rule 665(b) of the Rules of Procedure of the State Bar, title II, State Bar Court Proceedings, enumerates moral qualifications for reinstatement as an item separate from rehabilitation, rule 951(f) of the California Rules of Court combines them as a single item. The Supreme Court has often considered rehabilitation and moral qualifications for readmission together. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[6]**

It is a basic principle of reinstatement proceedings that a petitioner continues to bear the burden of proof, even on review. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[8]**

Because the State Bar does not have the burden of proof in reinstatement proceedings, it need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence to prevail. Instead, the State Bar need only proffer sufficient adverse evidence to lower the persuasiveness of the petitioner's evidence so that he does not meet his burden to prove his case by clear and convincing evidence. Of course, the State Bar may elect not to present any adverse evidence if it concludes that petitioner's showing is insufficient to establish his case by clear and convincing evidence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[5]**

Community service activities may bear on the showing of rehabilitation in a reinstatement proceeding, but discontinuance of such activity, without more, is not necessarily an adverse factor. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[1]**

Where petitioner for reinstatement had operated a hot tub salon with a paroled ex-convict, with the approval of both his own probation officer and the ex-convict's parole officer, and where petitioner took careful steps to avoid any problems and there was no evidence of law violations or immoral activity, potential risk of such problems did not undercut petitioner's showing of rehabilitation in view of other favorable evidence. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[2]**

Where petitioner for reinstatement admitted his alcoholism, but his showing of recovery rested entirely on his own efforts at abstinence as supplemented by favorable character testimony, and he failed to present any medical or other expert opinion attesting to his recovery and prognosis, or any evidence that he had undergone recent treatment or participated in any recovery program, hearing judge's conclusion that such showing was insufficient to establish rehabilitation was entitled to considerable weight. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[4]**

In order to gain readmission to the State Bar, a petitioner must pass the Professional Responsibility Examination and must demonstrate (1) rehabilitation and present moral qualifications for readmission and (2) present ability and learning in the general law. (Trans. Rules Proc. of State Bar, rule 667.) *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[1]**

A petitioner for reinstatement who resigned with disciplinary charges pending must meet the same requirements for readmission as a petitioner who was disbarred. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[2]**

Petitioners for reinstatement bear a heavy burden of proving rehabilitation; they must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful, and must present stronger proof of present honesty and integrity than one seeking admission for the first time whose character has never been in question. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[3]**

The law looks with favor upon the regeneration of erring attorneys and should not place unnecessary burdens upon them. There can be no absolute guarantee that a petitioner for reinstatement will never engage in misconduct again, and the petitioner need not show perfection. All that can be required is a showing of rehabilitation and of present moral fitness. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[4]**

A reinstatement petitioner's showing of acceptance of responsibility for his misconduct, of extreme remorse, and of efforts and success at developing the skills and relationships necessary to deal appropriately with future problems supported the conclusion that the petitioner demonstrated insight into his misconduct and had taken steps to change his character and behavior. The petitioner's showing of a proper attitude to his misconduct and a steady determination to rehabilitate himself warranted favorable consideration in considering his reinstatement. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[6]**

Reformation is a state of mind which may be difficult to establish affirmatively and may not be disclosed by any certain or unmistakable outward sign. Accordingly, the lack of outward signs such as community involvement does not necessarily demonstrate a lack of rehabilitation. The evidence of rehabilitation must be viewed in its totality. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[7]**

A reinstatement petitioner's failure to provide lengthy details about his misconduct to his character witnesses did not negate the petitioner's showing that he had learned to communicate with those close to him, where petitioner

informed most of the witnesses of his conviction and loss of his law license and there was no evidence that petitioner concealed his misconduct or misled the witnesses. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[8]**

A petitioner's failure to report certain information in the appropriate locations on the petition for reinstatement did not reflect adversely on the petitioner's showing of rehabilitation and present moral fitness where the omitted information was contained in other parts of the petition and where there was no intent to deceive or conceal derogatory information. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[9]**

A petitioner for reinstatement does not have to establish that the changes that have occurred in his or her post-misconduct life are attributable to psychotherapy before that therapy is entitled to weight on the issue of the petitioner's showing of rehabilitation. Rather, the therapy, as well as the other evidence of rehabilitation, must be viewed and weighed collectively. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[10]**

Circumstances which indicated that a reinstatement petitioner had withdrawn from participation in the criminal conspiracy which led to his resignation from the bar could not be ignored simply because the petitioner could have taken other steps to end the criminal conduct. The petitioner's failure to turn himself in to law enforcement immediately at the time of his withdrawal did not negate the fact that his criminal involvement was of limited duration, and did not preclude his later effort to show rehabilitation. Such circumstances, as well as all other circumstances of the criminal conduct, had to be considered in deciding whether the petitioner had met the burden of proof in the reinstatement proceeding. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[11]**

Rehabilitation is a process that occurs over a period of time and which is demonstrated by a period of sustained exemplary conduct. A reinstatement petitioner's alleged failure to begin this process during his or her misconduct does not preclude a showing of sustained exemplary conduct over many years after the misconduct. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[12]**

In determining whether a petitioner has met the burden of proof in a reinstatement proceeding notwithstanding alleged weaknesses in the showing of rehabilitation and moral fitness, it is essential to compare the facts of the proceeding with the facts of other reported reinstatement cases in which the petitioners were admitted despite such weaknesses. Where a petitioner's showing of rehabilitation included evidence as to the petitioner's remorse, acceptance of full responsibility for the misconduct, candor, honesty and integrity, success in a fiduciary position, and success at meeting financial obligations, it was as strong as the showings of petitioners who had gained reinstatement. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[13]**

The passage of an appreciable period of time constitutes an appropriate consideration in determining whether a petitioner for reinstatement has made sufficient progress towards rehabilitation. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[14]**

A reinstatement petitioner's recent conviction for driving under the influence did not, by itself, establish a lack of either rehabilitation or present moral fitness, where the conviction was an isolated, uncharacteristic and aberrational incident; the petitioner did not have a chemical dependency problem; the petitioner had taken steps to prevent any further occurrence; and the conviction was petitioner's first DUI offense, was unrelated to the practice of law, and was unrelated to the misconduct which led to petitioner's resignation. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[15]**

In deciding whether a reinstatement petitioner has met the burden of proof, the evidence presented must be viewed in light of the moral shortcomings which resulted in the petitioner's loss of his or her license. Where the petitioner's participation in criminal misconduct had been limited and was mitigated by contributing emotional factors that had long since been brought under control, the review department concluded that the petitioner had made an adequate showing of rehabilitation and present moral fitness when viewed against this backdrop and in light of past comparable reinstatement cases. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[16]**

Although review department gives great deference to credibility findings by hearing judge in favor of petitioner for reinstatement, petitioner continues to bear a heavy burden of proof on review. Petitioner must present overwhelming proof of reform and must show by the most clear and convincing evidence that efforts toward rehabilitation have been successful. Such evidence must demonstrate sustained exemplary conduct over an extended period of time. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[2]**

A petitioner for reinstatement must pass the Professional Responsibility Examination and must show present ability and learning in the general law, as well as rehabilitation and present moral qualifications for readmission. (Trans. Rules Proc. of State Bar, rule 667.) A claim that the petitioner has held himself or herself out as entitled to practice law pertains to the issue of rehabilitation and moral qualifications. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[3]**

External pressures to pay restitution for misappropriated funds, including court orders and agreements with victims of misappropriation, do not preclude consideration of such restitution in reinstatement proceedings. The weight to be accorded to restitution depends on the petitioner's attitude, as evidenced by a spirit of willingness, earnestness, and sincerity. Where a reinstatement petitioner who had misappropriated funds from a probate estate had subsequently recognized the gravity of his misconduct; admitted his misappropriation to the probate court and the State Bar; cooperated in an audit of the estate's records; secured his debt to the estate by granting it interests in his real and personal property, and fully repaid both the misappropriated funds and additional interest, surcharges, fees, and costs, his restitution deserved significant weight even though it was required by a probate court order. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[5]**

Postmisconduct pro bono work and community service are factors evidencing rehabilitation and present moral qualifications. Where a petitioner for reinstatement did some pro bono research as a paralegal and performed volunteer work for, and made donations to, a museum, his showing could have been clearer and more impressive, but still constituted a factor in favor of his reinstatement. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[6]**

Although a petitioner for reinstatement does not need to occupy a fiduciary position in order to prove rehabilitation, evidence that the petitioner has successfully occupied such a position after misconduct is of probative value. Where a petitioner exercised fiduciary responsibilities for a probate estate and a trust after his resignation with disciplinary charges pending, his distribution of funds for the probate estate and the trust without problems constituted a factor in favor of his reinstatement, even though the sums involved were relatively small. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[7]**

Rehabilitation requires an acceptable appreciation of one's professional responsibilities and a proper attitude toward one's misconduct. Where a petitioner for reinstatement, after being unable to deliver funds misappropriated from an estate, had confronted the severity of his misconduct; confessed his wrongdoing to the probate court and the State Bar and cooperated with both; discussed his misconduct and plans for resignation and rehabilitation with his family; ended the excessive spending for which he had misappropriated funds; and voluntarily wound up his practice and resigned from the State Bar, this conduct reflected an awareness of his professional responsibilities and constituted a significant factor in favor of his reinstatement. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[8]**

Character testimony and reference letters, especially from employers and attorneys, are significant in reinstatement proceedings. Great consideration is due to the testimony of members of the bar and public of high repute who have closely observed a petitioner for reinstatement. Not every witness or letter writer must have recent close contact with the petitioner; a variety of persons with different relationships to the petitioner can reflect present moral qualifications. Where a petitioner presented favorable testimony by five character witnesses, one of whom had observed him closely since his misconduct, and favorable reference letters from four persons, three of whom had had recent contact with him, such testimony and reference letters were entitled to consideration as factors supporting his reinstatement. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[9]**

Where reinstatement petitioner's misconduct had occurred over a single period of four to six years; character witnesses provided an impressive description of petitioner's premisconduct character, and petitioner had practiced law without misconduct for at least 37 years and done extensive pro bono work, evidence suggested that petitioner's misconduct was aberrational. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[11]**

Where an attorney, while winding up his law practice before resigning with disciplinary charges pending, told clients that he was "retiring" but made clear that he would not be practicing law, this notification did not violate rule 955 of the California Rules of Court because it was given while the attorney was still an active member of the bar. While the evasiveness of the notification was relevant to the attorney's rehabilitation and moral qualifications

for subsequent reinstatement, it did not mandate an adverse conclusion on those issues. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[13]**

Where a resigned attorney continued to work as a paralegal for his son's law firm despite the son's adoption of a firm name which might have been construed to imply that the resigned attorney was a member of the firm, but the evidence indicated that the firm name was beyond the resigned attorney's control, and there was no credible evidence that the public or clients were in fact misled or that the resigned attorney had practiced law after resigning, the review department deferred to the hearing judge's favorable credibility determinations and concluded that the resigned attorney had not held himself out as entitled to practice law. The resigned attorney's continued employment in a situation where the public and clients could easily be misled clearly called into question his suitability for reinstatement, but under all the circumstances did not establish his lack of rehabilitation or present moral qualifications. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[18]**

Rehabilitation is a state of mind which may be difficult to establish. Readmission to the bar does not require perfection. No unnecessary burdens should be placed upon erring attorneys in proving rehabilitation and present moral qualifications. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[19]**

Whether a petitioner has met the heavy burden of proof in a reinstatement proceeding depends on a comparison of the facts of the proceeding with the facts in other reported cases. Petitioners have obtained reinstatement despite weaknesses in their showings of rehabilitation and present moral qualifications. Where the showing of rehabilitation and present moral qualifications by a petitioner for reinstatement was as strong as similar showings by petitioners who obtained reinstatement despite alleged weaknesses in their cases, and where petitioner's case was distinguishable from reported cases in which petitioners failed to proved rehabilitation and present moral qualifications, the review department recommended reinstatement despite petitioner's evasive notice to clients that he was "retiring" and despite petitioner's continuing to work as a paralegal for a law firm even though he questioned the propriety of the law firm's name. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[20]**

Reinstatement petitioner's admission of misconduct, cooperation with authorities, lifestyle changes, curtailment of spending, and restitution were significant factors in favor of reinstatement. Postmisconduct pro bono work, community service, and handling of fiduciary responsibilities, as well as character witnesses' testimony and reference letters, also supported reinstatement. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[21]**

A petitioner for reinstatement must pass the Professional Responsibility Examination, show present ability and learning in the general law, and show rehabilitation and present moral qualifications for readmission. (Trans. Rules Proc. of State Bar, rule 667.) *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[4]**

A petitioner for reinstatement bears a heavy burden of proof, and must show rehabilitation by the most clear and convincing evidence and provide overwhelming proof of reform. However, no absolute guarantee that the petitioner will never engage in misconduct again is possible, nor must a petitioner show perfection. The law favors the regeneration of erring attorneys and should not place unnecessary burdens on them in proving rehabilitation. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[5]**

The hearing judge's determinations of testimonial credibility must receive great weight because the hearing judge observed the witnesses' demeanor. However, the review department, examining the record independently, must reweigh the evidence and pass upon its sufficiency. Where testimonial credibility was not an issue and the determination to be made was whether the quality and quantity of a party's evidence met the applicable burden of proof, the issue was a question of law. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[6]**

A petitioner for reinstatement must provide stronger proof of present honesty and integrity than an applicant who is seeking admission for the first time and has never had his or her character questioned. Such proof must overcome the prior adverse judgment which resulted in the petitioner's disbarment or resignation with discipline charges pending. The evidence must be considered in light of the petitioner's prior moral shortcomings. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[7]**

Egregious misconduct does not preclude reinstatement. The law favors rehabilitation. Reformation is open to all attorneys who have erred. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[8]**

The passage of an appreciable period of time is an appropriate consideration in determining whether a petitioner for reinstatement has made sufficient progress towards rehabilitation. Where the evidence is uncontroverted and shows exemplary conduct for eight to ten years with no suggestion of wrongdoing, a petitioner would seem to have established rehabilitation. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[10]**

Evidence of pro bono or charitable work reflects on an erring attorney's rehabilitation and present moral qualifications. Where a petitioner for reinstatement had volunteered one full day every week for several years at a legal services program, such extensive pro bono work was a significant factor in favor of the petitioner's reinstatement. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[11]**

Although the law demands neither fraudulent penitence nor artificial contrition, a petitioner for reinstatement must understand his or her professional responsibilities and must show a proper attitude toward his or her misconduct. Where a petitioner acknowledged the seriousness of his wrongdoing, expressed remorse, and described a fundamental change in values likely to prevent future misconduct, such testimony, which hearing judge found credible, was a significant factor in favor of his reinstatement. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[12]**

Although testimony by character witnesses and letters of reference are not conclusive, favorable character evidence deserves heavy weight in determining whether a petitioner for reinstatement has proved rehabilitation and present moral qualifications. Favorable character testimony and reference letters from employers and attorneys are entitled to special weight. Petitioner's current employer's testimony expressing a high opinion of petitioner's character, demeanor and behavior, and confirming petitioner's sensitivity and concern for proper ethical behavior, merited significant weight. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[13]**

Where evidence about the manner in which a reinstatement petitioner has handled positions of trust is available, such evidence is of probative value. But evidence that the petitioner has occupied positions of trust is not a requirement of reinstatement, and favorable testimony about the petitioner's trustworthiness should not be discounted because the witnesses have failed to observe how the petitioner would handle a fiduciary relationship. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[17]**

The standard for rehabilitation and present moral qualifications in a reinstatement proceeding is objective, and whether the petitioner has met the heavy burden of proof depends on a comparison of the facts of the current proceeding with the facts in other reported proceedings. Where petitioner's showing of rehabilitation and present moral qualifications was at least comparable to the showings by others who had obtained reinstatement, and reported cases denying reinstatement were distinguishable, review department recommended reinstatement. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[18]**

Reinstatement is not necessarily precluded where the reinstatement petition omits information which is insignificant and the petitioner has no intent to mislead or to conceal derogatory information. However, reinstatement may be denied when omissions from the petition are significant or misleading. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[2]**

The California Rule of Court regarding reinstatement requires petitioners for reinstatement to pass a professional responsibility examination, and to establish their learning and ability in the law, rehabilitation and present moral qualifications. Applicants who fail to show sufficient learning in the law may be required to pass the examination required of initial applicants for admission. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[3]**

The heavy burden of proving rehabilitation is with the petitioner seeking reinstatement. One who has been previously disbarred must present stronger proof of present honesty and integrity than one seeking initial admission whose character has never been questioned. The proof submitted must overcome the prior adverse judgment of the petitioner's character, and must be considered in light of the moral shortcomings which led to the disbarment. The burden is on petitioners seeking reinstatement to show by a sustained course of good conduct that they have attained a standard of character which entitles them to be members of the bar. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[4]**

Passage of a professional responsibility examination is one of the basic requirements for reinstatement. Although a State Bar rule permits the State Bar Court to grant a petitioner up to two years after the reinstatement hearing to pass the examination, the Supreme Court requires proof of passage to precede reinstatement. Thus, the State Bar rule is interpreted to require passage of the examination as a condition precedent to a State Bar Court recommendation of reinstatement to the Supreme Court. (Trans. Rules Proc. of State Bar, rule 667.) *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[5]**

To demonstrate rehabilitation, a reinstatement petitioner needs to show a recognition of his or her wrongdoing, and evidence of rehabilitation is viewed in light of the moral shortcomings that led to the disbarment. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[8]**

An attorney's obligation to make restitution is not limited to legally enforceable claims. An attorney may have a moral obligation to make restitution as part of the duties of an attorney, in order to confront the harm caused by the theft. Nonetheless, payment of restitution is neither mandatory nor determinative of rehabilitation. The attorney's attitude toward payment to the victim is considered as well as the ability to pay. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[9]**

An attorney's moral duty to make restitution is not limited to clients, and extends to an employer to whom the attorney owed a fiduciary duty. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[10]**

Where there has been an absence of complete restitution and no evidence of an inability to pay, a petitioner for reinstatement may present evidence of other affirmative acts which demonstrate the petitioner's recognition of fault, contrition and curing of the source of the initial problem and the resulting harm. Such other evidence must be "quite convincing" to establish the present rehabilitation of the petitioner. The fact that petitioner's victim had recommended petitioner's imprisonment, rather than probation and restitution, did not justify petitioner's failure to make restitution. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[11]**

Testimonials from attorneys and employers are given considerable weight in reinstatement proceedings but are not alone conclusive. A broad spectrum of witnesses who have observed the petitioner's daily conduct and mode of living is particularly insightful. Information on business ventures and pro bono or charitable work also reflects on petitioner's moral character and rehabilitation. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[12]**

Disbarred attorneys may qualify for reinstatement upon sufficient passage of time and adequate proof of rehabilitation, present moral fitness and learning and ability in the general law. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[14]**

Where attorney had committed extremely serious misconduct over long period of time, and questions remained concerning attorney's rehabilitation, requiring standard 1.4(c)(ii) showing in lieu of disbarment would not be sufficient to protect the public and maintain the integrity of the profession. *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. **[15]**

While the law does look with favor upon the regeneration of erring attorneys, the petitioner seeking reinstatement bears the burden to show by clear and convincing evidence that the petitioner meets the requirements, and that burden is a heavy one. The person seeking reinstatement after disbarment should be required to present stronger proof of present honesty and integrity than one seeking admission for the first time whose character has never been called into question. A disbarred attorney may be able to show by sustained exemplary conduct over an extended period of time that the attorney has reattained the standard of fitness to practice law. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[3]**

In a reinstatement proceeding, the petitioner bears the burden of establishing rehabilitation, present moral qualifications for readmission and present ability and learning in the general law. (Rule 952(d), Cal. Rules of Court; rule 667, Trans. Rules Proc. of State Bar.) *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[4]**

Reinstatement proceedings are adversarial in nature, with the heavy burden resting on petitioner to prove rehabilitation, present moral fitness to practice and learning and ability in the general law. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[7]**

In a reinstatement proceeding, records of prior discipline, including the proceeding in which the petitioner was disbarred, are admissible, because the evidence of the petitioner's present character must be considered in light of the moral shortcomings which resulted in the prior discipline. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[1]**

The petitioner in a reinstatement proceeding bears the heavy burden of showing by clear and convincing evidence that he or she meets readmission requirements. A person seeking reinstatement after disbarment should be required to present stronger proof of present honesty and integrity than one seeking admission whose integrity has never been called into question; the proof presented must overcome the former adverse judgment of the person's character. Reinstatement may be sought on a showing that the petitioner has reattained the required standard of fitness to practice law, by sustained exemplary conduct over an extended period of time. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[2]**

Character evidence, albeit laudatory, was not alone determinative in a proceeding for reinstatement. Presentation of affidavit of one witness regarding conduct in six years since disbarment was inadequate as showing of good character, and was depreciated by petitioner's concealment of disbarment from employer and omission of recent civil suit from disbarment application. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[12]**

The Supreme Court has consistently held that petitioners seeking reinstatement have the burden to show by clear and convincing evidence that they meet readmission requirements, and that burden is a heavy one. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[1]**

Persons seeking reinstatement after disbarment should be required to present stronger proof of their present honesty and integrity than persons seeking admission for the first time whose character has never been called into question. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[2]**

In an application for reinstatement, although treated by the Supreme Court as a proceeding for admission, the proof presented must be sufficient to overcome the Court's former adverse judgment of applicant's character. In determining whether a reinstatement petitioner has met this burden, the evidence of present character must be considered in light of the moral shortcomings which resulted in the imposition of discipline. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[3]**

Upon its independent review of the record, the review department found that circumstances of reinstatement petitioner's omission of two lawsuits from reinstatement petition demonstrated that petitioner had not met his heavy burden of showing clearly and convincingly his rehabilitation and present moral fitness. While review department was reluctant to differ with referee who weighed the credibility of witnesses, including petitioner, and who concluded that petitioner met reinstatement standards, it was review department's duty to independently examine record, reweigh evidence and pass on its sufficiency. Doing so, review department concluded that hearing referee had not given sufficient care to analyzing petitioner's evidence about his non-disclosure of two lawsuits as it bore on the qualities needed for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[9]**

The petition for reinstatement is not merely a paperwork exercise to hurdle on the way to readmission; verified petition serves as important, formal written presentation by which petitioner seeks decision on reinstatement. A court evaluating a petition for reinstatement should be able to rely on it as candid and complete in the same manner as a court would rely on an attorney's affidavit or declaration made under penalty of perjury. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[11]**

Where reinstatement petitioner failed to disclose litigation completely in two successive petitions, his failure to do so was not excused by theory of mistake; rather, his offer of that theory cast further doubt that he had achieved insight into standard of sustained exemplary conduct he had to meet for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[12]**

In reinstatement proceeding, impressive testimonials of witnesses were neither conclusive nor necessarily determinative; witnesses could not be given conclusive weight in light of petitioner's failure to file complete and sufficient application for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[15]**

The Supreme Court has not specified the exact amount of legal learning required for reinstatement. Petitioner's inability to answer one specific legal question at hearing did not significantly undermine the strength of the showing he had made regarding current legal learning. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[16]**

Where, in ordering reinstatement petitioner's earlier disbarment, Supreme Court had set as the standard for his reinstatement that he show reattainment of the standard of fitness to practice law by "sustained exemplary conduct over an extended period of time," this standard did not require perfection nor total freedom from true mistake. However, where petitioner did not justify omission of lawsuits from reinstatement petition by ascribing them simply to mistake; could not justify materially incomplete petition in respect of his employment; and had taken inconsistent position in lawsuit, petitioner's showing fell short of sustained exemplary conduct. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[17]**

2505 Interpretation of Rules of Procedure, Div. 7, Ch. 3 (rules 5.440-5.447)

2509 Other Procedural Issues

The review department concluded that the hearing judge erred as a matter of law in denying the motion to set aside the dismissal for lack of jurisdiction and found that the procedural requirement of Rules of Procedure of the State Bar, rule 662(c) did not divest the court of jurisdiction to extend the time for, or to grant relief from, payment of costs. Relying on well–settled rules of statutory construction, the review department construed the rule to be directory rather than mandatory or jurisdictional and thus found that the court retained jurisdiction to determine whether petitioner's failure to provide proof of payment of costs prior to filing the reinstatement petition should have resulted in a dismissal under the facts and circumstances of the case. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[1a, b]**

Despite its seemingly mandatory wording, Rules of Procedure of the State Bar, rule 662(c) is merely procedural, advancing a time requirement for the payment of costs, while the relevant Business and Professions Code sections confer jurisdiction to decide the substantive issues of costs and relief therefrom. There is no evidence that the Board of Governors of the State Bar attempted to supplant the statutory authority set forth in Business and Professions Code section 6140.7 and 6086.10, or to divest the State Bar Court of jurisdiction, by implementing a rule of procedure, and indeed, the Board of Governors is proscribed from doing so by Business and Professions Code section 6086. That section is consistent with the more general rule that, where a statute empowers an administrative agency to adopt regulations, those regulations must be consistent and not conflict with the governing statute. Because there is no express language or clear intent to render the rule jurisdictional, the review department looks to the cost provisions as a whole, the nature and character of these provisions, and the consequences that would follow from potential constructions. If the rule were interpreted to be mandatory or jurisdictional, the rule would conflict with and/or constrict relevant statutes and other rules, inadvertently alter the reinstatement requirements, and at times produce unreasonable results. Construing the rule as directory, however, in no way interferes with or compromises the ability of the State Bar or the State Bar Court to effectuate the intent of obtaining costs as money judgments. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[2a, b]**

A strict and unyielding interpretation of rule 662(c) of the Rules of Procedure of the State Bar mandating that costs be paid prior to filing a reinstatement petition is more restrictive than the requirement of Business and Professions Code section 6140.7 that costs be paid as a condition of reinstatement of active membership. A strict interpretation is also inconsistent with the State Bar Court's delegated authority to give relief from costs in whole or in part or to extend the time to pay costs. If a resigned or disbarred attorney were completely relieved of the obligation to pay costs or were provided an extension of time to pay, it would be impossible to provide proof that all discipline costs have been paid prior to filing a reinstatement petition. If the rule were interpreted to be mandatory, it would render relevant costs provisions irrelevant; but the finding that the rule is directory harmonizes all provisions and avoids an unnecessary and impermissible conflict with state statutes and other rules of procedure of the State Bar. Also, such a construction is consistent with the rehabilitative goals of the discipline system by maintaining the court's discretion to consider the timely payment of costs as a factor in determining a petitioner's rehabilitation. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[3a-e]**

In construing statutes, a practical construction is preferred. A construction of Rules of Procedure of the State Bar, rule 662(c) which permits the State Bar Court to retain jurisdiction is manifestly more practical than one which cuts off the court's jurisdiction regardless of the time and resources the parties have already expended in the court proceedings. Where a reinstatement proceeding had been pending for almost a year at the time a motion to dismiss was filed, the State Bar's investigation period and the discovery period for both parties had expired, and the trial was set to commence in approximately one month, dismissal was a severe remedy for noncompliance with payment of costs, and denial of a motion to set aside the dismissal was draconian. If a petitioner fails to pay the disciplinary costs prior to filing his reinstatement petition, the hearing judge has discretion to dismiss the reinstatement proceeding rather than to undertake a lengthy trial. But the hearing judge may also consider the failure to timely pay costs as a negative factor in petitioner's showing of rehabilitation or condition a petitioner's return to active status on the payment of some or all of the costs. Finally, if a disbarred or resigned attorney has failed to pay costs, the State Bar may enforce an order imposing costs as a money judgment. Construing Rules of Procedure of the State Bar, rule 662(c) as directory will continue to promote timely payment of costs, while not mandating unreasonable consequences in pending proceedings. *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56 **[5a b, c]**

In a proceeding for relief from actual suspension, in taking into account the attorney's prior misconduct, the hearing judge erroneously discounted the aggravating factor of dishonesty as duplicative and added mitigation where there had been none; however, the error was harmless because it was appropriate for the hearing judge to consider aggravating factors in considering the amount and nature of the evidence required to justify terminating suspension and to consider stipulated facts that may have shed light on the cause of misconduct, even if identified as other circumstances, in assessing the likelihood that misconduct could recur. *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867. **[6a, b]**

Where character witnesses, who had long–term as well as current knowledge of petitioner, uniformly attested to petitioner's good character and honesty and gave specific, convincing reasons for holding favorable opinions of petitioner's rehabilitation or present moral fitness, their testimony is heavily weighed as evidence of petitioner's rehabilitation and good moral character. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[2 a, b]**

Significant weight is given to the testimony of judges and officers of the court because these witnesses have a strong interest in maintaining the honest administration of justice. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[3]**

Testimony of members of the bar and bench of high repute is entitled to careful consideration in assessing a petitioner's rehabilitation when the petitioner has been close to their observation. This is because such witnesses are morally bound by their oaths as attorneys at law not to recommend a disbarred attorney for reinstatement unless they are satisfied of the rehabilitation of his character. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[5]**

Issues raised in State Bar's petition for interlocutory review as to (1) whether Rules of Procedure required petitioner for reinstatement to provide proof, at time he presented his petition for filing, that he had passed a professional responsibility examination within last year (i.e., one before filing of petition) and (2) whether hearing judge erred in finding that petitioner had not previously resigned from State Bar with disciplinary charges pending were proper for interlocutory review because they could determine outcome of proceeding and determine whether petitioner's rehabilitation was an issue in proceeding. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[1 a-e]**

Where hearing judge did not issue written ruling on his denial of State Bar's motion to dismiss former attorney's petition for reinstatement, review department determined hearing judge's reasoning from written transcript of hearing on motion, which was included in appendix to State Bar's petition for interlocutory review. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[2]**

Hearing judge erred as a matter of law in finding that petitioner for reinstatement had not previously resigned from State Bar with disciplinary charges pending where petitioner's resignation was entitled "resignation with charges pending;" stated that charges were pending against him; was in form prescribed by California Rule of Court 960; was accepted by Supreme Court without prejudice to further proceedings; and where petitioner stated in his

petition for reinstatement that, at time he resigned from State Bar, no formal charges were filed against him by State Bar, but only a number of minor client complaints that he had responded to, taken adequate measures to deal with, and answered State Bar in writing denying any misconduct. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.91.**[3]**

State Bar Court must interpret State Bar Rule of Procedure 665(a) that requires all petitioners for reinstatement to take and pass professional responsibility examination within frame work of California Rule of Court 951(f) dealing with reinstatement because State Bar's rule making authority is subject to Supreme Court's inherent authority over attorney regulatory matters. And State Bar Court should endeavor to construe State Bar rule as consistent Rules of Court. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.91.**[5]**

Applying rules of statutory interpretation to language of State Bar Rule of Procedure 665(a) requiring all petitioners for reinstatement to take and pass professional responsibility examination, review department held (1) that rule sets the earliest time to pass examination at one year before filing of petition, but does not set latest time to pass examination and (2) that rule does not require proof of passage as condition precedent to filing petition, but only as condition to precedent to State Bar Court recommendation of reinstatement. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.91.**[6 a-b]**

The sole issue raised is whether the requirement set forth in Business and Professions Code section 6140.5, subdivision (c), that an attorney who resigns with disciplinary charges pending reimburse the Client Security Fund (CSF) for all sums paid out as a result of the former attorney's misconduct together with interest and costs, is a condition precedent to the former attorney's filing of a petition for reinstatement. The issue is not whether, at the time he filed his petition, petitioner was eligible for reinstatement, but rather whether he had a right to file his petition for reinstatement. Section 6140.5, subdivision (c) mandates that the amount paid out by CSF because of the dishonest conduct of a lawyer, plus applicable interest and costs, shall be paid as a condition of reinstatement of membership. There is no language in that section that precludes or purports to preclude the filing of a petition for reinstatement without including a showing of repayment to the CSF. And the review department was unaware of any law, rule of court, or rule of procedure that required an affirmative showing that reimbursement has been made to CSF before or at the time of filing a petition for reinstatement. Moreover, there was no dispute that reinstatement occurs only when the Supreme Court so directs after State Bar Court proceedings, not when a petition for reinstatement is filed. Accordingly, the State Bar failed to establish either an abuse of discretion or error of law. *In the Matter of Jaurequi* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.56.**[1 a-c]**

In reinstatement cases, the well-established practice is to begin the analysis by reviewing the petitioner's showing in light of the moral shortcomings which led to his disbarment. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894.**[1]**

A petitioner for reinstatement must show by clear and convincing evidence that he or she has met the requirements for readmission. OCTC need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence. Instead, OCTC need only proffer sufficient adverse evidence to lower the persuasiveness of a petitioner's evidence so that he or she does not meet the burden to prove his or her case by clear and convincing evidence. Nor is a petitioner entitled to the benefit of the doubt if equally reasonable inferences may be drawn from a proven fact. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894.**[3]**

Although rule 665(b) of the Rules of Procedure of the State Bar, title II, State Bar Court Proceedings, enumerates moral qualifications for reinstatement as an item separate from rehabilitation, rule 951(f) of the California Rules of Court combines them as a single item. The Supreme Court has often considered rehabilitation and moral qualifications for readmission together. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894.**[6]**

It is a basic principle of reinstatement proceedings that a petitioner continues to bear the burden of proof, even on review. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894.**[8]**

In its opinion remanding a petition for reinstatement for further proceeding not inconsistent with the opinion, the review department held, on the record then before it, that the petitioner had demonstrated his moral reform from the acts which lead him to resign from the Bar with disciplinary charges pending. Accordingly, under law of the

case, it would be improper for hearing department to reconsider petitioner's moral reform on remand in the absence of additional evidence. As to events that predated the petition, and were disclosed on the petition, it is clear that reopening would be impermissible. The same would be true of events about which the State Bar had a reasonable opportunity to investigate and present at a hearing. However, one of the underlying purpose of reinstatement proceedings is to insure that only persons of present good moral character are reinstated to the practice of law in this state. Accordingly, with the exceptions noted, the State Bar Court may consider any act or conduct that is relevant to a petitioner's moral character regardless of when or where the act or conduct occurred. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[1]**

A petitioner establishes that he possesses the requisite present moral qualifications for reinstatement by presenting clear and convincing evidence that he possesses good moral character and has been rehabilitated. Any act or conduct bearing on the petitioner's qualities of honest, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and nation, and respect for the rights of others and the judicial process is relevant in a reinstatement proceeding. Unlike a petitioner's rehabilitation from prior bad acts, a petitioner's present moral qualifications for reinstatement is not capable of being conclusively determined for all time and is subject to re-evaluation on the State Bar's motion at least until the effective date of the Supreme Court's reinstatement order. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[2]**

Because jurisdiction vests in only one court at a time, once a review department opinion remanding the proceeding to hearing department for further proceedings becomes final, only the hearing department had jurisdiction to rule on State Bar's motion to expand the issues to be addressed at the trial on remand. Because the review department did not adjudicate the issue of petitioner's present moral fitness in its opinion remanding the proceeding to hearing department, the hearing judge's consideration of that issue on remand was not inconsistent with the review department's remanding opinion, and the hearing judge therefore did not error in admitting additional relevant evidence on the issue. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[3]**

Because the State Bar does not have the burden of proof in reinstatement proceedings, it need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence to prevail. Instead, the State Bar need only proffer sufficient adverse evidence to lower the persuasiveness of the petitioner's evidence so that he does not meet his burden to prove his case by clear and convincing evidence. Of course, the State Bar may elect not to present any adverse evidence if it concludes that petitioner's showing is insufficient to establish his case by clear and convincing evidence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[5]**

Petitioner failed to establish that the hearing judge abused his discretion in denying petitioner's post-decision motion to reopen the record to present additional evidence because petitioner did not establish that the evidence he sought to proffer was newly discovered or that it could not have been presented at trial with the exercise of reasonable diligence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[6]**

The State Bar Court's statutory exercise of independent decision-making authority over the determination of disciplinary and reinstatement proceedings does not extend to the investigation of such matters. *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18. **[3]**

In reinstatement proceeding, where petitioner moved to augment record on review with medical evidence regarding recovery from alcoholism which hearing judge had declined to consider on motion for reconsideration, and review department concluded that petitioner made favorable showing on all other aspects of rehabilitation, review department considered petitioner's evidence in accordance with case law holding that extrinsic evidence will not be ignored where it is the only means of proving rehabilitation from serious physical or emotional problems. Where such evidence added support to conclusion that petitioner had not demonstrated that recovery program was adequate, and State Bar expressed concern that evidence had been offered without opportunity for cross-examination, review department remanded for further hearing and expert testimony regarding petitioner's recovery. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[5]**

Where review department recommended respondent's disbarment, issue of whether respondent should be given credit toward required waiting period to apply for reinstatement (Trans. Rules Proc. of State Bar, rule 662),

on account of time spent on continuous suspension prior to disbarment, was properly reserved for consideration by a hearing judge on an appropriate petition following the disbarment. *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593. **[7]**

Where reinstatement petitioner's employer offered favorable character testimony at trial, and petitioner requested augmentation of the record to add the employer's declaration executed over 14 months later updating and reiterating such testimony, the review department considered the record incomplete without the declaration and granted petitioner's unopposed request to augment the record with the declaration. (Prov. Rules of Practice, rule 1304.) *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[2]**

Where decisions by the former State Bar Court concerning a petitioner's prior reinstatement petition helped illuminate the petitioner's subsequent progress toward rehabilitation, the review department took judicial notice of such decisions pursuant to Evidence Code section 452(d). *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[3]**

Passage of a professional responsibility examination is one of the basic requirements for reinstatement. Although a State Bar rule permits the State Bar Court to grant a petitioner up to two years after the reinstatement hearing to pass the examination, the Supreme Court requires proof of passage to precede reinstatement. Thus, the State Bar rule is interpreted to require passage of the examination as a condition precedent to a State Bar Court recommendation of reinstatement to the Supreme Court. (Trans. Rules Proc. of State Bar, rule 667.) *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[5]**

Where there was no evidence in the record that a reinstatement petitioner had taken and passed a professional responsibility examination, and neither the parties nor the hearing judge focused on the issue when evaluating petitioner's request for reinstatement, the matter was remanded to give the petitioner an opportunity to take and pass the examination if he had not already done so, and for findings on the issue. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[7]**

In proceedings on petition for reinstatement, the review department, with the concurrence of the parties, could take judicial notice of State Bar Court decisions on earlier unsuccessful reinstatement petition. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[1]**

In reinstatement cases, where the record on its face indicates a pending disciplinary matter dismissed without prejudice should the petitioner seek reinstatement, or indicates matters as serious as criminal convictions arising after disbarment or resignation, the parties should make clear on the record their respective positions on these factors, which could raise a serious question as to whether a person petitioning for reinstatement had been rehabilitated or was presently fit to practice law. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[9]**

Where reinstatement petitioner had shown rehabilitation, but had not presented sufficient proof of learning and ability in the general law, then if review department had concluded that petitioner was presently fit to practice, it would have conditioned its recommendation of reinstatement on passage of the bar examination to assure the public of petitioner's legal learning. However, review department's adverse determination on petitioner's fitness to practice made bar exam recommendation unnecessary. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[16]**

By obtaining a 30-day extension of the 90-day period to investigate a petition for reinstatement before referral for hearing, State Bar examiner did not violate State Bar procedural rules, which allow investigation even after the 90-day period or any extension of it. (Rule 664, Trans. Rules Proc. of State Bar.) *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[4]**

To justify relief based on claimed procedural irregularity, specific prejudice must be shown; relief was denied to reinstatement petitioner who made conclusory claim of prejudice from prolongation of pre-hearing investigation, but did not demonstrate actual prejudice. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[5]**

Petitioner for reinstatement could have presented additional character testimony from out-of-state witnesses without undue expense by taking their depositions. (Rules 318, 666, Trans. Rules Proc. of State Bar.) *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[13]**

Review department's review of reinstatement matter was made more difficult by hearing referee's failure to make findings on many of the specific issues in dispute, but review department's independent review of the record permitted it to make the necessary findings. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[8]**

2510 Reinstatement Granted

Where petitioner's testimony that he had not used methamphetamine for over seventeen years was uncontroverted and where there was no evidence that petitioner's weekly drink of alcohol led to alcohol abuse or ever caused him to relapse into methamphetamine use and where petitioner participated in a professional in–house substance abuse treatment program, participated in after–care group therapy, maintained ongoing participation in A.A. and supplemented his showing of recovery with favorable testimony from several, critical character witnesses, petitioner estvablished his rehabilitation from his methamphetamine addiction. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[4 a, b]**

Petitioner's acknowledgment of his drug abuse, his commitment to abstinence, and his active and regular participation in his personal recovery program positively reflect his sustained rehabilitation. Petitioner's nontraditional recovery program and the absence of independent medical or psychological evidence regarding petitioner's recovery from methamphetamine addiction do not outweigh petitioner's clear and convincing proof of rehabilitation and sustained exemplary conduct over an extended period of time. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[5]**

Although petitioner's noncompliance with rule 955 was wilful, this fact alone would not require denial of his reinstatement. Given the other strong evidence of rehabilitation, petitioner's noncompliance with rule 955 is not determinative of petitioner's rehabilitation where the violation occurred over 18 years ago, petitioner had only two cases pending and made arrangements for other attorneys to take over the cases, and there is no evidence that the violation either injured clients or impaired any disciplinary proceedings against petitioner. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[7]**

Although the record contains an infirmity due to petitioner's noncompliance with rule 955, reinstatement has been recommended in other cases where there have been similar, isolated weaknesses in the evidentiary showings. Petitioner offered impressive evidence of his rehabilitation and present moral character sufficient to warrant reinstatement. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[10]**

In the Matter of Bodell (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459.

Petitioner's failure to comply timely with the provisions of rule 955, California Rules of Court, was not, in itself, grounds for denying petition for reinstatement. Essentially, petitioner followed the suggestion of her former counsel in the disbarment proceeding to allow him (counsel) to take care of the filing of the required affidavit of compliance with rule 955. Petitioner's former counsel did not follow through and petitioner did not comply with the rule until about eight months after filing her petition for reinstatement. The hearing judge expressed "some reservations" about petitioner's testimony concerning her belated compliance with rule 955, yet chose to resolve the issue in her favor. The review department upheld the hearing judge's decision. In doing so, the department noted, as did the hearing judge, that at the time of her disbarment, petitioner had no clients, co-counsel or pending cases and was not obligated to return any client property covered by the rule. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1. **[1 a-b]**

A close reading of the hearing judge's conclusion that petitioner had proven rehabilitation, together with several adverse findings of petitioner's actions regarding her former husband led the review department to support the judge's positive recommendation. Regarding petitioner's testimony about the restraining orders she attempted to obtain in the State Bar Court against her former husband, the judge found it either negligent or intentionally misleading. However, he did not specify at which end of that wide range petitioner's testimony rested. Certainly, if petitioner's understanding of restraining orders was simply careless, no adverse conclusions were justified. The review department found no basis for a conclusion of dishonesty on petitioner's part regarding the status of the restraining orders. The review department also drew no adverse moral conclusions from petitioner's frequent litigation in the State Bar Court over a protective order. Petitioner had a right of reasonable access to this court to seek judicial remedies. Her contact of members of the Board of Governors and senior State Bar staff was also

within her rights and she did not pursue inappropriate means to influence judicial decisions. The review department also concluded that petitioner disclosed adequate facts about the matter in her communications. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1. **[2 a-b]**

The hearing judge's discussion of his concerns over petitioner's actions in terms of according her a "reasonable doubt" made review somewhat difficult. It is clear that in a disciplinary proceeding, where the State Bar has the burden of proving charges by clear and convincing evidence, the accused is entitled to the exercise of reasonable doubts. However, in a reinstatement proceeding, where the petitioner unquestionably has the burden of presenting clear and convincing evidence of her qualifications, petitioner can not be given the benefit of reasonable doubts. However, by reading the decision in its entirety, the review department construed the hearing judge's decision finding reasonable doubts in favor of petitioner to not invoke the normal meaning of the term "reasonable doubt" as used in this area of law, but rather, such narrow doubt that would be acceptable in a satisfactory showing for reinstatement. *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1. **[3 a-b]**

A reinstatement petitioner's showing of acceptance of responsibility for his misconduct, of extreme remorse, and of efforts and success at developing the skills and relationships necessary to deal appropriately with future problems supported the conclusion that the petitioner demonstrated insight into his misconduct and had taken steps to change his character and behavior. The petitioner's showing of a proper attitude to his misconduct and a steady determination to rehabilitate himself warranted favorable consideration in considering his reinstatement. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[6]**

In determining whether a petitioner has met the burden of proof in a reinstatement proceeding notwithstanding alleged weaknesses in the showing of rehabilitation and moral fitness, it is essential to compare the facts of the proceeding with the facts of other reported reinstatement cases in which the petitioners were admitted despite such weaknesses. Where a petitioner's showing of rehabilitation included evidence as to the petitioner's remorse, acceptance of full responsibility for the misconduct, candor, honesty and integrity, success in a fiduciary position, and success at meeting financial obligations, it was as strong as the showings of petitioners who had gained reinstatement. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[13]**

A reinstatement petitioner's recent conviction for driving under the influence did not, by itself, establish a lack of either rehabilitation or present moral fitness, where the conviction was an isolated, uncharacteristic and aberrational incident; the petitioner did not have a chemical dependency problem; the petitioner had taken steps to prevent any further occurrence; and the conviction was petitioner's first DUI offense, was unrelated to the practice of law, and was unrelated to the misconduct which led to petitioner's resignation. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[15]**

A reinstatement petitioner's recent conviction for driving under the influence In deciding whether a reinstatement petitioner has met the burden of proof, the evidence presented must be viewed in light of the moral shortcomings which resulted in the petitioner's loss of his or her license. Where the petitioner's participation in criminal misconduct had been limited and was mitigated by contributing emotional factors that had long since been brought under control, the review department concluded that the petitioner had made an adequate showing of rehabilitation and present moral fitness when viewed against this backdrop and in light of past comparable reinstatement cases. *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546. **[16]**

Whether a petitioner has met the heavy burden of proof in a reinstatement proceeding depends on a comparison of the facts of the proceeding with the facts in other reported cases. Petitioners have obtained reinstatement despite weaknesses in their showings of rehabilitation and present moral qualifications. Where the showing of rehabilitation and present moral qualifications by a petitioner for reinstatement was as strong as similar showings by petitioners who obtained reinstatement despite alleged weaknesses in their cases, and where petitioner's case was distinguishable from reported cases in which petitioners failed to proved rehabilitation and present moral qualifications, the review department recommended reinstatement despite petitioner's evasive notice to clients that he was "retiring" and despite petitioner's continuing to work as a paralegal for a law firm even though he questioned the propriety of the law firm's name. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[20]**

Reinstatement petitioner's admission of misconduct, cooperation with authorities, lifestyle changes, curtailment of spending, and restitution were significant factors in favor of reinstatement. Postmisconduct pro bono work, community service, and handling of fiduciary responsibilities, as well as character witnesses' testimony and reference letters, also supported reinstatement. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[21]**

The passage of an appreciable period of time is an appropriate consideration in determining whether a petitioner for reinstatement has made sufficient progress towards rehabilitation. Where the evidence is uncontroverted and shows exemplary conduct for eight to ten years with no suggestion of wrongdoing, a petitioner would seem to have established rehabilitation. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[10]**

Evidence of pro bono or charitable work reflects on an erring attorney's rehabilitation and present moral qualifications. Where a petitioner for reinstatement had volunteered one full day every week for several years at a legal services program, such extensive pro bono work was a significant factor in favor of the petitioner's reinstatement. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[11]**

Although the law demands neither fraudulent penitence nor artificial contrition, a petitioner for reinstatement must understand his or her professional responsibilities and must show a proper attitude toward his or her misconduct. Where a petitioner acknowledged the seriousness of his wrongdoing, expressed remorse, and described a fundamental change in values likely to prevent future misconduct, such testimony, which hearing judge found credible, was a significant factor in favor of his reinstatement. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[12]**

Although testimony by character witnesses and letters of reference are not conclusive, favorable character evidence deserves heavy weight in determining whether a petitioner for reinstatement has proved rehabilitation and present moral qualifications. Favorable character testimony and reference letters from employers and attorneys are entitled to special weight. Petitioner's current employer's testimony expressing a high opinion of petitioner's character, demeanor and behavior, and confirming petitioner's sensitivity and concern for proper ethical behavior, merited significant weight. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[13]**

Testimony by psychologist who had tested reinstatement petitioner and interviewed him 10 times, and who opined that risk of petitioner's recidivism was very low, was entitled to significant weight. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[15]**

The standard for rehabilitation and present moral qualifications in a reinstatement proceeding is objective, and whether the petitioner has met the heavy burden of proof depends on a comparison of the facts of the current proceeding with the facts in other reported proceedings. Where petitioner's showing of rehabilitation and present moral qualifications was at least comparable to the showings by others who had obtained reinstatement, and reported cases denying reinstatement were distinguishable, review department recommended reinstatement. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[18]**

2550 Reinstatement Not Granted

2551 Inadequate Showing of Rehabilitation

Where the underlying misconduct involves the theft of client trust funds, restitution is fundamental to rehabilitation. The weight attached to whether restitution has been undertaken in whole or in part depends on the ability to restore the misappropriated funds as well as the attitude expressed regarding the matter. Thus, the petitioner must provide a factual showing that he understands the extent of the harm his misconduct caused, as well as proof of his willingness to remedy it. Where petitioner engaged in a repeated pattern of theft of client funds for three years, but petitioner was unable to identify with any certainty the number of clients harmed or the amounts misappropriated, and the record lacked specificity as to how long clients had to wait for payment, the specific harm they incurred and its effect or petitioner's attitude in rectifying the harm, petitioner's assertion that all clients were repaid lacked conviction, and the evidence of rehabilitation was inadequate. *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27 **[1 a–i]**

Where some clients were repaid amounts misappropriated from them during petitioner's cycle of theft and repayment, paying one client with another client's money, and no evidence was presented to show that petitioner repaid any of the identified or unidentified clients guided by a moral imperative consistent with the duties of an attorney, or merely to perpetuate his ongoing scheme or to satisfy terms of his probation, the review department could not conclude that the manner of restitution was consistent with rehabilitation. *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27 **[2]**

Petitioner's misappropriations occurred because he found himself overcome by the stresses of his increased financial obligations, and petitioner still had outstanding loan obligations. Thus, given the utter lack of evidence showing his comprehension of the magnitude of harm, or his attitude of mind regarding repayment, his assurances at trial that he would no longer resort to unethical means to pay his debts constituted insufficient evidence of rehabilitation. *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27 **[3]**

While an omission is not necessarily fatal to a petition for reinstatement, if an omitted claim is significant or misleading, or conceals derogatory information, reinstatement may be denied. Where petitioner failed to disclose nine lawsuits to which he was a party, regardless of the reasons for the omissions, the omissions left it to chance whether the bar's investigation process would uncover the lawsuits. Even if petitioner omitted the lawsuits as a result of hurrying to meet a deadline, he had ample time to correct his omission well before he did so, and his lack of care and the expedited manner in which he handled the disclosure of his lawsuits, coupled with a lack of evidence to show rehabilitation, was troubling and further demonstrated petitioner's failure to understand the seriousness of his misconduct. *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27 **[4 a–d]**

In instances where significant weight has been afforded to character declarations or testimony, the evidence has been complementary to other probative evidence of the petition. Where letters in support of petitioner's reinstatement described him as a man of personal integrity, described his involvement in charitable activities, asserted that petitioner's misconduct was aberrant behavior traceable to financial stresses, and stated that the declarants were aware of petitioner's misconduct, yet petitioner had not accounted for the full financial extent of the harm to his clients, nor the manner in which he made restitution, it was unclear how the witnesses could fully understand the magnitude of petitioner's misconduct or how he made up for it. *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27 **[5 a, b]**

Since petitioner's post–resignation misconduct related to his gambling and alcohol abuse negatively reflected on his moral character, petitioner's first day of sobriety is the point when he began his rehabilitation in earnest insofar as the practice of law is concerned. It is from this point that petitioner's overall rehabilitation in light of his past wrongdoing is measured. Therefore the question was not whether the passage of time since petitioner failed to file a rule 955 affidavit after resignation should be considered in establishing his rehabilitation but whether petitioner's 39–month period of sustained exemplary conduct from the date of sobriety to the date of trial is sufficient to demonstrate his overall rehabilitation given the seriousness of his past misconduct. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[5]**

Where petitioner's gambling and alcoholism resulted in ethical breaches that involved misappropriation of entrusted funds, multiple acts of deceit which continued post–resignation, and repeated disregard for court orders, including one from the Supreme Court, and that caused harm to multiple clients due to incompetent performance or abandonment, petitioner's period of exemplary conduct was insufficient to establish his overall rehabilitation given the extent of his prior wrongdoing and addictions. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[6a, b]**

A lack of rehabilitation was found where petitioner mischaracterized his prior misconduct as mere mistakes and continued to attack the findings of misconduct by filing numerous petitions for writs and supplemental pleadings challenging the disbarment decision. Rehabilitation often requires a lengthy period of exemplary conduct. An erring attorney who seeks readmission must understand his or her professional responsibilities and must show a proper attitude toward his or her misconduct. The review department affirmed the finding that petitioner had not shown rehabilitation. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894.**[4]**

Where petitioner for reinstatement admitted his alcoholism, but his showing of recovery rested entirely on his own efforts at abstinence as supplemented by favorable character testimony, and he failed to present any medical or other expert opinion attesting to his recovery and prognosis, or any evidence that he had undergone recent treatment or participated in any recovery program, hearing judge's conclusion that such showing was insufficient to establish rehabilitation was entitled to considerable weight. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[4]**

In reinstatement proceeding, where petitioner moved to augment record on review with medical evidence regarding recovery from alcoholism which hearing judge had declined to consider on motion for reconsideration, and review department concluded that petitioner made favorable showing on all other aspects of rehabilitation, review department considered petitioner's evidence in accordance with case law holding that extrinsic evidence will not be ignored where it is the only means of proving rehabilitation from serious physical or emotional problems. Where such evidence added support to conclusion that petitioner had not demonstrated that recovery program was adequate, and State Bar expressed concern that evidence had been offered without opportunity for cross-examination, review department remanded for further hearing and expert testimony regarding petitioner's recovery. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[5]**

Where reinstatement petitioner showed moral rehabilitation but did not make adequate showing of recovery from alcoholism, review department declined to recommend reinstatement conditional on continued adherence to a treatment program. Possibility of conditional reinstatement has not been foreclosed, but it would not be appropriate when it involves as central an issue of concern as recovery from alcoholism and depression. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[6]**

Where there has been an absence of complete restitution and no evidence of an inability to pay, a petitioner for reinstatement may present evidence of other affirmative acts which demonstrate the petitioner's recognition of fault, contrition and curing of the source of the initial problem and the resulting harm. Such other evidence must be "quite convincing" to establish the present rehabilitation of the petitioner. The fact that petitioner's victim had recommended petitioner's imprisonment, rather than probation and restitution, did not justify petitioner's failure to make restitution. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[11]**

Although petitioner for reinstatement made restitution to the victims of the misconduct which had resulted in disbarment, petitioner's lack of concern to keep his creditors at least informed of his whereabouts and his indifferent attitude toward his creditors were negative factors despite his very modest financial resources. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[10]**

Upon its independent review of the record, the review department found that circumstances of reinstatement petitioner's omission of two lawsuits from reinstatement petition demonstrated that petitioner had not met his heavy burden of showing clearly and convincingly his rehabilitation and present moral fitness. While review department was reluctant to differ with referee who weighed the credibility of witnesses, including petitioner, and who concluded that petitioner met reinstatement standards, it was review department's duty to independently examine record, reweigh evidence and pass on its sufficiency. Doing so, review department concluded that hearing referee had not given sufficient care to analyzing petitioner's evidence about his non-disclosure of two lawsuits as it bore on the qualities needed for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[9]**

As with any aspirant to membership in State Bar, reinstatement petitioner is entitled to access to courts to decide good faith claims, but where petitioner who worked for confusingly intertwined entities sued customer of one entity for punitive damages for complaining against one entity instead of another, and failed to show justification for suit, petitioner failed to sustain burden of showing exemplary conduct required to qualify for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[14]**

Where, in ordering reinstatement petitioner's earlier disbarment, Supreme Court had set as the standard for his reinstatement that he show reattainment of the standard of fitness to practice law by "sustained exemplary conduct over an extended period of time," this standard did not require perfection nor total freedom from true mistake. However, where petitioner did not justify omission of lawsuits from reinstatement petition by ascribing them simply to mistake; could not justify materially incomplete petition in respect of his employment; and had taken inconsistent position in lawsuit, petitioner's showing fell short of sustained exemplary conduct. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[17]**

2552 Inadequate Showing of Fitness to Practice

The basis of the hearing judge's finding of present moral fitness was character evidence and petitioner's testimony about his volunteer work and his assistance to relatives. However, in determining present moral qualifications, testimony by character witnesses and letters of reference are not conclusive. Similarly, volunteer work and care of relatives are factors to be considered, but are not dispositive. The review department reversed the finding of present moral fitness, finding that by minimizing and denying his serious misconduct, petitioner revealed a failure to appreciate the responsibilities of an attorney and the gravity of his ethical violations. This failure undermined his attempt to prove his present moral qualifications for readmission, as well as his attempt to show rehabilitation. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[5]**

For an applicant for reinstatement, whose moral character was found wanting in earlier disbarment proceedings, the verified petition for reinstatement serves as the important, formal written presentation by which the petitioner placed himself before the State Bar, the legal profession, the judiciary and the public for decision whether he or she should again be allowed to discharge the high responsibilities required of an attorney at lain in this state. A court evaluating a petition for reinstatement should be able to rely on it as candid and complete in the same manner as a court would rely on an attorney's affidavit or declaration made under penalty of perjury. Where petition contained inaccuracy about marital status and omissions about financial obligations, lawsuits, and legal learning activities, and petitioner's explanations for these defects were not credited by hearing referee, petitioner's failure to bring before the State Bar Court a correct and complete petition for reinstatement fell below the standard of sustained exemplary conduct petitioner must meet for reinstatement. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[10]**

Where witnesses' abilities to observe petitioner's character in light of any changes since disbarment were limited, or witnesses were not fully aware of nature of offenses leading to disbarment, such character evidence failed to show a clear case for reinstatement, or to overcome effect of State Bar's negative evidence. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[13]**

Character evidence, albeit laudatory, was not alone determinative in a proceeding for reinstatement. Presentation of affidavit of one witness regarding conduct in six years since disbarment was inadequate as showing of good character, and was depreciated by petitioner's concealment of disbarment from employer and omission of recent civil suit from disbarment application. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[12]**

Upon its independent review of the record, the review department found that circumstances of reinstatement petitioner's omission of two lawsuits from reinstatement petition demonstrated that petitioner had not met his heavy burden of showing clearly and convincingly his rehabilitation and present moral fitness. While review department was reluctant to differ with referee who weighed the credibility of witnesses, including petitioner, and who concluded that petitioner met reinstatement standards, it was review department's duty to independently examine record, reweigh evidence and pass on its sufficiency. Doing so, review department concluded that hearing referee had not given sufficient care to analyzing petitioner's evidence about his non-disclosure of two lawsuits as it bore on the qualities needed for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[9]**

In disciplinary cases, the Supreme Court has considered an attorney's acts of gross neglect in representing clients' interests to involve moral turpitude. Reinstatement petitioner's lack of care as to his own duties regarding disclosure of litigation on reinstatement petition, while not requiring strong label of moral turpitude, fell short of highest standard of fitness which petitioner must demonstrate for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[10]**

In reinstatement proceeding, impressive testimonials of witnesses were neither conclusive nor necessarily determinative; witnesses could not be given conclusive weight in light of petitioner's failure to file complete and sufficient application for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[15]**

2553 Inadequate Showing of Learning and Ability in Law

A petitioner's submissions in a reinstatement proceeding can form the basis for a finding of a lack of present ability and learning in the law. Petitioner failed to demonstrate present learning and ability in the law, despite having taken many bar review and continuing education classes and having increased his knowledge of the law, when he filed review briefs that used facts from exhibits that were never admitted into evidence; attempted to use exhibits, admitted for a limited purpose, to assert the truth of the matters therein; misstated the long established burden of proof in reinstatement proceedings; misread the findings of the judge, and unreasonably exaggerated. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[7]**

Where reinstatement petitioner did not provide documentary evidence to support his claim that he had written legal memoranda, and also did not provide convincing testimonial evidence, petitioner did not show sufficient proof of learning and ability in the general law. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[15]**

Where reinstatement petitioner had shown rehabilitation, but had not presented sufficient proof of learning and ability in the general law, then if review department had concluded that petitioner was presently fit to practice, it would have conditioned its recommendation of reinstatement on passage of the bar examination to assure the public of petitioner's legal learning. However, review department's adverse determination on petitioner's fitness to practice made bar exam recommendation unnecessary. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[16]**

Where petitioner for reinstatement did not adequately demonstrate present learning in the law, reinstatement could have been recommended conditioned on passage of California Bar Examination, if petitioner had been found rehabilitated and morally fit. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[14]**

2554 Failure to Comply with Cal. Rules of Ct. 9.20 (former Rule 955)

In the Matter of Rudnick (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27

Because subdivision (e) of rule 955 provides that a disbarred lawyer's failure to comply with rule 955 may constitute a ground for denial of reinstatement, the clear failure of a petitioner for reinstatement to comply with rule 955 was a serious negative factor regardless of whether the petitioner had any clients at the time when he was required to comply with rule 955. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[11]**

2559 Other Basis for Denial

An attorney's obligation to make restitution is not limited to legally enforceable claims. An attorney may have a moral obligation to make restitution as part of the duties of an attorney, in order to confront the harm caused by the theft. Nonetheless, payment of restitution is neither mandatory nor determinative of rehabilitation. The attorney's attitude toward payment to the victim is considered as well as the ability to pay. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[9]**

Where reinstatement petitioner failed to disclose litigation completely in two successive petitions, his failure to do so was not excused by theory of mistake; rather, his offer of that theory cast further doubt that he had achieved insight into standard of sustained exemplary conduct he had to meet for reinstatement. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[12]**

Omission of employment information from reinstatement petition, standing alone, would not warrant denial of reinstatement, but when coupled with omission of lawsuits, also showed that petitioner had failed to sustain his burden. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25. **[13]**

2590 Miscellaneous Issues in Reinstatement Proceedings

The fact that petitioner waited almost ten years after he resigned before he made restitution did not detract from petitioner's showing of rehabilitation since he demonstrated a proper attitude and sincerity toward restitution by voluntarily choosing not to discharge debts owed to creditors who were former clients or lienholders and by fully reimbursing all but one of his victims. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883. **[3a, b]**

Restitution is neither mandatory, nor in and of itself determinative of rehabilitation. Applicants for reinstatement are to be judged not solely on the ability to make restitution, but by their attitude toward payment to the victim. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[6]**

Generally the standard to apply to the review of a discovery order on appeal is abuse of discretion. There was no abuse of discretion in denying the State Bar's request that the hearing judge order petitioner to submit to an independent medical examination because petitioner continues to consume alcohol when there is no evidence that petitioner presently abuses alcohol or suffered from a previous alcohol addiction or that petitioner's present consumption of alcohol caused any relapse into drug use. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816. **[8 a, b]**

Although earlier admissions cases do not consider the time a petitioner is in custody or under court or State Bar supervision to be particularly weighty in assessing rehabilitation, the petitioner in each of those cases had engaged in extremely serious misconduct for an extensive time and had not adequately shown rehabilitation in light of the seriousness of the offenses. In contrast, in this case, petitioner's misconduct, though clearly serious, spanned four years, but there was no evidence that petitioner acted in less than an exemplary fashion while on probation. Further, some of petitioner's positive conduct, notably his cooperation with the State Bar, occurred despite his understanding that he would get no benefit from it. The review department therefore concluded that it was appropriate in this case to accord some weight to petitioner's activities while on probation, but it gave far greater weight to the last four years of petitioner's showing, which were after he completed his criminal probation. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[2 a,b]**

Opinion testimony of an attorney as to the ultimate issue that petitioner was qualified for reinstatement was not precluded, although that ultimate issue was for the State Bar Court and the Supreme Court to decide. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[6 a,b]**

Negative testimony regarding petitioner's rehabilitation did not rebut petitioner's favorable testimony for a very important reason: the negative testimony was based solely on the severity of petitioner's earlier misconduct and not on his rehabilitative steps since resignation. The witnesses had no personal observation of petitioner for most, if not all, of the 10 years that elapsed between the time petitioner resigned and the State Bar Court hearings. Thus, while the negative testimony of each of these witnesses was relevant on the issues of the seriousness and the nature and extent of petitioner's prior misconduct, it was of little relevance on the issues of petitioner's present character and of whether petitioner has maintained a sustained period of unblemished and exemplary conduct. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[7 a-c]**

Reinstatement petitioner's outstanding income tax delinquencies of $458,000 and his offer to compromise and settle the delinquency with Internal Revenue Service for $50,000 did not show adverse moral character. This was not a case where petitioner concealed assets or his delinquencies. Nor was this a case where petitioner failed to file tax returns. Further, petitioner should not be deprived of the ability to take advantage of the offer in compromise procedures open to any citizen seeking to resolve a large delinquency, particularly when that delinquency consists of sizeable penalties and interest. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459. **[8 a-d]**

Issues raised in State Bar's petition for interlocutory review as to (1) whether Rules of Procedure required petitioner for reinstatement to provide proof, at time he presented his petition for filing, that he had passed a professional responsibility examination within last year (i.e., one before filing of petition) and (2) whether hearing judge erred in finding that petitioner had not previously resigned from State Bar with disciplinary charges pending were proper for interlocutory review because they could determine outcome of proceeding and determine whether petitioner's rehabilitation was an issue in proceeding. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[1 a-e]**

Where hearing judge did not issue written ruling on his denial of State Bar's motion to dismiss former attorney's petition for reinstatement, review department determined hearing judge's reasoning from written transcript of hearing on motion, which was included in appendix to State Bar's petition for interlocutory review. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[2]**

Hearing judge erred as a matter of law in finding that petitioner for reinstatement had not previously resigned from State Bar with disciplinary charges pending where petitioner's resignation was entitled "resignation with charges pending;" stated that charges were pending against him; was in form prescribed by California Rule of Court 960; was accepted by Supreme Court without prejudice to further proceedings; and where petitioner stated in his petition for reinstatement that, at time he resigned from State Bar, no formal charges were filed against him by State Bar, but only a number of minor client complaints that he had responded to, taken adequate measures to deal with, and answered State Bar in writing denying any misconduct. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[3]**

State Bar Court must interpret State Bar Rule of Procedure 665(a) that requires all petitioners for reinstatement to take and pass professional responsibility examination within frame work of California Rule of Court 951(f) dealing with reinstatement because State Bar's rule making authority is subject to Supreme Court's inherent authority over attorney regulatory matters. And State Bar Court should endeavor to construe State Bar rule as consistent Rules of Court. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[5]**

Applying rules of statutory interpretation to language of State Bar Rule of Procedure 665(a) requiring all petitioners for reinstatement to take and pass professional responsibility examination, review department held (1) that rule sets the earliest time to pass examination at one year before filing of petition, but does not set latest time to pass examination and (2) that rule does not require proof of passage as condition precedent to filing petition, but only as condition to precedent to State Bar Court recommendation of reinstatement. *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91. **[6 a-b]**

The sole issue raised is whether the requirement set forth in Business and Professions Code section 6140.5, subdivision (c), that an attorney who resigns with disciplinary charges pending reimburse the Client Security Fund (CSF) for all sums paid out as a result of the former attorney's misconduct together with interest and costs, is a condition precedent to the former attorney's filing of a petition for reinstatement. The issue is not whether, at the time he filed his petition, petitioner was eligible for reinstatement, but rather whether he had a right to file his petition for reinstatement. Section 6140.5, subdivision (c) mandates that the amount paid out by CSF because of the dishonest conduct of a lawyer, plus applicable interest and costs, shall be paid as a condition of reinstatement of membership. There is no language in that section that precludes or purports to preclude the filing of a petition for reinstatement without including a showing of repayment to the CSF. And the review department was unaware of any law, rule of court, or rule of procedure that required an affirmative showing that reimbursement has been made to CSF before or at the time of filing a petition for reinstatement. Moreover, there was no dispute that reinstatement occurs only when the Supreme Court so directs after State Bar Court proceedings, not when a petition for reinstatement is filed. Accordingly, the State Bar failed to establish either an abuse of discretion or error of law. *In the Matter of Jaurequi* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 56. **[1 a-c]**

In reinstatement cases, the well-established practice is to begin the analysis by reviewing the petitioner's showing in light of the moral shortcomings which led to his disbarment. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[1]**

A petitioner for reinstatement must show by clear and convincing evidence that he or she has met the requirements for readmission. OCTC need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence. Instead, OCTC need only proffer sufficient adverse evidence to lower the persuasiveness of a petitioner's evidence so that he or she does not meet the burden to prove his or her case by clear and convincing evidence. Nor is a petitioner entitled to the benefit of the doubt if equally reasonable inferences may be drawn from a proven fact. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[3]**

Although rule 665(b) of the Rules of Procedure of the State Bar, title II, State Bar Court Proceedings, enumerates moral qualifications for reinstatement as an item separate from rehabilitation, rule 951(f) of the California Rules of Court combines them as a single item. The Supreme Court has often considered rehabilitation and moral qualifications for readmission together. *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894. **[6]**

In its opinion remanding a petition for reinstatement for further proceeding not inconsistent with the opinion, the review department held, on the record then before it, that the petitioner had demonstrated his moral reform from

the acts which lead him to resign from the Bar with disciplinary charges pending. Accordingly, under law of the case, it would be improper for hearing department to reconsider petitioner's moral reform on remand in the absence of additional evidence. As to events that predated the petition, and were disclosed on the petition, it is clear that reopening would be impermissible. The same would be true of events about which the State Bar had a reasonable opportunity to investigate and present at a hearing. However, one of the underlying purpose of reinstatement proceedings is to insure that only persons of present good moral character are reinstated to the practice of law in this state. Accordingly, with the exceptions noted, the State Bar Court may consider any act or conduct that is relevant to a petitioner's moral character regardless of when or where the act or conduct occurred. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[1]**

A petitioner establishes that he possesses the requisite present moral qualifications for reinstatement by presenting clear and convincing evidence that he possesses good moral character and has been rehabilitated. Any act or conduct bearing on the petitioner's qualities of honest, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and nation, and respect for the rights of others and the judicial process is relevant in a reinstatement proceeding. Unlike a petitioner's rehabilitation from prior bad acts, a petitioner's present moral qualifications for reinstatement is not capable of being conclusively determined for all time and is subject to re-evaluation on the State Bar's motion at least until the effective date of the Supreme Court's reinstatement order. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[2]**

Because jurisdiction vests in only one court at a time, once a review department opinion remanding the proceeding to hearing department for further proceedings becomes final, only the hearing department had jurisdiction to rule on State Bar's motion to expand the issues to be addressed at the trial on remand. Because the review department did not adjudicate the issue of petitioner's present moral fitness in its opinion remanding the proceeding to hearing department, the hearing judge's consideration of that issue on remand was not inconsistent with the review department's remanding opinion, and the hearing judge therefore did not error in admitting additional relevant evidence on the issue. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[3]**

Because the State Bar does not have the burden of proof in reinstatement proceedings, it need not rebut a petitioner's showing of rehabilitation, present moral fitness, or present learning and ability in the law with clear and convincing adverse evidence to prevail. Instead, the State Bar need only proffer sufficient adverse evidence to lower the persuasiveness of the petitioner's evidence so that he does not meet his burden to prove his case by clear and convincing evidence. Of course, the State Bar may elect not to present any adverse evidence if it concludes that petitioner's showing is insufficient to establish his case by clear and convincing evidence. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630. **[5]**

Where reinstatement petitioner showed moral rehabilitation but did not make adequate showing of recovery from alcoholism, review department declined to recommend reinstatement conditional on continued adherence to a treatment program. Possibility of conditional reinstatement has not been foreclosed, but it would not be appropriate when it involves as central an issue of concern as recovery from alcoholism and depression. *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692. **[6]**

An attorney who resigns with disciplinary charges pending rather than being disbarred must still establish rehabilitation through a reinstatement proceeding. (Trans. Rules Proc. of State Bar, rule 662.) *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[1]**

Restitution is fundamental to the goal of rehabilitation. It forces attorneys to confront in concrete terms the harm caused by their misconduct. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[4]**

Although a petitioner for reinstatement does not need to occupy a fiduciary position in order to prove rehabilitation, evidence that the petitioner has successfully occupied such a position after misconduct is of probative value. Where a petitioner exercised fiduciary responsibilities for a probate estate and a trust after his resignation with disciplinary charges pending, his distribution of funds for the probate estate and the trust without problems constituted a factor in favor of his reinstatement, even though the sums involved were relatively small. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[7]**

Where a municipal court judge and a state appellate justice were subpoenaed as witnesses, it was proper for them to testify in a reinstatement proceeding. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[10]**

It was not improper for petitioner for reinstatement to have continued to work as a paralegal for his son in his former office after resigning with charges pending, where petitioner did not engage in any acts constituting the practice of law while so employed. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[12]**

Statement by resigning attorney to clients that he would assist another attorney in handling their matters was proper, where attorney did not suggest that he would be acting as clients' attorney in so doing. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[14]**

Where a resigned attorney continued to work as a paralegal for another attorney, and two former clients of the resigned attorney, although aware he was no longer practicing law, submitted checks payable to him for legal services from the other attorney, and where he promptly endorsed the checks over to the other attorney, neither the checks nor the resigned attorney's handling of them supported the claim that he had held himself out as entitled to practice law. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[15]**

Where a resigned attorney continued to work as a paralegal for a sole practitioner, and attorney-client contracts and letters from the sole practitioner contained plural references to attorneys, these plural references did not establish that the resigned attorney had held himself out as entitled to practice law, where the resigned attorney was not aware of these plural references, and the sole practitioner hired other attorneys to assist on a contract basis. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[16]**

A law firm is required by statute to remove from its business name the name of an attorney who is disbarred or resigns with discipline charges pending. The May 1989 Rules of Professional Conduct explicitly provide that a law firm's name can itself constitute a prohibited misleading communication, and the definition of "communication" in the predecessor rules was also broad enough to encompass law firm names. However, where a resigned attorney continued to work for his attorney son as a paralegal despite the son's adoption of a firm name which might have been construed to imply that the resigned attorney was a member of the firm, any possible misconduct by the son regarding his firm's name was not before the State Bar Court on the father's petition for reinstatement. *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423. **[17]**

The fact that a person resigned with disciplinary charges pending instead of suffering disbarment does not affect the necessity for a reinstatement proceeding. (Trans. Rules Proc. of State Bar, rule 662.) *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[1]**

Egregious misconduct does not preclude reinstatement. The law favors rehabilitation. Reformation is open to all attorneys who have erred. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[8]**

Judges should not testify voluntarily as character witnesses. Judges should respond to requests from the State Bar, but absent such a request, should not write a letter of reference for an attorney facing discipline or a petitioner seeking reinstatement. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[14]**

Favorable character testimony in reinstatement proceeding should not have been devalued based on lack of frequent current contact with petitioner by witnesses who knew him at time of original misconduct, or based on failure to call family members to testify, where misconduct was unrelated to home or family. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[16]**

Where evidence about the manner in which a reinstatement petitioner has handled positions of trust is available, such evidence is of probative value. But evidence that the petitioner has occupied positions of trust is not a requirement of reinstatement, and favorable testimony about the petitioner's trustworthiness should not be discounted because the witnesses have failed to observe how the petitioner would handle a fiduciary relationship. *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309. **[17]**

The Supreme Court has not ruled out the possibility of a conditional reinstatement, but the condition must not be inconsistent with the basic purpose underlying reinstatement. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668. **[6]**

As with the treatment of failure to pay restitution in reinstatement and criminal probation cases, in a disciplinary proceeding for failure to make timely restitution as a condition of attorney disciplinary probation, due process requires an examination of the probationer's ability to make restitution and the sufficiency and good faith of the probationer's efforts to acquire the resources to pay. *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525. **[11]**

Form petitions signed by lawyers and judicial officers in support of petitioner's reinstatement, which contained sketchy text and were undated, were properly excluded from evidence for lack of adequate foundation, as they fell far short of offering any probative value of the assessment of petitioner's character for meeting the rigorous burden of a reinstatement petition. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[5]**

Form petitions in support of petitioner's reinstatement, and other letters and testimonials, were excludable from evidence as hearsay, absent stipulation of the State Bar examiner. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[6]**

Review department gave deference to hearing referee's findings and conclusions regarding reinstatement petitioner's showing of rehabilitation, since they rested largely on referee's superior position to evaluate testimony of witnesses. However, petitioner's two post-disbarment criminal convictions, and failure to establish that restitution had been made in disciplinary proceeding pending at time of disbarment, raised serious questions regarding rehabilitation. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[8]**

Where reinstatement petitioner described himself as an attorney at law in public advertisement, but same document referred clearly to petitioner's disbarment, review department declined to find that petitioner had held himself out to the public as authorized to practice law. However, petitioner's use of term "attorney at law" when not an active member of State Bar was inappropriate, and its use in papers filed with State Bar Court in reinstatement proceeding did not aid petitioner in demonstrating sustained exemplary conduct. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[11]**

To be accurate, petitioner should have stated that the minimum waiting period to apply for reinstatement is five years (Trans. Rules Proc. of State Bar, rule 662), rather than stating that he had been disbarred for five years. Nonetheless, petitioner's statement as a whole clearly indicated that petitioner was not then licensed to practice law, so misstatement was not serious. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[12]**

Favorable character evidence is neither conclusive or necessarily determinative on reinstatement. *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373. **[14]**

In a reinstatement proceeding, records of prior discipline, including the proceeding in which the petitioner was disbarred, are admissible, because the evidence of the petitioner's present character must be considered in light of the moral shortcomings which resulted in the prior discipline. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[1]**

The review department gives great weight to the findings of the hearing judge, who saw and heard the witnesses and resolved matters of testimonial credibility. Nevertheless, under rule 453(a), Trans. Rules Proc. of State Bar, the hearing judge's decision serves as a recommendation to the review department, which undertakes an independent review and may make findings of fact or draw conclusions of law at variance with those of the judge. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[3]**

In a reinstatement proceeding, the hearing judge acted within his discretion in excluding a second affidavit from a character witness. Like a character reference letter in a disciplinary proceeding, the character reference, even though in affidavit rather than letter form, was excludable as hearsay absent a stipulation to the contrary. Further, the second affidavit was cumulative, and the hearing judge carefully considered the more detailed first affidavit, which he admitted into evidence as part of the reinstatement application. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[6]**

As a formal proceeding of the State Bar Court, a reinstatement hearing is governed by the formal rules of evidence applicable in civil proceedings. (Rule 556, Trans. Rules Proc. of State Bar.) More liberal evidentiary standards applicable in certain other types of statutory proceedings do not apply in State Bar proceedings. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[7]**

Where petitioner for reinstatement did not adequately demonstrate present learning in the law, reinstatement could have been recommended conditioned on passage of California Bar Examination, if petitioner had been found rehabilitated and morally fit. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219. **[14]**

2600 Issues in Admissions Moral Character Proceedings

2601 Special Procedural Issues

2602 Burdens of Proof

In moral character cases, the Supreme Court must independently assess the weight that any civil court findings have with respect to State Bar's burden of proof on rebuttal of applicant's prima facie showing of good moral character, in light of other evidence on rebuttal and applicant's showing, if any, in rehabilitation. The ultimate question is unique to moral character proceeding, in which no deference is owed to a civil judgment. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[5]**

Although the burden of proof in State Bar proceedings is generally clear and convincing evidence, there is no State Bar rule that specifically sets forth the State Bar's burden of proof on rebuttal in moral character proceedings. An applicant's claim for admission to the practice of law in this state is not a mere privilege, but a claim of right that is afforded the protection of due process. Even though there are distinctions between admission proceedings and disciplinary proceedings, the question involved in both disciplinary and admissions proceedings is the same—is the applicant for admission or the attorney sought to be disciplined a fit and proper person to be permitted to practice law. The test for admission and for discipline is and should be the same. Accordingly, except as otherwise provided by law, the State Bar's burden of proof in adducing evidence of bad moral character on rebuttal of an applicant's prima facie showing is by clear and convincing evidence. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[8]**

Where First Amendment rights are at stake, the State Bar's burden of proof in adducing evidence of bad moral character on rebuttal of an applicant's prima facie showing is proof beyond a reasonable doubt. Where the right of access to the courts is at stake, proof beyond a reasonable doubt may also be required. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[9]**

The State Bar Court may apply collateral estoppel principles to preclude an applicant from relitigating an issue that was actually litigated and resolved adversely to him or her in a prior civil proceeding, provided that the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, that the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, that the applicant was a party to the civil proceeding, that there is a final judgment on the merits in the civil proceeding, and that no unfairness in precluding relitigation of the issue is demonstrated by the applicant. An applicant may demonstrate that it would be unfair to bind him or her to an adverse civil finding by showing, among other things, that he or she had less incentive or motive to litigate the issue in the civil proceeding, that the civil finding or judgment is itself inconsistent with some other finding or judgment, or that he or she was required to litigate under different and less advantageous procedures in the civil proceeding. Where applicant's fraud judgment met the above criteria and no unfairness was demonstrated, the hearing judge appropriately applied the doctrine of collateral estoppel to the underlying fraud issue in this moral character proceeding. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[12]**

2603 Waiver of Confidentiality

Members of the State Bar may be disciplined on the basis of their pre-admission misconduct. State Bar Moral Character Committee's consideration for moral character purposes of respondent's pre-admission misdemeanor conviction did not bar State Bar Court from considering it for discipline purposes. Records relating to respondent's admission to the State Bar were admissible in his post-admission disciplinary proceeding, especially where respondent failed to object at trial to being questioned about such records. *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402. **[2]**

Moral character proceedings in the State Bar Court are confidential unless an applicant waives confidentially in writing. Where applicant waived confidentiality on condition that she not be identified by name and only as to the issue of the hearing judge's allegedly improper application of principals of collateral estoppel, the review department's

published opinion did not refer to applicant by name and addressed only those matters necessary to resolve that issue. In a separate unpublished opinion, the review department addressed the remaining issues on its de novo review of the hearing judge's ultimate decision as to whether applicant met her burden of proof of current good moral character. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[1]**

2604 Discovery

Under rule 835 of the Transitional Rules of Procedure, various discovery provisions applicable in disciplinary proceedings are also applicable in moral character proceedings. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[2]**

Rule XI of the Rules Regulating Admission to Practice Law in California, providing that the files of the Committee of Bar Examiners are confidential, does not have any bearing on the Committee's duty to respond to interrogatories from the applicant in a moral character proceeding, and, when read in conjunction with other applicable rules, only precludes the Office of Trials from disclosing documents voluntarily as opposed to pursuant to appropriate discovery requests or by court order. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[3]**

Normally, discovery objections not raised in a timely fashion will not be considered, and this provision applies in discovery in moral character proceedings even though the Civil Discovery Act has not been made applicable to such proceedings in its entirety. However, where a claim of privilege from discovery had been belatedly presented to the hearing judge without objection and raised an important issue, the review department considered its applicability on review. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[5]**

The State Bar is a public entity within the scope of the statutory official information privilege (Evid. Code, § 1040). The procedure to be followed in State Bar Court proceedings where the official information privilege is asserted is the same as in civil cases. In a moral character proceeding, where the information sought was the identities of persons whom the State Bar had reserved the right to call as impeachment or rebuttal witnesses at trial, the official information privilege did not apply to such information, either because the consent exception was applicable, or because the reservation of the right to call such persons reduced the Committee of Bar Examiners' need for secrecy to the interest of a party in the outcome of the proceeding, which is not protected under section 1040 and which was outweighed by the interests of the public and the applicant in a fair trial. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[6]**

Private personal information about a non-party to a proceeding may be privileged from discovery under some circumstances pursuant to the California constitutional right to privacy. The privacy right to be protected is that of the non-party, and the custodian of the private information may not waive it. The right to privacy is not absolute, but must be balanced against the need for disclosure. In a moral character proceeding, it was unreasonable for material witnesses against the applicant to claim a right of privacy preventing the disclosure of their identities to the applicant during discovery, while consenting to testify against the applicant at trial. However, as to the identities of persons whose testimony would not be used under any circumstances, the applicant had not made a sufficient showing of need to overcome these persons' privacy rights, and their names could be withheld from disclosure. *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279. **[10]**

2605 Interpretation of Rules of Procedure, Div. 7, Ch. 4 (rules 5.460-5.466)

2609 Other Procedural Issues

The procedure in moral character proceedings is that an applicant must initially furnish sufficient evidence to make a prima facie showing of good moral character. If the applicant makes such a showing, the State Bar may then seek to rebut it with evidence of the applicant's bad moral character. If the State Bar rebuts the applicant's prima facie showing, the applicant must prove rehabilitation from the acts evidencing bad moral character in order to prove the requisite good moral character. All reasonable doubts are resolved in applicant's favor. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318. **[2]**

2610 Good Moral Character Found

2611 No Prima Facie Case of Lack of Good Character

The State Bar Court may apply collateral estoppel principles to preclude an applicant from relitigating an issue that was actually litigated and resolved adversely to him or her in a prior civil proceeding, provided that the issue resulting in the civil finding is substantially identical to the issue in the State Bar Court, that the civil finding was made under the same burden of proof applicable to the substantially identical issue in the State Bar Court, that the applicant was a party to the civil proceeding, that there is a final judgment on the merits in the civil proceeding, and that no unfairness in precluding relitigation of the issue is demonstrated by the applicant. An applicant may demonstrate that it would be unfair to bind him or her to an adverse civil finding by showing, among other things, that he or she had less incentive or motive to litigate the issue in the civil proceeding, that the civil finding or judgment is itself inconsistent with some other finding or judgment, or that he or she was required to litigate under different and less advantageous procedures in the civil proceeding. Where applicant's fraud judgment met the above criteria and no unfairness was demonstrated, the hearing judge appropriately applied the doctrine of collateral estoppel to the underlying fraud issue in this moral character proceeding. *In the Matter of Applicant A* (ReviewDept.1995) 3 Cal. State Bar Ct. Rptr.318.**[12]**

Admission of attorneys to practice law is an exercise of one of the inherent powers of the California Supreme Court,which relies on the Committee of Bar Examiners of the State Bar to administerandcarryoutthebaradmission process, including examining applicants for admission and investigating their fitness .An applicant who is denied certification by the Committee may seek independent adjudication by the State Bar Court. The determination of moral character made by that court is final and binding, subject to review by the Supreme Court. *In the Matter of* Lapin(ReviewDept.1993) 2Cal.StateBarCtRptr.279. [1]

No question on respondent's application for admission to practice law called upon respondent, as an applicant, to reveal criminal conduct for which respondent had not yet been convicted or arrested and for which respondent was not awaiting trial. If any such question had been asked, respondent would have had a good argument for withholding information that would lead to criminal liability. Nothing in respondent's manner of completing the application, or in respondent's subsequent two-month delay in reporting to the State Bar a criminal indictment handed down after the application was completed, undermined respondent's showing of rehabilitation from pre-admission criminal conduct. *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62. **[1]**

2700 Issues in Lawyer Referral Service Proceedings

2701 Special Procedural Issues

2720 Denial of Certification

2721 Reversed

2725 Upheld

2740 Certification Revocation

2741 Reversed

2745 Upheld

2790 Miscellaneous Issues in Lawyer Referral Service Proceedings

2800 Issues in Legal Services Trust Fund Proceedings

2801 Special Procedural Issues

2820 Denial of Funding Eligibility

2821 Reversed

2825 Upheld

2840 Termination or Reduction of Funding

2841 Reversed

2845 Upheld

2890 Miscellaneous Issues in Legal Services Trust Fund Proceedings

2900 Issues in Legal Specialization Proceedings

2901 Special Procedural Issues

Rule 15.2 of the Rules Governing the State Bar Program for Certifying Legal Specialists provides that a denial, suspension, or revocation of certification or re-certification by the Board of Legal Specialization based on a final disciplinary action by the Supreme Court, the State Bar Court, or any body authorized to impose professional discipline, shall be final and shall not be subject to further review. The legislative history of rule 15.2 made it abundantly clear that the State Bar proposed the adoption of this rule to the Supreme Court with the specific intent of divesting previously disciplined applicants of their right of appeal to the State Bar Court. Thus, the rule expressly deprived the State Bar Court of jurisdiction to consider applicant's procedural due process challenge. Accordingly, the review department was compelled to agree with the hearing judge, who correctly dismissed the matter for lack of jurisdiction. Although the State Bar Court lacked jurisdiction in this case, the review department construed rule 15.2 to mean that the decision of the Board denying applicant re-certification was subject to review by the Supreme Court *In the Matter of Applicant B* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 731. [1]

Although Business and Professions Code section 6026.5(f) permits appeals from decisions of the Board of Legal Specialization to the Board of Governors of the State Bar to be treated as confidential, the Board of Governors, in delegating its authority to hear such appeals to the State Bar Court, did not expressly indicate whether it intended to preserve the confidentiality of such appeals. (Trans. Rules Proc. of State Bar, rule 225(a)(1).) Where a legal specialization proceeding was treated as public by the hearing judge, the parties were deemed to have waived any argument that the review department should treat the proceeding as confidential by their failure to raise a timely objection to such treatment. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[1]**

An administrative determination by the Board of Legal Specialization regarding an application for certification must comport with due process, and review by the State Bar Court exists in part to test whether due process was afforded. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[5]**

2902 Interpretaion of Rules of Procedure, Div. 6, Ch. 6 (rules 5.390-5.399) (adopted eff. July 24, 2015)

2902.10 Effective date/retrospective application

2902.20 Inapplicable Rules of Procedure (rule 5.399)

2902.90 Other issues re interpretation of Rules of Procedure, Div. 6, Ch. 6

2903 Pleadings and pre-hearing procedure

2903.10 Application for hearing (rule 5.391)

2903.20 Response to application (rule 5.392)

2903.30 Limited discovery for good cause (rule 5.393)

2903.90 Other issues re pleadings and pre-hearing procedure

2904 Ikssued not subject to review (rule 5.394)

2904.10 Failure to pass written examination (rule 5.394(A))

2904.20 Board action based on discipline (rule 5.394(B))

2904.90 Other issues re issued not subject to review

2905 Hearing procedure (rule 5.395)

2905.10 Admissibility of declarations (rule 5.395(A))

2905.20 Right to cross-examine declarants (rule 5.395(B))

2905.90 Other issues re hearing procedure

2906 Burden of proof and standard of review

2906.10 Independent review of record (rule 5.390)

2906.20 Board findings entitled to great weight (rule 5.390)

2906.30 Burden of proof on member (rule 5.396)

2906.40 Proof by clear and convincing evidence (rule 5.396)

2906.90 Other issues re burden of proof and standard of review

2907 Review by Review Department (rule 5.397)

2908 Binding effect of final State Bar Court decision (rule 5.398)

2920 Denial of Certification/Recertification

2921 Reversed

The Board of Legal Specialization has not been given the authority to construe prior discipline as a threshold criterion for specialist certification. Prior discipline is a factor to be considered inexamining an application for specialist certification, but does not constitute an absolute bar to certification. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[4]**

2925 Upheld

2940 Suspension or Revocation of Certification

2941 Reversed

2945 Upheld

2990 Miscellaneous Issues in Legal Specialization Proceedings

Rule15.2oftheRulesGoverningtheStateBarProgramforCertifyingLegalSpecialistsprovidesthatadenial, suspension, or revocation of certification or re-certification by the Board ofLegal Specialization based on a fmal disciplinary action by the Supreme Court, the State Bar Court, or any body authorized to impose professional discipline, shall be final and shall not be subject to further review. The legislative history of rule 15.2 made it abundantly clearthat the State Bar proposed the adoption of this rule to the Supreme Court with the specific intent of divestingpreviou5lydisciplined applicantsoftheirrightof appeal tothe StateBar Court.Thus, therule expressly deprived the StateBar Court ofjurisdiction to consider applicant's procedural due process challenge. Accordingly, the review department was compelled to agree with the hearing judge, who correctly dismissed the matter for lack ofjurisdiction. Although the StateBar Court lackedjurisdiction inthis case, the review department construed rule 15.2to mean that the decision ofthe Board denying applicant re-certification was subjectto review by the Supreme Court. *In the Matter ofApplicant B* (Review Dept. 2004) 4 Cal. State Bar Ct.Rptr.731.**[1]**

Where the record of a legal specialization proceeding contained no documents explaining the basis for the denial of specialist certification and where responses by the deputy trial counsel to interrogatories clarified the basis for the denial, augmentation of the record with the interrogatory responses was appropriate. (Prov. Rules of Practice, rule 1304.) *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[2]**

The Board of Legal Specialization has not been given the authority to construe prior discipline as a threshold criterion for specialist certification. Prior discipline is a factor to be considered in examining an application for specialist certification, but does not constitute an absolute bar to certification. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[4]**

An administrative determination by the Board of Legal Specialization regarding an application for certification must comport with due process, and review by the State Bar Court exists in part to test whether due process was afforded. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[5]**

The State Bar rule which provides that imposition of attorney discipline constitutes cause for the denial, suspension, or revocation of certification or recertification as a specialist applies only to certificate holders, not to applicants for certification. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[6]**

An attorney's record of prior discipline is a factor to be considered by the Board of Legal Specialization in determining whether the attorney initially meets the standards for specialist certification, and, in appropriate circumstances, may justify a decision to deny initial certification. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[7]**

No decision denying specialist certification is permissible unless the applicant for certification receives some meaningful opportunity to be heard in his or her own defense. Where an attorney in good standing applied for certification as a legal specialist 14 years after committing misconduct, 11 years after the resulting suspension order, and 8 years after the completion of the suspension, the Board of Legal Specialization was required to allow the attorney an opportunity to be heard on the attorney's current qualifications. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[8]**

By controlling specialist certification, the Board of Legal Specialization substantially affects not only the professional status of an attorney, but also an important economic interest which is worthy of due process protection. *In the Matter of Mudge* (Review Dept 1993) 2 Cal. State Bar Ct. Rptr. 536. **[9]**

Where the Board of Legal Specialization summarily denied an application for legal specialist certification solely on the basis of applicant's prior serious discipline, without considering any evidence or permitting a hearing on applicant's recent conduct and present qualifications, the Board violated its own rules and applicant's common law right to fair procedure. The Board's indication that it might reconsider the denial at a later date, without any enumerated criteria as to when it would do so, underscored the arbitrariness of its position. *In the Matter of Mudge* (Review Dept 1993) 2 Cal. State Bar Ct. Rptr. 536. **[10]**

California courts have long recognized a common law right to fair procedure protecting individuals from arbitrary exclusion or expulsion from private organizations which have the practical power to affect substantially an important economic interest. A basic and indispensable ingredient of the fair procedure required under the common law is that an individual who will be adversely affected by a decision be afforded some meaningful opportunity to be heard in the individual's defense. *In the Matter of Mudge* (Review Dept 1993) 2 Cal. State Bar Ct. Rptr. 536. **[11]**

Within due process limits, the Board of Legal Specialization has broad discretion in certifying specialists. It may consider any competent evidence rebutting an applicant's showing and may weigh and balance evidence in an appropriate manner. An applicant's prior discipline for very serious misconduct is clearly evidence that should be considered in this process. *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536. **[12]**