

Public Matter – Designated for Publication

Filed December 31, 2002

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)	
)	
JAMES ROBERT VALINOTI,)	Case No.: 96-O-08095
)	
A Member of the State Bar.)	OPINION ON REVIEW
_____)	

Respondent James Robert Valinoti¹ seeks our review of a hearing judge recommendation that he be placed on three years' stayed suspension and on three years' probation with conditions, including two years' actual suspension continuing until respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.²

In this proceeding the State Bar charged respondent with a combined total of twenty-eight counts of professional misconduct in nine separate client matters. In each of the nine client matters, respondent was attorney of record for one or more aliens³ with cases pending in the United States Immigration Court in Los Angeles (hereafter immigration court).

¹Respondent was admitted to the practice of law in the State of California on March 12, 1993, and has been a member of the State Bar since that time. He has no prior record of discipline.

²The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

³We use the term "alien" to describe "any person [who is] not a citizen or national of the United States." (8 U.S.C. § 1101(a)(3).)

SEE CONCURRING AND DISSENTING OPINION

The hearing judge did not find respondent culpable of any misconduct in two of the nine client matters. However, in the remaining seven client matters, the hearing judge found respondent culpable of fourteen counts of charged misconduct and on eight counts of *uncharged*, but proved misconduct. The hearing judge did not consider the eight counts of uncharged misconduct to be independent grounds for discipline, but correctly considered them only for purposes of aggravation.⁴ (See, e.g., *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36 [uncharged misconduct may not be used as an independent ground of discipline, but may be considered, in appropriate circumstances, for other purposes such as aggravation].)

In addition to the aggravation based on the eight counts of uncharged misconduct, the hearing judge found six additional factors in aggravation. In contrast to this extensive misconduct and aggravation, the hearing judge found only three mitigating factors, none of which is significant.

We consolidate respondent's numerous, lengthy arguments on review into the following five points of error: (1) that the hearing judge erroneously refused to evaluate respondent's conduct under what respondent asserts are in effect the "practice standards" for immigration law; (2) that, in almost all the client matters in this proceeding, the hearing judge erroneously refused to evaluate respondent's conduct under what respondent asserts was the limited scope of his representation; (3) that almost all the 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 he made in good faith; (4) that the hearing judge's findings that respondent made misleading statements to an immigration court judge are not supported by the record; and (5) that the hearing judge's recommended two-year period of actual suspension is excessive and should be eliminated or, at least, substantially reduced to no more than a "modest" period. The State Bar

⁴"Aggravation" or "aggravating circumstances" are circumstances or acts surrounding an attorney's misconduct which demonstrate that a greater degree of discipline than would otherwise have been appropriate is necessary to adequately protect the public, the courts, and the legal profession. (Std. 1.2(b).)

argues that all of respondent's arguments are meritless. It urges us to adopt the hearing judge's findings, conclusions, and discipline recommendation.⁵

After independently reviewing the record (Cal. Rules of Court, rule 951.5; Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207), we reject all of respondent's points of error. After making various modifications, we adopt many of the hearing judge's findings of fact and conclusions of law.⁶ However, while the hearing judge found respondent culpable of misconduct in only seven of the nine client matters, we conclude that respondent is culpable of misconduct in all nine. Moreover, while the hearing judge found respondent culpable of 14 of the 28 counts of charged misconduct, we conclude that he is culpable of 18. In addition, we independently conclude that respondent is culpable of five counts of serious *uncharged*, but proved misconduct, which were not found by the hearing judge.⁷ Because these five counts were not charged, we consider them only for purposes of aggravation. (*Edwards v. State Bar, supra*, 52 Cal.3d at pp. 35-36.) Respondent committed all the found misconduct, charged and uncharged, over the two and one-half year period from mid-1995 to late 1997.

Because the record establishes substantially more misconduct and aggravation than found by the hearing judge, we increase the recommended discipline to five years' stayed suspension and five

⁵Both parties have properly supported many of the statements in their briefs on review with references to the record as expressly required by rules 302(a) and 303(a) of the Rules of Procedure of the State Bar and rule 1320 of the Rules of Practice of the State Bar Court. However, a number of respondent's statements (1) are not supported by the required references to the record or (2) are "supported" by record references that are inapposite or refer only to respondent's evidence and version of the events, which is often times contrary to the hearing judge's express findings. Moreover, a number of respondent's statements find no support in the record. In addition, the State Bar supports many of its statements with references to the hearing judge's findings and conclusions set forth in his decision without providing the required references to where the evidence supporting those findings and conclusions may be found in the record. Although the State Bar has properly identified a few instances when a hearing judge finding conflicts with the undisputed evidence in the record, it has failed to do so in other instances in which it repeats the erroneous facts in its briefs as though they were true.

⁶On a posttrial motion of the State Bar, the hearing judge dismissed counts 6 and 7. We adopt those dismissals, but clarify that they are with prejudice (Rules Proc. of State Bar, rule 261(a)). (See, e.g., *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [the dismissal of a charge after a trial on the merits is with prejudice].)

⁷These additional acts of uncharged misconduct were not raised by the hearing judge or the parties. Thus, we notified the parties, in an order filed May 6, 2002, that we were addressing these additional acts sua sponte and permitted the parties to file supplemental briefs addressing these acts. (Rules Proc. of State Bar, rule 305(b).) Each party filed a supplemental brief, which we have considered.

years' probation with conditions, including three years' actual suspension, which will continue until respondent makes an appropriate showing of rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii).

I. *Nature of respondent's practice of law.*

When respondent began his legal career in 1993, he practiced primarily in the areas of construction defect and insurance defense matters. In mid-1995, he opened his own law office and began practicing immigration law by representing aliens with cases in the immigration court. Immigration courts are administrative trial courts that are part of the United States Department of Justice's Executive Office of Immigration Review (hereafter EOIR). Immigration court judges (hereafter IJs) are administrative judges appointed by the United States Attorney General. (8 U.S.C. § 1101(b)(4); 8 C.F.R. §§ 1.1(l), 3.10 (2002).) Almost all IJ rulings may be appealed to the Board of Immigration Appeals (hereafter BIA). (8 C.F.R. § 3.1(b) (2002).) The BIA, like the immigration courts, is part of the EOIR.⁸ Published BIA decisions are binding precedent on all immigration courts and the United States Immigration and Naturalization Service (hereafter INS) unless the BIA, the Attorney General or a federal court modifies or overrules them. (8 C.F.R. § 3.1(g) (2002).)

By early 1997, respondent's practice consisted almost entirely of immigration court matters. From mid-1995 through late 1997, respondent and his law office handled more than 2,720 immigration cases.

II. *Respondent's first point of error.*

In his first point of error, respondent contends that the hearing judge erroneously refused to evaluate respondent's conduct under what respondent asserts are the "practice standards" for immigration law and asserts that he may be disciplined only if his conduct violated those purported practice standards. Respondent then argues that, except in a few isolated instances, none of his

⁸Congress has constitutionally delegated much of its authority over immigration to the Attorney General of the United States, to whom it also granted the authority to establish such regulations as are appropriate for carrying out that delegated authority. (8 U.S.C. § 1103(a)(3).) In turn, the Attorney General has lawfully delegated, to the immigration courts and the BIA, much of the authority to determine the immigration status of aliens as well as the discretion to grant or deny immigration relief to aliens (e.g., naturalization, lawful permanent residency in the United States) under the Immigration and Nationality Act of June 27, 1952, as amended (8 U.S.C. § 1101 et seq.) (hereafter INA).

conduct in this proceeding violated those standards. Therefore, respondent contends that, except in those few instances in which his conduct violated those standards, the hearing judge's findings of misconduct are erroneous and must be reversed. We disagree.

Admittedly, immigration law is a specialized area of practice. However, the standards governing an attorney's ethical duties do not vary according to the many areas of practice. Nor do they vary according to whether an attorney practices alone or in a partnership, small law firm, large law firm, or corporate law department. (See, e.g., *Truck Ins. Exchange v. Fireman's Fund Ins. Co.* (1992) 6 Cal.App.4th 1050, 1059-1060.) Furthermore, with respect to attorney discipline, the ethical standards for attorneys are primarily established by the State Bar Rules of Professional Conduct (*Ames v. State Bar* (1973) 8 Cal.3d 910, 917) and the State Bar Act (Bus. & Prof. Code, § 6000 et seq.).⁹ However, when an attorney practices in a specific area or jurisdiction, those ethical standards may be measured by reference to other relevant state and federal statutes, rules of court, regulations, and administrative rules. None of the purported immigration law practice standards identified by respondent fall within one of these categories. Therefore, we reject respondent's first point of error.

III. Respondent's second point of error.

In his second point of error, respondent contends that, in seven of the nine client matters in this proceeding, the hearing judge erroneously refused to evaluate respondent's conduct under what respondent asserts was the limited scope of his representation and that this error caused the hearing judge to improperly find respondent culpable of failing to fulfill duties that he did not have and of failing to perform legal services that he never agreed to perform and for which he was never paid. Specifically, respondent contends that, as to those seven client matters, his representation was limited to that of what respondent refers to as an "appearance attorney." According to respondent, an "appearance attorney" appears in his clients' immigration cases only for the limited purpose of making court appearances; an "appearance attorney" does not, inter alia, prepare and file his clients' immigration applications, pleadings, or other documents. Instead, respondent asserts, those items

⁹Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

are properly prepared and filed by nonattorney immigration services providers. As respondent and his witnesses testified in the hearing department, these nonattorney immigration services providers (1) advise aliens on United States immigration law and procedures; (2) prepare and file immigration applications, pleadings, and other documents with the INS, the immigration court, and the BIA on behalf of their alien clients; and (3) refer their alien clients to immigration attorneys, such as respondent, when the aliens must appear in immigration court.

These nonattorney immigration services providers are commonly referred to as immigration consultants, visa consultants, and, in some Hispanic communities, *notarios* or *notarios publicos*. We, however, refer to them either as nonattorney immigration services providers, immigration services providers, nonattorney providers, or providers. We do not use the term immigration consultant because, as discussed *post*, it is a statutorily defined term in this state and is inapplicable to the nonattorney providers involved in this disciplinary proceeding. We do not use the terms visa consultants, *notarios*, and *notarios publicos* because they are deceptive, inappropriate terms.

Of the more than 2,720 immigration cases that respondent and his law office handled between mid-1995 and late 1997, all but about 170 of them were referred to him by nonattorney immigration services providers, of which respondent estimates there are between 50 to 100 in Southern California. Since mid-1995, when representing clients referred to him by these nonattorney providers, it has been respondent's customary practice (1) to rely on or permit the referring immigration services providers to, inter alia, prepare and file the clients' immigration applications, pleadings, and other documents and (2) to represent the clients only as an "appearance attorney," often without telling the clients. Respondent testified in the hearing department and has repeatedly argued in the hearing department and on review, that these customary practices of his were and are legal, appropriate, and in the interest of his clients.¹⁰ Thus, respondent contends that each culpability finding by the hearing judge which is based on a failure to fulfill a duty or to perform a service that respondent asserts should have been fulfilled or performed by the referring

¹⁰Respondent's testimony and arguments place his customary practices in issue so that any uncharged improprieties in them may appropriately be considered as aggravation in this proceeding. (See *Edwards v. State Bar*, *supra*, 52 Cal.3d at pp. 35-36.)

nonattorney provider is erroneous and must be reversed. We disagree and reject respondent's second point of error.

First, under controlling federal law not addressed by the parties, nonattorney immigration services providers may not legally or appropriately prepare immigration applications, pleadings, or other documents for respondent's immigration clients. Nor may they legally advise aliens on immigration law and procedures or otherwise represent aliens in immigration cases. In fact, the first count of uncharged misconduct on which we independently conclude that respondent is culpable is 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 the providers to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients. Second, under controlling federal law not addressed by the parties, the scope of respondent's representation was not limited to that of an "appearance attorney" in any client matter in which he or another attorney from his law office appeared in the client's immigration case as an attorney of record.

Before we discuss the controlling federal law, we first summarize how, from at least mid-1995 through late 1997, aliens often initially retained nonattorney immigration services providers to handle their immigration cases to obtain work permits, visas, or lawful immigration status for them and how those nonattorney providers ordinarily represented aliens and referred thousands of them to respondent. We then summarize how respondent customarily represented the clients the nonattorney providers referred to him. Not only do these summaries set forth the factual basis for our rejection of respondent's contention that he properly limited the scope of his representation in seven of the nine client matters in this proceeding to that of an "appearance" attorney, they also set forth the facts establishing respondent's culpability for aiding and abetting nonattorney providers to represent aliens in violation of federal law and to engage in the

unauthorized practice of law. Much of this summary is based on respondent's evidence and on his statements and admissions in his pleadings in the hearing department and briefs on review.¹¹

A. *How aliens hired nonattorney immigration services providers and how those providers represented them and referred many of them to respondent.*

Based on the record before us, it appears that instead of retaining attorneys, many aliens, including the clients in at least eight of the matters in this proceeding, initially hire nonattorney immigration services providers to handle their immigration cases. This may be explained in part because these nonattorney providers routinely (1) hold themselves out as immigration law experts; (2) engage in “in-person” solicitation (either personally or through representatives) of aliens at INS offices and the immigration court; and (3) advertise their services to non-English speaking aliens in local newspapers, telephone books, and other publications that cater to various non-English speaking communities. (See, e.g., Cisneros, *H.B. 2659: Notorious Notaries – How Arizona is Curbing Notario Fraud in the Immigrant Community* (Spring 2000) 32 Ariz. St. L.J. 287, 299-308 (hereafter *Notorious Notaries*)).) It may also be explained in part by the common misconception among aliens that the providers are specialized attorneys. This misconception frequently arises because many immigration services providers deceptively advertise or refer to themselves as notary publics, *notario publicos*, or *notarios*. (See, e.g., Ashbrook, *The Unauthorized Practice of Law in Immigration: Examining the Propriety of Non-Lawyer Representation*, (1991) 5 Geo. J. Legal Ethics 237, 253 [hereafter Ashbrook].) Even though the terms “*notario publicos*” and “*notarios*” are the Spanish translations for the English phrase “notary publics,” they are also titles of a selected class of “elite” attorneys in civil law countries such as Mexico and others in Central and South America. Accordingly, we refer to *notario publicos* and *notarios* as Latin notaries to distinguish them from American notaries.¹²

¹¹Because this summary is based on the record in this proceeding, it may not accurately reflect the practices of all nonattorney immigration services providers or other attorneys who practice immigration law in Southern California.

¹²In fact, because many individuals from civil law countries believe that American notaries are equivalent to Latin notaries, California all but prohibits notaries from using the terms *notario publico* and *notario*. (Gov. Code, § 8219.5, subd. (c).) Moreover, if a notary in California elects to hold himself out as an immigration service provider, he is expressly prohibited from advertising in any manner whatsoever that he is a notary. (Gov. Code, § 8223, subd. (a).)

There is no equivalent to the Latin notary in the United States. (*Notorious Notaries, supra*, 32 Ariz. St. L.J. at pp. 294-299.) In the United States, as in almost all Anglo based legal systems, the notary occupies a purely clerical position in which the notary is authorized to witness the signing of documents or administer a limited number of oaths. However, “[I]n contemporary Latin America, a lawyer fortunate enough to become a *notario publico* is a private legal professional of immense prestige who holds his or her office for life, as long he or she remains in good standing” (*Notorious Notaries* at p. 295.) Indeed, the Latin notary may be regarded somewhat akin to a judge who vouches for the validity of the entire transaction. (*Notorious Notaries* at p. 297.)

The foregoing facts lend support to respondent’s contentions that many of his alien clients (1) have “a cultural bias in favor of” the immigration services providers that they hire to handle their immigration matters, particularly when the providers are of the same culture as the aliens (*Ashbrook, supra*, 5 Geo. J. Legal Ethics at p. 266), and (2) view immigration attorneys, like respondent, as less important than the immigration services providers they hire. Nonetheless, these factors do not, as respondent argues, reduce or limit the nature and scope of his professional duties towards his clients in any of the seven client matters in this proceeding in which he claims to have limited his represented to that of an “appearance” attorney. Nor would they reduce or limit the nature and scope of his duties towards any of his other immigration clients..

When an alien retains a nonattorney immigration services provider to handle his immigration matter, he typically does so (1) in response to the provider's solicitations or advertisements or (2) on the referral from a friend, family member, or prior client of the provider. (*Notorious Notaries, supra*, 32 Ariz. St. L.J. at pp. 301-302.) Most often, the immigration services provider tells the alien that he can obtain for the alien a work permit or a “green card” (i.e., an identification card issued only to aliens with lawful permanent resident status). The nonattorney provider usually charges aliens a flat fee ranging from \$2,000 to \$4,000 for handling their cases and preparing all the necessary “paperwork.”¹³

¹³The record suggests that this fee might be higher than an immigration attorney’s fee would be for the same or similar services.

At least from mid-1995 through late 1997, immigration services providers customarily began representing alien clients by seeking political asylum for them. More specifically, when an alien retained an immigration services provider, the provider prepared, for the alien, an Application for Asylum and for Withholding of Deportation – INS Form I-589 (Rev. 11-16-94) (hereafter asylum application) (now an Application for Asylum and for Withholding of Removal – INS Form I-589 [Rev. 05-01-98]), which was written in English, had to be completed in English, and had to be signed by the alien under penalty of perjury to certify that it and the supporting documentary evidence accompanying it were all true and correct. After the provider completed the application and had the alien sign it under penalty of perjury, the provider ordinarily filed it with the INS.

Subject to multiple exceptions not relevant here, to qualify for asylum, an alien must prove (1) that he has been persecuted in the country of his nationality or last habitual residence on account of his race, religion, nationality, membership in a particular social group, or political opinion or (2) that he has a well-founded fear of being persecuted in the future on one of the foregoing grounds if he is deported to the country of his nationality or last habitual residence. (8 U.S.C. §§ 1101(a)(42), 1157, 1158.) However, the grant of asylum is discretionary, not mandatory. (8 U.S.C. § 1158(b)(1).) When an alien is granted asylum, he is permitted to stay in the United States and, one year later, may apply to have his immigration status adjusted to that of a lawful permanent resident. (8 U.S.C. § 1159(b).)

Respondent testified that it is extremely difficult for aliens from Mexico and many Central and South American countries to qualify for asylum because they cannot prove the requisite past persecution or well-founded fear of future persecution. Respondent further testified that virtually every asylum application prepared and filed by an immigration services provider was fraudulent because: (1) the alien clearly did not qualify for asylum; (2) many of the facts the provider put in the application and its supporting documentary evidence were false; and (3) the provider knew (when he prepared the application, had the alien sign it under penalty of perjury, and filed it with the INS) that the alien did not qualify for asylum and that many of the facts he put in the application and its supporting evidence were false. As respondent explains, one principal reason immigration

services providers routinely began representing aliens by preparing and filing fraudulent asylum applications was because the INS processed those applications much faster than most other types of immigration applications and because the aliens often received temporary work permits while their applications were pending. (Accord Assem. Com. on Public Safety, Analysis of Assem. Bill No. 2520 [an act to amend Bus. & Prof. Code, § 22445 relating to immigration consultants] (1993-1994 Reg. Sess.) [dated Mar. 13, 1994] for Com. Hearing of Apr. 5, 1994.)

Respondent asserts that many of his clients were willing participants in the immigration services providers' scheme of filing fraudulent asylum applications because they purportedly knew that they did not qualify for asylum and that there were false facts in their applications and supporting evidence. In addition, respondent asserts that many of his clients engaged in further fraudulent conduct because they (1) falsely declared, under oath to INS officials, that the facts in their asylum applications and supporting evidence were true and correct and (2) signed, under penalty of perjury, declarations in support of motions filed in their immigration cases when they knew the declarations contained false statements. Relying on these alleged fraudulent actions, respondent attacks the credibility of a number of his clients who testified against him in this disciplinary proceeding. We, like the hearing judge, conclude that the record does not support respondent's assertions that his clients engaged in such fraudulent conduct as to impeach their credibility as witnesses in this proceeding.

First, as we noted *ante*, the asylum application was written in English and had to be completed in English. Several of respondent's clients credibly testified in the hearing department that they did not read English at the time they signed their completed applications, that the immigration services providers never read the completed applications to them in their native language before the providers instructed them to sign the completed applications, and either that the providers told them that their applications were "in order" or that they trusted the providers to prepare their applications properly. The clients' testimonies are supported by the fact that *none* of the immigration services providers who prepared the asylum applications in this proceeding complied with the federal law mandating that *anyone* other than a member of an applicant's

immediate family who prepares or assists in preparing an asylum application for an alien must sign the preparer's declaration at the end of the application (1) to disclose the fact that he prepared or assisted in the preparation of the application and (2) to certify, under penalty of perjury, that he read the completed application to the alien in the alien's native language for purposes of verification before the alien signed the application.¹⁴ (Former 8 C.F.R. § 208.3(c)(4) (eff. Jan. 4, 1995 [59 Fed.Reg. 62284, 62298, Dec. 5, 1994] to Mar. 31, 1997); former 8 C.F.R. § 208.3(c)(2) (eff. Apr. 1, 1997 [62 Fed.Reg. 10312, 10338, Mar. 6, 1997] to Jan. 4, 2001); now 8 C.F.R. § 208.3(c)(2) (eff. Jan. 5, 2001 [65 Fed.Reg. 76121, 76131, Dec. 6, 2000]).)

Second, the hearing judge, who saw and heard the clients testify, found them to be credible witnesses notwithstanding respondent's allegations that they engaged in fraudulent conduct. We must give great weight to these credibility determinations. (See, e.g., Rules Proc. of State Bar, rule 305(a).) Finally, because respondent routinely accepted referrals from immigration services providers in cases in which respondent knew that the providers had prepared and filed fraudulent asylum applications without signing the preparer's declarations, respondent's attacks on the credibility of his own clients are disingenuous.

After the immigration services provider filed the alien's completed asylum application, the INS interviewed the alien on his asylum claim. The alien ordinarily went to the interview alone or with a family member. At or shortly after the interview, the INS almost always summarily denied the application because it was patently meritless. Thereafter, the INS initiated a deportation proceeding against the alien by filing in the immigration court and serving on the alien an order to show cause (hereafter OSC or deportation OSC) ordering him to appear before an IJ in Los Angeles and show why he should not be deported for, most often, having previously entered the United

¹⁴A preparer's willful failure to disclose his assistance by not signing the preparer's declaration may result in an adverse ruling on the alien's asylum application. In addition, a preparer's willful failure to sign an application with knowledge or in reckless disregard of the fact that the application (1) contains a false, fictitious, fraudulent statement, or material misrepresentation, (2) has no basis in law or fact, or (3) fails to state a material fact is a crime punishable by fine, imprisonment for not more than five years, or both. (8 U.S.C. § 1324c(e) & (f).)

States without inspection by an immigration officer.¹⁵ Once the deportation proceeding was initiated, the immigration court obtained jurisdiction over both the issue of alien's deportability and the merits of his asylum application. Accordingly, when it initiated the deportation proceeding, the INS forwarded the alien's asylum application to the immigration court, where the alien could have it considered "de novo" by the IJ if he so desired.

Understandably, the alien did not want to appear in immigration court alone. Accordingly, the nonattorney provider then "referred" the alien to respondent, or another immigration attorney. The nonattorney providers usually referred their alien clients to immigration attorneys with whom they had a relationship; who the providers knew would "represent" the alien clients only by appearing with them in court; and who the providers knew would not steal their clients by taking over the clients' cases and preparing and filing the clients' immigration applications, pleadings, and documents. In fact, as the hearing judge correctly found, respondent did not interfere with the nonattorney providers' relationships with their clients or ordinarily assume responsibility for preparing and filing the applications, pleadings, and documents for the clients the providers referred to him because, had he done so, it would have reduced the number of referrals he would have received from the providers in the future.

Often, immigration services providers waited until the day of the initial hearing in their alien clients' cases before they referred their clients to respondent, or another immigration attorney. In such a case, the immigration services provider walked the hallways outside the immigration court courtrooms with the alien the day of the hearing looking for respondent. When the provider found respondent, he introduced the client to respondent, arranged for respondent to appear with the client in court, and usually paid respondent a cash appearance fee. Regardless of whether the provider referred the client to respondent shortly before or well in advance of the initial hearing, respondent did not ordinarily meet with the client to review the client's case or otherwise obtain the facts necessary to properly represent the client at the initial hearing.

¹⁵Deportation for entry without inspection (former 8 U.S.C. § 1251(a)(1)(B)) has been replaced with removal for being present in the United States in violation of the INA or any other federal law (8 U.S.C. § 1227(a)(1)(B)).

B. How respondent's represented clients referred to him by immigration services providers

Respondent testified that the immigration services provider, not he, set the fee that the provider or the client paid respondent for each court appearance respondent made. Respondent testified that he was paid as little as \$50 per appearance and as much as \$350 per appearance, but that he averaged \$150 per appearance. By conservative extrapolation, based on the evidence, respondent earned more than \$250,000 in 1996 and again in 1997.

Before the initial hearing, respondent and the client executed a Notice of Entry of Appearance as Attorney or Representative – Form EOIR-28 (Jan. 89) (hereafter Form EOIR-28) (now Notice of Entry of Appearance as Attorney or Representative – Form EOIR-28 [August 99]), which respondent then filed with the immigration court and served on the INS. Under 8 Code of Federal Regulations parts 3.17(a) and 292.4(a), neither attorneys nor other federally authorized representatives may represent aliens in immigration court until they execute, file, and serve Forms EOIR-28,¹⁶ and once they do so, they may not withdraw from representation or effectuate substitutions of attorney except on motions to the IJ to whom their clients' cases are assigned. (8 C.F.R. §§ 3.17(b), 292.4(a); accord *Immig. Ct. L.A., San Pedro, and Lancaster, Local Operating Procedures, Proc. 4* (all future references to local operating procedures are to this source); cf. Rules Prof. Conduct, rule 3-700(A)(1) [“If permission for termination of employment is required by the rules of a tribunal, [an attorney] shall not withdraw from employment in a proceeding before that tribunal without its permission.”].)¹⁷

When respondent first met the client, he typically told the client that, at the hearing, he would (1) withdraw the client's asylum application; (2) request suspension of deportation relief for

¹⁶Because neither respondent nor the State Bar addressed 8 Code of Federal Regulations parts 3.17 and 292.4, the hearing judge sua sponte took judicial notice of them. The rules and procedures for the immigration courts and the BIA established by the Attorney General and set forth in the Code of Federal Regulations have the force and effect of law. (*United States ex rel. Accardi v. Shaughnessy* (1954) 347 U.S. 260, 265; *In re Sun Cha Tom* (1968) 294 F.Supp. 791, 793.) Accordingly, the hearing judge correctly took judicial notice of parts 3.17 and 292.4. (Rules Proc. of State Bar, rule 214; Evid. Code, § 451, subd. (b); 44 U.S.C. §§ 1507, 1510; *Philip Chang & Sons Associates v. La Casa Novato* (1986) 177 Cal.App.3d 159, 171, fn. 4.) Like the hearing judge, we are required to sua sponte take judicial notice of parts 3.17 and 292.4 as well as all other relevant parts of the Code of Federal Regulations. (*Ibid.*; Evid. Code, § 459, subd. (a).)

¹⁷All further references to rules are to the Rules of Professional Conduct unless otherwise indicated.

the client;¹⁸ and (3) alternatively request that the client be permitted to voluntarily depart from the United States in lieu of being deported should the client not be granted suspension of deportation and the client be found to be deportable.¹⁹ At the hearing, respondent also ordinarily admitted the factual basis to the issue of deportability charged against the client in the deportation OSC, or otherwise admitted to his client's deportability, and then designated the client's country of origin as the country of deportation. It is unclear whether respondent told his client of this practice during their first meeting or whether he ever explained the implications of such an admission of deportability to the client.

If respondent's client was granted suspension of deportation, he gained legal immigration status and, subject to a limited number of exceptions not relevant here, was permitted to remain in the United States permanently. However, to qualify for suspension of deportation relief, an alien had to prove several requirements, including (1) that he was of good moral character and (2) that his deportation would result in "extreme hardship" to himself or an immediate family member who is a United States citizen or legal alien. (Former 8 U.S.C. § 1254(a) [former INA § 244(a)(1) (suspension of deportation)], repealed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. No. 104-208 (Sept. 30, 1996) 110 Stat. 3009) (hereafter IIRA) § 308(b)(7), replaced by 8 U.S.C. § 1229b [INA § 240A (cancellation of removal)].)

Obviously, the filing of a frivolous or fraudulent asylum application could make establishing the requisite good moral character extremely difficult. In addition, establishing the extreme hardship requirement could be very difficult. Moreover, even if the client carried his burden of proof and established each of the requirements, the granting of suspension of deportation relief was wholly within the discretion of the IJ. (*INS. v. Rios-Pineda* (1985) 471 U.S. 444, 446 [105 S.Ct. 2098, 85 L.Ed.2d 452]; see also *Achacoso-Sanchez v. INS* (7th Cir. 1985) 779 F.2d 1260, 1264.)

¹⁸Respondent did not always request suspension of deportation relief; at times he sought other relief for the client.

¹⁹If an alien's application for suspension of deportation (or application for some form of primary relief) was denied, it was very important that the alien be allowed to depart the United States voluntarily and not be ordered deported because, if an alien was deported, he was ineligible to reenter the United States and seek most forms of immigration relief for five years unless the United States Attorney General consented otherwise.

Thus, the timely and proper presentation of the client’s case in the immigration court was of the utmost importance to the client. Likewise, if the IJ denied the client’s application, it made the client’s timely and proper appeal to the BIA of the utmost importance to the client. (See, e.g., *INS v. Jong Ha Wang* (1981) 450 U.S. 139, 145 [101 S.Ct. 1027, 67 L.Ed. 2d 123] [standard of judicial review of BIA’s denial of suspension of deportation relief is abuse of discretion].)

After respondent admitted his client’s deportability, designated a country of deportation, withdrew the client’s asylum application, and requested suspension of deportation or voluntary departure in the alternative, the IJ set a deadline for filing the Application for Suspension of Deportation – Form EOIR-40 (Nov. 94) (now Application for Suspension of Deportation – Form EOIR-40 [Expires 08/31/01])²⁰ and set the case for hearing, which was often the merits hearing (i.e., the trial) on the client’s application. The IJ also admonished the client of his absolute duty to timely file his application and to appear at the next hearing ready to proceed with his attorney²¹ or be subject to having his requests for relief deemed abandoned and being ordered deported in absentia, the order of which cannot be appealed, but only rescinded on a motion to reopen, which may be granted only under *exceptional circumstances*.²²

Respondent testified that, after the initial hearing, he almost always spoke with the client in the hallway outside the courtroom, gave the client his business card, and gave the client the option of having either respondent or the referring immigration services provider prepare the client’s

²⁰Notwithstanding the notation “Expires 08/31/01” on current Form EOIR-40, it “continues to be the one and only valid version of the form.” Presumably, Form EOIR-40 will be “retired” because, under the IIRA, suspension of deportation proceedings have been replaced with cancellation of removal proceedings (8 U.S.C. § 1229b).

²¹Every notice of hearing sent out by the immigration court states that, if the alien is represented, his attorney must appear with him at the noticed hearing “*prepared to proceed*.” (Emphasis added.)

²²“Exceptional circumstances” to support a motion to reopen are narrowly limited to those circumstances (such as serious illness of the alien or serious illness or death of an immediate relative of the alien, but not including less compelling circumstances) that are beyond the control of the alien. (8 U.S.C. § 1229a(e)(1).) Ineffective assistance of counsel is an “exceptional circumstance” provided the alien strictly complies with the procedural requirements. (*Matter of Lozada* (BIA 1988) 19 I. & N. Dec. 637, 639-640; but see *Castillo-Perez v. INS* (9th Cir. 2000) 212 F.3d 518, 526 [procedural requirements not strictly enforced when their purpose is served by other means].) However, bad advice, an error committed, or ineffective assistance by an immigration consultant rarely qualifies as an exceptional circumstance (*Singh-Bhathal v. INS* (9th Cir.1999) 170 F.3d 943, 946; but see *Rodriguez-Lariz v. INS* (9th Cir. 2002) 282 F.3d 1218, 1224) unless the consultant defrauded the alien into believing that he or she was an attorney (*Lopez v. INS* (9th Cir.1999) 184 F.3d 1097, 1100).

application for suspension of deportation and its supporting documentary evidence and any other necessary pleadings or documents. According to respondent, the client ordinarily insisted on returning to the referring immigration services provider and having the provider draft the “paperwork” because the client had already paid the provider to do so. Even though respondent’s testimony was partially corroborated by secretary Lopez’s testimony, the hearing judge not only rejected it, but he also expressly found, in a number of the client matters in this proceeding, that respondent did not meet with the client or give the client his business card after the initial hearing. Furthermore, in at least two client matters, the hearing judge found that respondent (1) told his client that the referring immigration services provider was going to prepare the client’s paperwork and (2) instructed the client return to the provider and to give the provider whatever information and documentation the provider needed to prepare the client’s paperwork. We adopt the hearing judge’s rejection of respondent’s testimony and his findings on respondent’s conduct after the initial hearings.

C. *Respondent aided and abetted nonattorney providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law when he relied on or permitted those providers to prepare and file client documents.*

In his opening brief on review respondent supports his testimony and arguments that his customary practice of relying on or permitting nonattorney immigration services providers to prepare and file applications, pleadings, and documents for his clients is legal, appropriate, and in his clients’ interest by stating that “immigration consultants or notarios are licensed by the State of California to prepare petitions and applications for aliens . . .” and that “[t]he papers at issue in the instant [disciplinary] proceeding, e.g., applications for suspension of deportation, are routinely prepared and filed by non-attorney consultants or notarios, who lawfully offer such services to aliens. . . .” Respondent, however, does not cite to any legal authority to support his unequivocal statement that the State of California licenses “immigration consultants or notarios.”²³ To the contrary, respondent’s statement is inaccurate because California has never *licensed* “immigration

²³Respondent does, however, provide a reference to the record; but the evidence located at the record reference is inapposite, having nothing to do with the licensing of “immigration consultants or notarios.”

consultants or notarios.” It has, however, since 1983, regulated and placed restrictions on nonattorneys, other than those nonattorneys who are expressly authorized by federal law to represent aliens before the INS, the immigration courts, and the BIA, who provide *nonlegal* assistance and advice on immigration matters to others for compensation. (§ 22440 et seq. [hereafter California act regarding immigration consultants].) Such nonattorneys who provide nonlegal assistance and advice are referred to as immigration consultants. (§ 22441, subd. (a).) California’s regulation of immigration consultants attempts to create “a class of consultants to help [immigration] applicants fill out *basic* forms at *minimal* cost.”²⁴ (*Unlawful practice hits vulnerable immigrants*, Cal. St. B.J. (Nov. 2001) pp. 1, 7, italics added.) Furthermore, respondent does not cite any authority for his representation that “non-attorney consultants or notarios” may lawfully prepare and file applications and petitions for aliens as they did in this proceeding. In fact, respondent’s statement that they may is patently incorrect.

Next, in his reply brief on review, respondent supports his testimony and arguments by stating that, “[a]s is their prerogative, aliens frequently utilize the services of immigration consultants for preparation of paperwork, and *federal law permits non-lawyer consultants to provide such services.*” (Italics added.) Again, respondent cites no authority to support these unequivocal statements, which are additional misrepresentations of law to this court.

Finally, in his September 9, 2002, supplemental brief on review, which he filed in response to our May 6, 2002, order notifying the parties of our intent to address sua sponte the issue of whether the record contained clear and convincing evidence that respondent aided and abetted nonattorney immigration services providers to represent aliens in violation of federal law or to engage in the unauthorized practice of law, respondent states that “[a]s non-attorneys, notarios are specifically permitted to represent aliens in immigration proceeding pursuant to federal statute.[²⁵] (8 C.F.R. § 292.1 et seq.) [Footnote omitted.] This is recognized by California Business and

²⁴For example, California law allows a notary public to complete government immigration forms if the client provides the data to be entered and if the notary charges no more than \$10 per person for each set of forms completed. (Govt. Code, § 8223, subd. (b).)

²⁵The intended reference is to federal regulation, not federal statute.

Professions Code, sections 22440-22448.” These are incorrect statements of law to this court. The supporting authorities cited by respondent are simply inapposite. Under 8 Code of Federal Regulations part 292.1, an authority cited by respondent, there are only six categories of nonattorneys who may represent aliens in immigration cases without violating federal law. (8 C.F.R. § 292.1(e); Opn. Gen. Counsel INS (June 9, 1992) 1992 WL 1369368 (INS) Legal Opinion on the Role of Visa Consultants in the Practice of Immigration Law [hereafter 1992 Opn. Gen. Counsel INS];²⁶ Ashbrook, *supra*, 5 Geo. J. Legal Ethics at p. 278.) Neither immigration consultants, notarios, nor immigration services providers fall within one of these six categories of federally authorized nonattorney representatives.

Furthermore, based on the interplay of the regulatory definitions of case, representation, practice, and preparation as set forth in 8 Code of Federal Regulations part 1.1(g), (m), (i), (k), respectively, “the scope of the term ‘representation’ is a *very* broad one. It includes activities which range from *incidentally* preparing papers for a person, to giving a person advice about his or her case, to appearing before the Service on behalf of a person.” (1992 Opn. Gen. Counsel INS; Opn. Gen. Counsel INS (Apr. 20, 1993) 1993 WL 1503972 (INS) [hereafter 1993 Opn. Gen. Counsel INS], affirming 1992 Opn. Gen. Counsel INS.) Therefore, any person who is not an attorney or one of the six federally authorized nonattorney representatives under 8 Code of Federal Regulations part 292.1 may not engage in any activity falling within this *very* broad definition of representation without violating federal law. (1992 Opn. Gen. Counsel INS; 1993 Opn. Gen. Counsel INS; Ashbrook, *supra*, 5 Geo. J. Legal Ethics at p. 242 [there is a very “narrow domain, where non-lawyer work in immigration matters would not constitute the practice of immigration law”].) Concomitantly, a person who merely assists another in completing preprinted government immigration forms will not violate federal law *so long as* he does not receive more than nominal

²⁶See *United States v. Larionoff* (1977) 431 U.S. 864, 872-873 (federal agency's interpretation of its own regulations entitled to great deference); *Diaz v. INS* (E.D.Cal. 1986) 648 F.Supp. 638, 645, citing *Miller v. Youakim* (1979) 440 U.S. 125, 145, fn. 25 (formal interpretation dispensed by agency's general counsel that is intended to apply nationally constitutes an agency interpretation); see also *Motion Picture Studio Teachers & Welfare Workers v. Millan* (1996) 51 Cal.App.4th 1190, 1195 (agency's interpretation of its regulations entitled to considerable judicial deference and generally controls unless clearly erroneous).

consideration for such assistance *and* does not hold himself out as qualified in legal matters or in the area of immigration and naturalization law and procedures. (*Ibid.*)

In this state, “ ‘to practice as an attorney at law’ means to do the work as a business which is commonly and usually done by lawyers in this country.” (*People v. Merchants Protective Corp.* (1922) 189 Cal. 531, 535, quoting *People v. Alfani* (1919) 227 N.Y. 334, 339, 125 N.E. 671.) Thus, “the practice of the law is the doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure. But in a larger sense it [also] includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court.” (*People v. Merchants Protective Corp.*, *supra*, 189 Cal. at p. 535, quoting *Eley v. Miller* (1893) 7 Ind. App. 529, 535, 34 N.E. 836, 837-838; *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 542-543.) And, under the law of this state “[w]hether a person give advice as to [local] law, Federal law, the law of a sister State, or the law of a foreign country, he is giving legal advice. . . .’ [Citation.]” (*Bluestein v. State Bar* (1974) 13 Cal.3d 162, 173-174.)

We hold that the preparation and filing of immigration applications, pleadings, and documents by the nonattorney immigration services providers in this proceeding was the representation of aliens under federal law, that those nonattorney providers were not within one of the six categories of nonattorneys authorized under federal law to represent aliens in immigration cases, and that those nonattorney providers, therefore, represented aliens in violation of federal law. We further hold that the preparation and filing of immigration applications, pleadings, and documents by the nonattorney providers in this proceeding fall within California’s definition of the unauthorized practice of law (accord *Unauthorized Practice Committee, State Bar of Texas v. Cortez* (Tex. 1985) 692 S.W.2d 47, 50; *Oregon State Bar v. Ortiz* (Or.Ct.App. 1986) 713 P.2d 1068, 1070) and that those nonattorney providers, therefore, engaged in the unauthorized practice of law. Finally, we hold that, by relying on or permitting those nonattorney providers to prepare and file immigration applications, pleadings, and other documents for his clients from at least mid-1995 through late 1997, respondent deliberately aided and abetted the providers to represent aliens in

violation of federal law. In doing so, respondent engaged in acts of moral turpitude in willful violation of section 6106. Moreover, in willful violation of rule 1-300(A), respondent deliberately aided and abetted the providers to engage in the unauthorized practice of law. Respondent's violation of rule 1-300(A) rose to a level involving moral turpitude in violation of section 6106.

D. *Respondent's representation was not limited to that of an "appearance attorney."*

To support his testimony and argument that his customary practice of limiting the scope of his representation of the clients referred to him by immigration services providers to that of an "appearance attorney" are legal, appropriate, and in his clients' interests, respondent cites and discusses two local bar association ethics opinions and a law review article.²⁷ To support its contrary position, the State Bar cites to a number of cases setting forth an attorney's duties when representing a client in a judicial proceeding. Whether the scope of respondent's representation of his alien clients was or could have been properly limited to that of an "appearance attorney" is unquestionably resolved against respondent by controlling federal law, which was not addressed by the parties. Therefore, we need not and do not address the parties' cited authorities and arguments on this issue.

As noted *ante*, an attorney, or federally authorized nonattorney representative, may not represent an alien in an immigration case until he executes and files a Form EOIR-28, and once he does so, he becomes the client's attorney of record and may not withdraw or substitute out of the case without the permission of the IJ. Since June 1972, 8 Code of Federal Regulations part 292.5(a) has definitively mandated that, whenever a party in an immigration case is required to give notice; serve any document, other than arrest warrants and subpoenas; make a motion; file or submit an application, pleading, or other document; or perform or waive the performance of any act and the

²⁷Los Angeles County Bar Association Professional Responsibility and Ethics Committee Formal Opinion 483 (Mar. 1995) Limited Representation of in Pro Per Litigants; Los Angeles County Bar Association Professional Responsibility and Ethics Committee Formal Opinion 502 (Nov. 1999) Lawyers' Duties when Preparing Pleadings or Negotiating Settlement for in Pro Per Litigant; Zacharias, *Limited Performance Agreements: Should Clients Get What They Pay For?* (1998) 11 Geo. J. Legal Ethics 915; Limited Representation Committee of the California Commission on Access to Justice Report on Limited Scope Legal Assistance With Initial Recommendations (Oct. 2001 [initial recommendations approved State Bar, Bd. of Gov., on Jul. 28, 2001]).

party is represented by an attorney, it is the duty of the party's attorney to give such notice, serve the document, make the motion, file or submit the application, pleading, or other document, and perform or waive the performance of the act. Accordingly, when respondent filed a Form EOIR-28 in a client's immigration case, he had the duty to fully and competently represent the client before the immigration court and to properly prepare each and every application, pleading, and document necessary for the proper representation of that client. (8 C.F.R. § 292.5(a); *Matter of Velasquez* (BIA 1986) 19 I. & N. Dec. 377, 384 [“there is no ‘limited’ appearance of counsel in immigration proceedings”]; *Matter of N-K* (BIA 1997) 21 I. & N. Dec. 879, 882, fn. 2, 880 [it is a “well-settled principle” that “there is no ‘limited’ appearance of counsel in immigration proceedings”].) Moreover, this duty to fully and competently represent an alien client may not be modified by an agreement between a client and his attorney even if the parties expressly note the limited scope of the attorney’s representation on the Form EOIR-28 filed with the immigration court. (*Matter of N-K, supra*, 21 I. & N. Dec. at pp. 879, 882, fn. 1.) In fact, since it was last revised in August 1999, Form EOIR-28 has plainly stated: “**Appearances** – . . . Please note that appearances for limited purposes are not permitted.” Accordingly, respondent’s testimony and repeated argument that he could legally and appropriately limit the scope of his representation to that of an “appearance attorney” are disingenuous.

Moreover, respondent’s unsupported assertion that his alien clients had the “prerogative” of returning to the referring immigration services providers for the preparation and filing of their applications, pleadings, or other documents is meritless and frivolous in light of the duties imposed on an attorney once he or she appears before the immigration court by filing a Form EOIR-28. (8 C.F.R. § 292.5(a); *Matter of Velasquez, supra*, 19 I. & N. Dec. at p. 384; *Matter of N-K, supra*, 21 I. & N. Dec. at pp. 879, 882, fn. 2.)

IV. Respondent's third point of error.

In his third point of error, respondent contends that almost all the hearing judge’s findings of misconduct are erroneous because they are based on unintentional acts and omissions that resulted

from simple negligence or honest mistakes that respondent made in good faith as a “product of trying to do too much, not too little,” for his clients.²⁸ We disagree and reject this point.

First, the hearing judge correctly found that, from at least mid-1995 through late 1997, respondent: (1) repeatedly and deliberately abdicated his ethical duties to properly represent his alien clients and to competently perform the legal services that he had a legal duty to perform; (2) repeatedly accepted more immigration cases than he and his law office could properly handle; (3) routinely “placed his interests above those of his clients” by permitting nonattorneys to prepare and file his clients’ immigration applications, pleadings, and other documents with the immigration court and BIA; and (4) consistently “demonstrated a profound lack of understanding of his duty of fidelity to his clients.” Second, as the second count of uncharged misconduct on which we independently conclude that respondent is culpable and consider as aggravation, we find that, from at least mid-1995 through late 1997, respondent engaged in a course of practicing law that was reckless and involved gross carelessness. The hearing judge’s and our independent findings, individually and collectively, not only negate respondent’s claims of unintentional acts and omissions, simple negligence, honest mistakes, and good faith, but also preclude a finding of good faith mitigation under standard 1.2(e)(ii).

As the Supreme Court explained more than 40 years ago with respect to the duty of attorneys to keep adequate records of client funds, “ ‘[t]he purpose of keeping proper books of account, vouchers, receipts, and checks is to be prepared to make proof of the honesty and fair dealing of attorneys when their actions are called into question, whether in litigation with their clients or in disciplinary proceedings and it is a part of their duty which accompanies the relation of attorney and client. The failure to keep proper books . . . is in itself a suspicious circumstance.’ [Citations.]” (*Clark v. State Bar* (1952) 39 Cal.2d 161, 174.) And, as the Supreme Court explained more than 60 years ago with respect to keeping adequate financial records, it would be a distortion of justice to permit an attorney handling client funds to escape responsibility for his misconduct by the simple

²⁸These arguments place respondent’s methods of practicing law in issue so that any impropriety in them may appropriately be considered as aggravation. (See *Edwards v. State Bar, supra*, 52 Cal.3d at pp. 35-36.)

act of not keeping any record or data from which an accounting might be made and the misconduct proved. (*Bruns v. State Bar* (1941) 18 Cal.2d 667, 672.) By analogy, these principles are equally applicable with respect to the duty of an attorney to keep adequate non-financial client files and records so that an attorney's failure to keep such adequate files and records is in itself a suspicious circumstance and that justice will not permit an attorney to escape responsibility for his misconduct by the simple act of not keeping adequate non-financial client files and records from which his conduct may be reviewed and any misconduct proved. (Accord *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, 715 [applying principles regarding an attorney's duty to keep adequate financial records to an attorney's failure to use written fee agreements].)

In light of the foregoing Supreme Court authorities, respondent's fiduciary duties to his clients unquestionably required that he keep adequate non-financial client files and records. (Cf. *Lewis v. State Bar* (1973) 9 Cal.3d 704, 713.) At a minimum, respondent was required to keep, for each client, an individual file that not only contained the client's name, address, and telephone number, but also all other items reasonably necessary to competently represent the client, such as a written fee agreement, correspondence, pleadings, deposition transcripts, exhibits, physical evidence, and expert reports. (Cf. rule 3-700(D)(1).) As discussed *post*, respondent failed to keep non-financial client files and records that complied with these minimum requirements.

Without question, respondent's fiduciary duties to his clients also required that he develop and maintain adequate management and accounting procedures for the proper operation of a law office.²⁹ (Cf. *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 26; *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716, 726-727.) At a minimum, respondent was required to develop and maintain procedures for: the proper maintenance and protection of client files; calendaring court hearings and filing deadlines; tracking court hearing dates and filing deadlines to insure they are not missed; tracking correspondence and client

²⁹Of course, respondent's development and maintenance of adequate office management and accounting procedures are fundamental to his fulfilling multiple other duties, including his duties to competently perform legal services (rule 3-110(A)), to adequately communicate with his clients (rule 3-500; § 6068, subd. (m)), to protect his clients' confidential information (§ 6068, subd. (e)), and to properly handle and account for client funds and other property (rule 4-100).

communications; secure handling and accurate accounting of client trust funds and other property. (See State Bar Ct. Std. Conditions of Probation, condition 19;³⁰ see also State Bar Trust Acct. Record Keeping Stds. (adopted by Bd. of Governors, eff. Jan. 1, 1993, pursuant to rule 4-100(C)).) In addition, respondent was required to train his staff with respect to these procedures and to employ adequate safeguards to insure that his staff actually followed the procedures. (*Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858.) In short, respondent was required to “accept responsibility to supervise the work of his staff.” (*Ibid.*) As noted *post*, respondent failed to fulfill any of these requirements.

In short, the facts in this proceeding “disclose 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.” (*Waterman v. State Bar* (1936) 8 Cal.2d 17, 21.) Such recklessness and gross carelessness, even if not deliberate or dishonest, violate “the oath of an attorney to discharge faithfully the duties of an attorney to the best of his knowledge and ability and involve moral turpitude, in that they are a breach of the fiduciary relation which binds him to the most conscientious fidelity to his clients’ interests. [Citations.]” (*Simmons v. State Bar* (1970) 2 Cal.3d 719, 729; accord *Doyle v. State Bar* (1976) 15 Cal.3d 973, 978, and cases there cited.) Even repeated acts of mere negligence and omission involve moral turpitude and “prove as great a lack of fitness to practice law as affirmative violations of duty.” (*Bruns v. State Bar, supra*, 18 Cal.2d at p. 672.)

1. Respondent's excessive case load & inadequate support staff.

a. 1995.

Respondent handled approximately 20 immigration cases in 1995. Respondent employed a secretary for one or possibly two months in 1995.

³⁰When used, standard condition 19 requires a disciplined attorney to develop an approved law office management plan which, at a minimum, “must include procedures to send periodic reports to clients, the documentation of telephone messages sent and received, file maintenance, the meeting of deadlines, the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located, and for the training and supervision of support personnel.”

Even though respondent unequivocally testified that he did not employ a paralegal in 1995, the record establishes that he employed paralegal Victor M. Enriquez (hereafter paralegal Enriquez) in 1995. First, respondent's unequivocal testimony that he did not employ a paralegal in 1995 is impeached by his own later testimony.³¹ Second, paralegal Enriquez's business card itself is documentary evidence that respondent employed a paralegal in 1995.³² As the hearing judge noted, paralegal Enriquez's business card has both the name "Law Offices of: James Robert Valinoti" and the insignia "JV & Associates" printed at the top. According to respondent, "JV & Associates" (hereafter JV) is a partnership between Javier Nunez and Vicente Enriquez,³³ who are both nonattorney immigration services providers who refer immigration clients to respondent.³⁴ On paralegal Enriquez's business card there is only one address. As discussed *post*, that address is the address of the offices that respondent shared with JV in 1995.

³¹While testifying in defense to misconduct charged in the Maya-Perez client matter, respondent testified that he had sufficient records to prove that the fee he charged and collected in that matter was reasonable. In describing the work that he and his law office performed to earn the fee, respondent unequivocally testified that, on November 8, 1995, when he and Maya-Perez met for the first time, they met at his law office for "[p]robably a little over an hour . . . , and then she spent more time with *my paralegal*." (Emphasis added.)

³²The hearing judge correctly admitted this business card into evidence over respondent's sole objection that the State Bar did not produce it during formal discovery. Moreover, because the hearing judge admitted the business card without limitation and without any hearsay objection from respondent, we may and do consider it for the truth of the matter stated. (*People v Sangani* (1994) 22 Cal.App.4th 1120, 1142; *Mosesian v. Pennwalt Corp.* (1987) 191 Cal.App.3d 851, 865; see also *In the Matter of Scapa & Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635, 649.)

³³Vicente Enriquez is the father of paralegal Enriquez. To distinguish between Vicente Enriquez and his son, paralegal Enriquez, we refer to Vicente Enriquez as Mr. Enriquez.

³⁴By permitting the name and title of "Law Offices of: James Robert Valinoti" to be printed on the same business card bearing the insignia of the non attorney partnership of "JV & Associates," respondent appears to have violated section 6105, which proscribes an attorney from permitting his name and title as attorney to be used by a nonattorney. Moreover, even assuming arguendo that respondent's testimony that he had no business relationship with JV other than accepting immigration matter referrals from JV is true, then paralegal Enriquez's business card (which clearly represents that respondent and JV had a business relationship and that they jointly employed paralegal Enriquez), would violate rule 1-400(D)(2)'s proscription against attorney communications, including business cards (rule 1-400(A)(2)), containing any matter or presenting or arranging any matter in a manner or format which, *inter alia*, is false or deceptive or tends to confuse or mislead. Because respondent's misconduct in permitting his name and title to appear with JV's insignia on paralegal Enriquez's business card supports our conclusion that respondent aided and abetted nonattorneys to engage in the unauthorized practice of law, we do not separately consider it as additional uncharged misconduct aggravation.

b. 1996.

In 1996, respondent employed Veronica Lopez (hereafter Lopez or secretary Lopez) as a full-time secretary from April 1996 until late November 1996. For approximately two weeks thereafter, Lopez did a very small amount of work for respondent. Lopez spent each morning with respondent at the immigration court acting as his translator for his Spanish-speaking clients and spent each afternoon doing secretarial work in respondent's law office. The record does not establish whether anyone served as respondent's translator in the afternoons or in the mornings after Lopez quit in late November.

From approximately March 1996 to late November 1996, respondent employed, as a “kind of part time” secretary, someone respondent testified was named Roxanne, but whom Lopez testified was named Rosanna (hereafter Rosanna). Even though respondent employed Rosanna for approximately nine months and presumably paid her (withholding, reporting, and paying her state and federal employment taxes) throughout those nine months, he could not remember her last name.

In either November or December 1996, respondent hired Lupe Becerra as his full-time secretary. Becerra worked for respondent until June 1997. Respondent denied employing a paralegal in 1996.

Respondent testified (1) that, from approximately February through August 1996, he employed, as an associate attorney, an attorney who we refer to as attorney Kazarian and (2) that, for a few months “sometime” during 1996, he employed, either as an associate attorney or an independent contractor, a second attorney who we refer to as attorney Peak. Respondent's testimony, however, is impeached by Lopez's credible, disinterested, and unchallenged testimony that, while she worked for respondent in 1996, she and Rosanna were respondent's only employees. Lopez's testimony is consistent with the very limited office space respondent had for most of 1996.

Respondent's law office handled more than 1,000 immigration cases in 1996. Respondent estimates that he was the attorney of record in at least 400 or 500 of those cases. Presumably, other attorneys associated with respondent's office were the attorneys of record in the remaining cases.

According to respondent he made an average of four immigration court appearances each morning and four each afternoon in 1996. We accept respondent's testimony that he made an average of four appearances each afternoon in 1996, but reject his testimony that he made an average of four appearances each morning because it is impeached by Lopez's credible, disinterested, and unchallenged testimony that, when she worked for respondent, he made between five and seven appearances each morning.³⁵ Lopez did not know how many appearances respondent made each afternoon because, as noted *ante*, she worked in respondent's law office in the afternoons and because she did not keep respondent's calendar. Respondent personally "kept" or "maintained" his own calendar. In conclusion, we find that respondent made between five and seven court appearances each morning and that he made an average of four appearances each afternoon in 1996. Moreover, the record suggests that respondent made at least this same number of appearances each day in 1997.

c. 1997.

Becerra was the only secretary respondent employed in 1997. And, as noted *ante*, she worked for respondent until June 1997. In 1997, respondent employed a paralegal named Ezekiel Bahena, who was still working for respondent at the time of trial in the hearing department.

In December 1997, respondent hired, as an independent contractor, an attorney we refer to as attorney Mehrpoo. When he hired her, attorney Mehrpoo had no immigration law experience; in fact, she had *just* become a member of the State Bar. As the hearing judge aptly noted with justifiable concern, respondent permitted attorney Mehrpoo to make court appearances by herself in his immigration cases after giving her only three weeks of very informal training. She worked between 30 and 40 hours a week and made approximately four court appearances a day. She worked for respondent until March 1998.

³⁵Lopez's testimony is supported by the disinterested and credible statement Immigration Judge Ronald N. Ohata made, during a November 1996 hearing in the Israil matter, that respondent was making between six and ten appearances each morning in 1996. Because the transcript of that hearing was admitted for all purposes without any hearsay objection, we may and do consider it for the truth of the matters stated. (See footnote 32, *ante*, page 26, and cases there cited.) We rely on Immigration Judge Ohata's statement to the extent that it supports Lopez's testimony and contradicts respondent's testimony.

Even though respondent failed to disclose these facts when testifying in response to the State Bar's detailed questioning regarding his office staff, the record establishes that he employed an attorney who we refer to as attorney Hovsepien in March 1997 and an attorney who we refer to as attorney Arias in summer 1997. By 1997, respondent's law office had more than 1,700 immigration cases. Respondent estimates that he was the attorney of record in 1,000 of those cases and that other attorneys associated with his law office were the attorneys of record in the remaining case.

2. Respondent's many law offices.

When respondent first opened his own law practice in 1995, he shared office space with JV at 9452 Garvey Avenue, Suite D, El Monte, California.³⁶ Initially, respondent unequivocally testified in the hearing department that he maintained his law office on Garvey Avenue until January 1996 when he moved it to 4605 Lankershim Boulevard, Suite 418, North Hollywood, California.³⁷ However, respondent later impeached that unequivocal testimony by testifying later in the hearing that, from "December of '95 through part of January '96," his law office was located at 1543 West Olympic Boulevard and that he did not move his office to Lankershim Boulevard until either the end of January or the beginning of February of 1996.³⁸ Yet, all of respondent's testimony and

³⁶While testifying in the hearing department, respondent denied that he shared offices with JV. However, his denial was not clear nor unequivocal. Moreover, the hearing judge made inconsistent findings on whether respondent shared an office with JV. Our finding that respondent shared offices with JV is supported by at least the following three factors. First, respondent specifically admitted that the building on Garvey Avenue was a small office building and that, as soon as you walked in the front door, there was a "shared" area for the offices, which respondent describes as a combined reception and hallway area. Second, respondent testified that his law office was in suite D of the building on Garvey Avenue, and suite D is the same suite that is listed in the address on paralegal Enriquez's business card. Third, as we discuss in further detail *post*, while in the offices on Garvey Avenue, Mr. Enriquez "pointed" respondent out to Rodolfo Baza-Salgado and identified him as an attorney associated with JV who would represent the Rodolfo Baza-Salgado and his wife in immigration court.

³⁷Respondent admits that, for the more than 10 months that his office was on Lankershim Boulevard, his business cards incorrectly listed the office's address as being in Universal City instead of North Hollywood.

³⁸Respondent's repeated inability to testify consistently as to the locations of his law offices not only highlights the difficulty that his alien clients (who did not understand English) had keeping up with and locating him, but it reflects adversely on his credibility as a witness in general, particularly in light of the fact that he testified that, before trial, he "checked about" all of his old office addresses at the request of his counsel in the hearing department. It is clear from his findings and culpability conclusions that the hearing judge repeatedly rejected respondent's testimony and determined that respondent simply was not a credible witness. Because the record clearly supports these repeated adverse credibility determinations, we give them great weight. (See Rules Proc. of State Bar, rule 305(a).)

credibility as to when and where he moved his office after he moved out of his Garvey Avenue office are impeached by documentary evidence. First, respondent listed his office address as 1306 Wilshire Boulevard, Suite 104, Los Angeles, California in (1) an immigration court pleading that he signed and filed in the Maya-Perez matter on January 16, 1996, and (2) the Form EOIR-28 that he signed and filed in the Padilla matter on February 2, 1996. Second, respondent listed his office address as 124 West 2nd. Street, Los Angeles, California in an immigration court pleading that he signed and filed in the Calderon matter on January 22, 1996.

Whenever respondent truly moved his office to Lankershim Boulevard, he sublet from and shared office space with Hratch Baliozian, who is a nonattorney immigration services provider who refers immigration clients to respondent.³⁹ Their office space consisted of a common reception area and two small offices. One of the offices was used by Baliozian and his staff, and the other one was used by respondent and his staff. Respondent testified that both the names “Law Offices of James R. Valinoti” and “Hratch Baliozian” were on the front door leading into respondent’s and Baliozian’s shared office space.⁴⁰

The only furniture in respondent’s office was a desk, which respondent, Lopez, and the second secretary shared; a credenza; and a shelf-type cabinet. There was no filing cabinet. Respondent kept all of his client files, which according to Lopez’s and respondent’s testimonies totaled no more than 200, in one or two boxes on the floor next to his desk. There was no office equipment in respondent’s office other than perhaps a telephone. However, in Baliozian’s office, there was a computer and a printer, which respondent’s secretaries were allowed to use for writing letters and drafting notices. Respondent might have owned the printer.

Respondent continued sharing office space with Baliozian on Lankershim Boulevard until he and Baliozian were evicted in mid-November 1996 because Baliozian did not pay the rent. Contrary to respondent’s testimony that he and Baliozian were evicted in October 1996, Lopez’s credible,

³⁹Respondent testified that he obtained approximately 50 alien client referrals from Baliozian.

⁴⁰Respondent’s posting of his law offices’ name on the same door with Baliozian’s name raises the same issues we discussed *ante* in footnote 34.

unchallenged testimony and the documentary evidence establish that they were evicted in mid-November 1996. Respondent testified that, during November and December following his and Baliozian's eviction, he (i.e., respondent) “was moving” his office to 3540 Wilshire Boulevard, Suite 322, Los Angeles, California and that he maintained his office at that address on Wilshire Boulevard until July 1997. However, respondent's testimony and credibility are again impeached by the documentary evidence in the record in this proceeding. On December 16, 1996, the immigration court served a copy of an IJ's order in the Gonzalez matter on respondent at 1543 West Olympic Boulevard, Suite 231, Los Angeles, California, which was the office address that respondent then maintained with the immigration court.⁴¹

Respondent testified that, in July 1997, he moved his office from 3540 Wilshire Boulevard to 510 West Sixth Street, Suite 924, Los Angeles, California and that, in November 1997, he moved his office from suite 924 to suite 515 in the same building on West Sixth Street.

3. *Respondent failed to properly maintain his official state bar address.*

Like the hearing judge, we take judicial notice of respondent's official State Bar membership records. As the hearing judge found, those records establish that respondent repeatedly violated his duty, under section 6002.1, subdivision (a), and Rules and Regulations of the State Bar, article I, section 1, to maintain, on the official membership records of the State Bar, his current office address and telephone number (hereafter official State Bar address). Respondent never notified the State Bar of the addresses and telephone numbers of the offices he shared with JV on Garvey Avenue or of the offices he shared with Baliozian on Lankershim Boulevard. Nor did respondent ever notify the State Bar of the offices he had on 1306 Wilshire Boulevard, West 2nd Street, or West Olympic Boulevard. In fact, the first law office respondent ever notified the State Bar of was his office on 3540 Wilshire Boulevard and, even then, his notification was not timely. Furthermore, respondent never notified the State Bar of his office in suite 924 at 510 West Sixth Street. Finally, even though respondent notified the State Bar of his office in suite 515 at 510 West Sixth Street, he did not do so until after he had been there for one year.

⁴¹The copy of the notice is unclear; the street address may be 1542 instead of 1543.

Respondent also violated section 6002.1, subdivision (a), from July 1994 through March 1997 because, throughout that time period, respondent maintained post office boxes as his official State Bar addresses. This authority expressly mandates that attorneys maintain their current *office* addresses and telephone numbers as their official State Bar addresses; it is only when an attorney does not have an office that he is permitted to maintain some other address and telephone number as his official State Bar address. (Accord *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231, 246, fn. 19.) In addition to the multiple State Bar administrative and investigative purposes, attorneys must maintain their current office addresses and telephone numbers as their official State Bar addresses 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. The importance of such a listing is highlighted by the facts in this case, which show that a number of respondent's clients could not contact him about their cases because he repeatedly moved his law office without notifying them and his many other clients.

4. Respondent failed to notify his clients, the immigration court and postal service of his many changes of address.

a. Respondent's clients.

Respondent admits that he did not notify all of his clients each of the four times he moved his office between 1995 and 1997. He does, however, claim that he sent out “hundreds” of change of address notices to his clients with respect to one or maybe more of his moves, but he could not specify when the notices were mailed out or which move or moves they pertained to. We reject respondent's unsubstantiated claim.

In addition, respondent testified that he kept the addresses of his clients in the notebook-size, yearly calendars that he carried with him to court each day and, for a very brief time period, in a “hand-held computer organizer.” Respondent further testified that his “office did the best [it] could to send out notices to everybody” whose address was listed in either his notebook-size calendars or his hand-held computer organizer. However, respondent also testified (1) that, in April 1996, someone broke into his car and stole his briefcase containing his 1996 calendar and (2) that, in June

1997, someone again broke into his car and stole his briefcase containing his 1997 calendar and his hand-held computer organizer. Even if we were able to accept as credible respondent's testimony that he kept his clients' names and addresses in his calendars and hand-held computer organizer, he could not have notified the clients listed in his stolen 1996 calendar when he moved his office in late 1996 or January 1997. Likewise, he could not have notified the clients listed in either his stolen 1996 calendar, his stolen 1997 calendar, or his stolen hand-held computer organizer when he moved his office in July 1997 or when he moved in November 1997.

Moreover, as discussed in detail *post*, we not only reject respondent's testimony that he kept his clients' addresses in his calendars and hand-held computer organizer, but also find that he failed to keep any client records in all but a limited number of his cases. Thus, respondent could not have and did not send out "hundreds" of change of address notices as he testified.

b. *The immigration court.*

Almost all the notices (e.g., notices of hearing dates, orders, and decisions) that the immigration court sends out each year are generated and addressed by the court's central computer system. The court's central administrative office maintains a centralized computer data bank that contains, *inter alia*, the name and address of the attorney of record for the alien in each case. When the court's computer system generates a notice, it automatically addresses the notice using the name and address of the alien's attorney of record as contained in the centralized data bank. As a result, attorneys who move their offices are required to submit only a single change of address notice to the court's administration office, which promptly updates its centralized data bank.

Even though respondent testified that he promptly notified the immigration court's central administrative office each time he moved his office between mid-1995 and late 1997, he did not proffer a conformed copy of any change of address notice to corroborate his testimony. Moreover, respondent's testimony is incorrect, at least, with respect to when he moved his office from 3540 Wilshire Boulevard to 510 West Sixth Street, Suite 924, in July 1997. On October 8, 1997, the immigration court served a computer-generated notice in the Ramirez matter on respondent at his old address on 3540 Wilshire Boulevard. Had respondent promptly notified the immigration court of

this July 1997 move as he testified, the court would have updated its centralized data bank and served the notice on respondent at his new address on West Sixth Street address. (Evid. Code, §§ 606, 664 [in the absence of proof establishing the contrary, official duties are presumed to have been regularly performed].)

It is clear that, sometime after October 8, 1997, respondent notified the immigration court of his July 1997 office move because, on December 23, 1997, the court served another computer-generated notice in the Ramirez matter on respondent at his office at 510 West Sixth Street, Suite 924. Yet, because the court served that December 1997 notice on respondent at his office in suite 924 in the building at 510 West Sixth Street, it is clear that he failed to promptly notify the court when he moved his office from suite 924 to suite 515 in that building in November 1997.

c. *The postal service.*

As far as he can recall, respondent thinks he notified and provided his new office address to the United State Postal Service each of the four times he moved his office between 1995 and 1997. However, the failure of the postal service to forward a number of letters and court notices to respondent's new office addresses strongly suggests otherwise. Likewise, the fact that the postal service continued to deliver respondent's mail to his old office addresses where it was accepted on respondent's behalf strongly suggests that respondent did not properly and timely notify the postal service of his changes of address. Thus, we find that respondent not only failed to properly and timely notify each of his clients and the immigration court of his four moves, but that he also failed to properly and timely notify the postal service so that, if nothing else, it could forward respondent's mail to his new offices.

5. *Respondent failed to maintain adequate client records.*

At least from mid-1995 through late 1997, neither respondent nor his staff kept a listing of the names, addresses, and telephone numbers of respondent's thousands of clients. Nor did they keep a record of most of the legal fees respondent earned in his immigration cases even though they totaled in the hundreds of thousands of dollars each year and, according to respondent's testimony, were often paid to him in cash. Even though he had thousands of clients, the record establishes, at

best, that he maintained only the following limited files: (1) 200 client files that he kept in one or two boxes on the floor in his office on Lankershim Boulevard; (2) a small number of skeletal client files that he made while at the immigration court;⁴² and (3) limited client records respondent personally wrote in his notebook-size calendars and hand-held computer organizer.

Respondent testified in the hearing department that, during the 10 months that he shared office space with Baliozian in 1996, he maintained the following information for each of his immigration clients in the computer that respondent, Baliozian, and their staffs shared: (1) the client's name, address, and telephone number; (2) the next court hearing in the case; (3) the filing dates; and (4) "all the basic calendaring information and – calendaring information slash client database." Respondent asserts that the computer was his. According to respondent, when he and Baliozian were evicted, Baliozian's "people were there and they were basically walking out with files and my computer and printer" and he (i.e., respondent) "was never able to recover [his] computer or [his] printer and some of [his] files."

However, when viewed in light of the entire record, respondent's testimony was neither probative (e.g., respondent admitted that he did not "know how many clients were on that [purported] database at the time the computer was taken") nor believable. Moreover, it was impeached by his own inconsistent testimony in the hearing department. Respondent unequivocally testified that, in June 1996, the only places he recorded "important dates" were (1) the notebook-size calendar that he took with him to court each day and (2) his client files. In addition, respondent's testimony is inconsistent with Lopez's disinterested and credible testimony, which respondent did not challenge, that no client information was stored in the computer and that respondent's staff used it only to draft letters and notices.

⁴²Respondent testified that he made the client files out of empty file folders he carried to court with him in his briefcase. Respondent claims that he did this on a regular basis, but the record strongly indicates that he did not. Respondent claim is clearly false at least with respect to the eight months' that Lopez worked for him in 1996. As noted *ante*, the testimony of respondent and Lopez establish that respondent had no more than 200 client files in 1996. In any event, respondent admitted that the files he made at court were skeletal and almost always contained only (1) the clients' asylum applications and copies of the deportation OSC's and (2) the clients' names, addresses, and telephone numbers. In sum, we reject respondent's claim that he made client files on a regular basis at the immigration court.

Moreover, respondent did not proffer any evidence on what steps he took to recover this purportedly stolen computer and printer. Specifically, respondent never testified that he reported it to the police as being stolen or that he even asked Baliozian to recover them for him. Even assuming that respondent owned the computer and that he did store important information regarding his clients in the computer, it would raise additional ethical concerns. It would be reckless for an attorney to store important client information on a computer that he shared with a nonattorney immigration services provider and that he stored in that provider's separate office.

Equally self-serving and unbelievable is respondent's testimony that, in his notebook-size calendars he maintained the following detailed information for each of his thousands of immigration clients: (1) the client's name, address, and telephone number; (2) the name of the IJ presiding over the client's case; (3) a description and the date and time of every hearing scheduled in the client's case; and (4) a notation of every filing deadline in the client's case. Moreover, in light of the record as a whole, his failure to produce even one of his calendars to support his testimony is a strong evidence that it is not just implausible and unbelievable, but deliberately false. (See, e.g., Evid. Code, §§ 412, 413; *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, 122 [a witness's failure to produce corroborating documentary evidence is an indication that the witness's testimony is not credible]; *Breland v. Traylor Eng. etc., Co.* (1942) 52 Cal.App.2d 415, 426 [when a party fails to introduce evidence that would naturally have been produced, the trier of fact may properly infer that the evidence is adverse to the party].)

6. Respondent failed to properly protect client records.

From at least mid-1995 through late 1997, respondent was reckless and grossly careless in protecting his clients' records and files. He displayed very little regard for the 200 client files he kept in one or two boxes on the floor of his office on Lankershim Boulevard, his calendars, and his hand-held computer organizer.

Secretary Lopez credibly testified as follows. When respondent and Baliozian were evicted from their office space on Lankershim Boulevard in mid-November 1996, she was unable to promptly notify respondent of the eviction because respondent was out of town. When she went to

the office the Saturday morning following the eviction, almost everything was gone from the office space except respondent's 200 client files. When she telephoned respondent at his home that Saturday morning and told him of the eviction, respondent told her that he did not want to go to the office and instructed her to "try to get as much as you can" and to bring the client files to him at his home. When she delivered the 200 client files to respondent at his home, respondent told her that he did not have room to keep them and instructed her to keep them. She kept all 200 files in her car for approximately one week. Thereafter, she gave them to a friend. That friend stored the files in her office until respondent claimed them approximately one week later.

Lopez further credibly testified that none of respondent's files were stolen when respondent and Baliozian were evicted. Respondent, however, testified (1) that the file in one or more of the nine client matters that are the subject of this disciplinary proceeding was stolen at the time of the eviction and (2) that the "stolen" file or files should contain proof that would exonerate him on some of the disciplinary charges. Respondent's testimony is speculative. When initially questioned in the hearing department, respondent could not identify which or how many client files were purportedly stolen. Later, he testified that the file in the Padilla matter was missing after the eviction. Even if he could identify which client files were stolen, it would still not justify his admitted failure to take any precaution whatsoever to prevent Baliozian, Baliozian's staff, or the building's landlord from stealing his clients' files whether during the eviction process or otherwise.

Moreover, respondent testified that, after the eviction, Lopez brought the files to his house, that he stored the files in his house, and that he did not see Lopez again for a couple of months. Respondent's testimony and credibility as a witness is again impeached by his own inconsistent statements. During a November 22, 1996, immigration court hearing in the Gonzalez matter, respondent made the following statements to the IJ: "My only concern is my office has been in somewhat of a disarray, as I previously told you. My lessor, from whom I used to sublease, apparently did not pay rent for approximately five or six months, and subsequently, *all my files are presently in my secretary's home.*" (Emphasis added.)

As noted *ante*, respondent testified that his 1996 calendar was stolen out of his car in April 1996 and that his 1997 calendar and hand-held computer organizer were stolen out of his car in June 1997. Respondent admitted that, after his 1997 calendar was stolen, he purchased a new calendar for 1997. But when the hearing judge asked respondent whether he still had that new calendar to show how respondent kept detailed client records in it, respondent answered that he did not know whether he still had it. Respondent never proffered his new 1997 calendar or any other calendar into evidence. Moreover, respondent offered no reason to justify his leaving what he asserts were his key client records in his car unattended.⁴³

7. *Respondent's repeated failures to properly file his clients' pleadings and to properly appear at his clients' immigration court hearings.*

Respondent claims that he would record filing deadlines and hearing dates in his calendar by writing down the client's name and address, the name of the IJ, and the filing deadlines and hearing dates with descriptions as to what they were for. Even if accurate, this alleged practice of recording this crucial information in his calendar proved effectively useless in light of the repeated theft of respondent's briefcase and calendars.

Moreover, while respondent and secretary Lopez both testified that, as filing deadlines and as court appearance dates approached, they called the referring immigration services providers and the alien clients to verify that the documents or pleadings were prepared and timely filed, the hearing judge rejected this testimony, and so do we. Respondent's testimony on this issue is impeached by his own admissions in a number of the eight immigration services providers client matters that he did not take such actions.

In sum, during much of the time period between mid-1995 and late 1997, respondent spent most days at the immigration court making his many appearances. He spent little time at his law office. He routinely agreed to make multiple appearances in different cases even though the

⁴³Also troubling is respondent's admissions that, after his calendars were stolen, he obtained computer printouts from the immigration court's central administrative office that listed all of the scheduled hearings in each of his cases, but that he did not use those printouts to reconstruct replacement calendars that accurately listed the dates and times of all of the hearings in his cases. According to respondent, he did not use the printouts because they were too voluminous and were not in either alphabetical or date order.

hearings in which he was to appear were set at the same time and before different IJs. At that time, there were at least 19 IJs in Los Angeles with courtrooms on various floors of either the Federal Building on North Los Angeles Street of the Roybal Center and Federal Building on East Temple Street. He also had multiple immigration court hearings and merits hearings (i.e., trials) set for the same time. He did not proffer an explanation as to how he could try more than one immigration case at a time.

Obviously, respondent “ran” from courtroom to courtroom looking for his clients (often times having to also look for someone to translate for him so that he could communicate with his clients), checking in with the court clerks,⁴⁴ and checking with the court clerks regarding the calendar placements for his hearings. It is not surprising that respondent was repeatedly late for and missed court appearances or that respondent had a well-known reputation for such. Respondent also repeatedly missed filing deadlines. And, as far as we can determine, he never properly sought an extension of time or properly requested a continuance of a hearing. At the November 1996 hearing in the Israil case referred to *ante*, Immigration Judge Ohata admonished an attorney from respondent's law office: “Mr. Valinoti knows he's overbooked. Most attorneys have maybe one or two hearings set. He has anywhere from six to ten set each morning or afternoon, and he's all over this courthouse. The result is his clients are not represented in court.”

We now consider the specific nine client matters forming the basis of the charges against respondent. We first consider the eight client matters that were referred to respondent by immigration services providers, and second consider the one client matter that may not have been referred to respondent by a provider.

V. The nine client matters.

A. The eight client matters referred to respondent by immigration services providers.

1. The Padilla matter.

⁴⁴Although the testimony of one IJ indicates that respondent may not have always been checking in with a court clerk. According to that IJ, his clerk was in his courtroom only on master calendar days, and at least once, respondent improperly checked in with a court interpreter and then left to go to another courtroom.

In response to a television advertisement for Cal State Legal Services (hereafter SIG), which is a nonattorney immigration services provider, Emilio Padilla hired SIG in August 1995 to get a green card for him. Padilla is a national of Mexico. Completion of the sixth grade was the extent of Padilla's formal education. From early 1993 through June 1999, Padilla worked as a machine operator for the same Los Angeles area company. However, that company fired Padilla in June 1999 because his work permit expired and because he still had not obtained his green card. At all relevant times, Padilla did not speak, read, write, or understand English.

When Padilla went to SIG, he dealt solely with a woman identified to him only as Veronica.⁴⁵ SIG's fee was \$2,000. By May 1996, Padilla had paid SIG \$700, leaving Padilla owing a balance of \$1,300.

SIG prepared an asylum application for Padilla; in support of which, Padilla gave SIG a number of documents relating to his residency in the United States. Thereafter, Veronica met with Padilla in August 1995 and instructed him to sign the application, which he did. As noted *ante*, by signing the application, Padilla certified, under penalty of perjury, that the facts in it and its supporting documentary evidence were true and correct. Padilla admitted while testifying in the hearing that he did not read the asylum application before he signed it. However, he also credibly testified that he could not have read it before he signed it because it was written and answered entirely in English, which he did not read or understand.

In September 1995, SIG filed the application with the INS without signing the preparer's declaration to disclose that it prepared the application and to certify that it read the completed application to Padilla in Spanish for purposes of verification before he signed it. The INS interviewed Padilla on his asylum application in December 1995.

While testifying in the hearing department, Padilla admitted, that during that December 1995 interview, he lied to an INS official by falsely telling the official that the facts in his application and supporting evidence were true and correct. Padilla is one of the witnesses whose credibility

⁴⁵The Veronica who worked at SIG is not Veronica Lopez who worked for respondent in 1996. We refer to the Veronica who worked for SIG as Veronica or as Veronica at SIG. And, as noted *ante*, we refer to the Veronica, who worked for respondent, by her last name of Lopez or by secretary Lopez.

respondent attacks on the basis that Padilla signed his asylum application under penalty of perjury and then answered “yes” to the INS official’s question, at his asylum interview, as to whether the facts in his application and its supporting evidence were true when he knew that they were not. As we stated *ante*, we reject respondent’s attacks on the credibility of his clients.

There is no evidence that indicates, much less establishes, that Padilla knew what facts were in his asylum application before he signed it or that he knew that, by merely signing the application, he was certifying, under penalty of perjury, that the facts in it were true and correct. Likewise, the evidence does not indicate, much less establish, that Padilla knew what facts were in his application and its supporting evidence when he answered “yes” to the INS official’s question at his asylum interview. In fact, the only evidence on the issue indicates that Padilla did not learn that there were false statements of fact in his application until sometime after his asylum interview. Furthermore, Padilla is one of the witnesses whom the hearing judge expressly found to be credible in the face of respondent’s attacks. Again, we must give that credibility determination great weight. (Rules Proc. of State Bar, rule 305(a).)

After Padilla’s asylum interview, the INS denied Padilla’s application and initiated a deportation proceeding against him by filing in the immigration court and serving on him an OSC ordering him to appear before an IJ in Los Angeles on February 2, 1996, and show cause why he should not be deported. Veronica at SIG made arrangements with respondent’s secretary Lopez for respondent to represent Padilla at this February 2, 1996, hearing.⁴⁶ SIG paid respondent \$100 for the appearance.

Veronica at SIG gave respondent’s name and physical description to Padilla and told Padilla to meet respondent outside of the immigration court shortly before the February 2, 1996, hearing.

⁴⁶The parties, the hearing judge, and the reporter’s transcript of this February 2, 1996, immigration court hearing refer to the hearing as though it took place on February 27, 1996. However, the deportation OSC, the Form EOIR-28 that respondent filed, the IJ’s written order filed after the hearing, and the reporter’s transcript of the subsequent immigration court hearing on March 28, 1997, establish that the hearing was held on February 2, 1996. Accordingly, respondent’s unequivocal testimony that he attended and appeared with Padilla at an immigration court hearing on February 27, 1996, when no such hearing ever occurred is yet another example of the evidence impeaching respondent’s credibility and candor as a witness.

Respondent met briefly with Padilla before the hearing, but they did not discuss Padilla's case. Respondent and Padilla signed a Form EOIR-28, which respondent filed, and Padilla gave respondent various documents regarding Padilla's employment, taxes, and residences in the United States. At the hearing, respondent admitted the factual basis on the issue of Padilla's deportability and designated Mexico as Padilla's country of deportation. Respondent did not tell the IJ that SIG had prepared Padilla's asylum application without signing the preparer's declaration.⁴⁷ He did, however, at least withdraw Padilla's application. Respondent also requested suspension of deportation relief for Padilla and, in the alternative, voluntary departure in lieu of deportation. The IJ ordered Padilla's application for suspension of deportation be filed by April 1, 1996, and set the application for a merits hearing on July 25, 1996. Further, the IJ admonished Padilla to cooperate with his attorney (i.e., respondent) in preparing the application and to secure for respondent all the necessary documents. The IJ also instructed Padilla: "Now, *your attorney* has a deadline for filing that application [for suspension of deportation]. *He* must file it by a certain date, and *he* must have that documentation." (Emphasis added.) Even though respondent heard the IJ give these instructions to Padilla and even though respondent knew that SIG, not he, would be preparing Padilla's application, respondent did not disclose this fact to the IJ, but instead permitted the IJ to believe that he (i.e., respondent) would be preparing and filing Padilla's application.

In early summer 1996, the immigration court sua sponte continued Padilla's July 1996 merits hearing until March 28, 1997, at 1:00 p.m. and properly notified respondent of the continuance. But respondent never told Padilla. Nonetheless, in either late 1996 or early 1997, Padilla somehow learned of the new hearing date.

As the hearing judge found, Padilla was unable to speak with respondent following the February 1996 hearing and neither SIG nor respondent told Padilla how to contact respondent. Therefore, Padilla returned to SIG's office the next day, and Veronica told him that SIG would

⁴⁷We do not consider, as uncharged misconduct aggravation, respondent's failure to notify the IJ of SIG's unlawful failure to sign the preparer's declaration on Padilla's application because SIG failed to sign the application before respondent began representing Padilla and because Padilla might have conceivably, albeit very unlikely, permitted SIG to file his application with the INS without signing the preparer's declaration. (Cf. § 6068, subd.(e).)

prepare all of the “papers” and give them to respondent in time for the “following court date.” Yet, SIG did not do so. Moreover, respondent did not call SIG to verify whether it had prepared and filed Padilla’s application for suspension of deportation nor did respondent prepare and file the application himself before the filing deadline. We do not rely on respondent's failure to contact SIG to verify that it had prepared and filed Padilla’s application to support a finding of misconduct because, had respondent contacted SIG, he would have engaged in an additional act of aiding and abetting SIG to represent aliens in violation of federal law and to engage in the unauthorized practice of law. Nonetheless, we do consider respondent’s failure to contact SIG as strong evidence of respondent’s inability to understand his professional obligation to competently represent Padilla and to comprehend the extreme peril to which he exposed Padilla by relying on and permitting SIG to prepare Padilla’s application.

Later, Padilla returned to SIG’s office on a couple of occasions, but their office was not open. Eventually, Padilla learned that SIG’s office was abandoned. Thus, he started looking for respondent, but could not find him. Padilla ultimately got respondent’s address and telephone number from either the INS or the immigration court and, thereafter, promptly spoke with respondent’s office and made an appointment to meet with respondent. Even though respondent knew that Padilla’s application was due by April 1, 1996, respondent did not meet with Padilla until May 8, 1996.

Respondent and secretary Lopez met with Padilla on May 8, 1996. At that meeting, respondent agreed to take over the preparation of Padilla’s paperwork from SIG and to accept the \$1,300 that Padilla owed SIG as his attorney’s fee, Lopez gave Padilla her pager number, Padilla paid respondent \$500, and Padilla gave respondent additional documents to support his application for suspension of deportation. Sometime before this meeting, SIG sent respondent, at least, some of the documents that Padilla had given to it earlier.

In the hearing department, respondent admitted that he never spoke with Padilla after their May 1996 meeting, but claimed that he later saw Padilla and Lopez meeting in his law office and that he presumed Lopez was working on Padilla's case. Respondent could not recall if he prepared

Padilla's application for suspension of deportation, but claimed to have prepared, in either August or September 1996, a motion for leave to file Padilla's application after the filing deadline. Respondent proffered no explanation to justify waiting until August or September, more than five months after the filing deadline, to prepare a motion for late filing when his failure to timely file the application in the first instance alone could have constituted a complete waiver of Padilla's opportunity to file the application. (8 C.F.R. § 3.31(c).)

Respondent also testified in the hearing department that Lopez was supposed to have filed the motion for late filing that he purportedly prepared, but that Lopez failed to file it for some unknown reason. Respondent's testimony is impeached by Lopez's credible and unchallenged testimony that it would have been respondent's responsibility, not hers, to file the motion. In any event, even if respondent prepared a motion for late filing and instructed Lopez to file it, respondent's reckless manner of practicing law precludes him from claiming that Lopez's failure to file the motion was an inadvertent mistake for which he should not be held responsible. (*Vaughn v. State Bar, supra*, 6 Cal.3d at pp. 857-858.)

When respondent did not contact him, Padilla attempted to contact respondent in late 1996. Padilla tried to telephone respondent, but respondent's telephone had been disconnected apparently without a recorded notice of a new telephone number. When Padilla went to respondent's office on Lankershim Boulevard, he found that respondent was no longer there (as noted *ante*, respondent and Baliozian were evicted from that office in November 1996 for not paying rent). Respondent never notified Padilla when he moved his office to 3540 Wilshire Boulevard after the eviction.

In late November 1996, Lopez quit her job with respondent, began working as an independent immigration services provider, and opened an office in Norwalk, California. Around that same time, Padilla was somehow able to contact Lopez either by paging her on her pager or by running into her at the immigration court. Lopez told Padilla that she did not know if respondent would appear with Padilla at the March 1997 merits hearing, but that she would try to get his file

from respondent. Lopez obtained Padilla's file.⁴⁸ However, Padilla thereafter had difficulty contacting Lopez. Therefore, at approximately 10:00 a.m. on the morning of the March 1997 merits hearing, Padilla went to Lopez's office in Norwalk. At that time, Lopez rapidly prepared an application for suspension of deportation for Padilla, gave it to him, and told him to take it with him to his hearing at 1:00 p.m.

Even though Padilla appeared, respondent remained his attorney of record. Accordingly, the IJ waited for respondent until 2:25 p.m. before she called Padilla's case. When the IJ called Padilla's case, she stated on the record that the hearing had been properly set and noticed for 1:00 p.m., that it was 2:25 p.m., and that respondent had not come into the courtroom or otherwise notified the court that he was detained or unavailable for the hearing. Attorney Hovsepien from respondent's law office then walked into the courtroom and told the IJ that respondent sent her to appear on his behalf because he had been called away on a family emergency, which Hovsepien did not identify for the IJ. Attorney Hovsepien admitted that she was late to the hearing because she was making a filing in federal court, a filing she presumably could have made up until the federal court's filing window closed later that afternoon or that an attorney filing service could have made for respondent.

Even though attorney Hovsepien explained to the IJ that she had only been working for respondent for one week, the IJ admonished Hovsepien over the grave situation in which respondent's failures (1) to prepare and file Padilla's application for suspension of deportation and (2) to appear for the merits hearing had placed his client. The IJ also admonished Hovsepien that this was not the first application that respondent had failed to file in her court. Next, the INS attorney stated that the INS's position was that Padilla's request for suspension of deportation relief should be deemed abandoned because respondent had not filed the application. That attorney

⁴⁸Respondent testified that, sometime after his eviction, Padilla's file was missing, but respondent admitted that he did not know when the file disappeared or what happened to it, but speculated that Lopez took it without his knowledge. Lopez, who testified after respondent, testified that, while she was storing respondent's client files after the eviction, respondent told her to give the file to Padilla. However Lopez obtained Padilla's file, it is clear that she either (1) obtained it with respondent's permission or (2) was able to improperly obtain it without respondent's knowledge because of respondent's reckless conduct and failure to adequately care for his client records.

further stated that the INS “holds the position that Mr. Valinoti has done this on numerous occasions, in front of numerous courts” and that he (i.e., the INS attorney) “can personally attest to the fact that [he has] seen at least four similar situations before other judges.”⁴⁹ Padilla then told the IJ that he no longer wanted respondent to represent him. The IJ continued Padilla’s merits hearing so that he could obtain competent counsel to represent him and informed Padilla of his right to file a complaint against respondent with the State Bar. Thereafter, Padilla hire new counsel and filed a complaint against respondent with the Bar.

In the hearing department, respondent could not identify what family emergency called him away and justified his sending attorney Hovsepian to the merits hearing. Had there truly been a family emergency that would justify respondent’s failure to appear without even notifying the court before the hearing, respondent certainly would have been able to recall it and recall it with at least some specificity.⁵⁰ Accordingly, we find that there was no such family emergency and that respondent instructed Hovsepian to appear for him at the merits hearing because he had not filed Padilla’s application or prepared for the hearing.

We adopt the hearing judge’s conclusion that respondent willfully violated rule 3-110(A) as charged in count 8 by repeatedly and recklessly failing to competently perform the legal services that he had a legal and professional duty to perform in Padilla’s immigration case. Respondent did not meet with Padilla before the initial hearing in Padilla’s case in February 1996 to review Padilla’s case and obtain the relevant facts necessary to provide Padilla with legal representation at that

⁴⁹These facts were taken from the transcript of the March 1997 hearing, which was admitted for all purposes without any hearsay objection and which we consider for the truth of the matters stated in it. (See footnote 32, *ante*, page 26, and cases there cited.) Moreover, we consider the unsworn statements of the INS attorney and attorney Hovsepian in the transcript to be highly credible because, as attorneys, they have a professional duty to employ means only as are consistent with truth (§ 6068, subd. (d); rule 5-200(A)), because they are both largely disinterested parties, and because Hovsepian made the statements within the course and scope of her employment as attorney in respondent’s law office.

⁵⁰Respondent admitted, while testifying in the hearing department, that he falsely answered, under penalty of perjury, the interrogatory the State Bar propounded to him regarding Padilla’s complaints by falsely answering “that he was first consulted by Padilla in about 1996 after Padilla had already hired and paid another office to prepare and file his asylum application. . . . [Respondent] recalls making an appearance on behalf of Padilla, and going to court to attend a second hearing on behalf of Padilla, but not being able to locate Padilla in the courtroom on that date.” Even though we do not consider these acts of misrepresentation under penalty of perjury as uncharged misconduct aggravation, we do consider them as further evidence significantly impeaching respondent’s credibility and candor.

hearing. Respondent never prepared and filed Padilla's application for suspension of deportation or a motion for late filing. Respondent did not prepare for the March 1997 merits hearing; nor did he counsel and prepare Padilla for that hearing or otherwise tell Padilla what questions he was going to ask Padilla while Padilla was testifying at the merits hearing. Respondent failed to appear at the March 1997 merits hearing without notifying the court of his unavailability. Even though respondent sent attorney Hovsepien (a new associate attorney employee who apparently did not have any immigration court training) to appear on his behalf, he failed to establish good cause for sending her; Padilla hired respondent, not Hovsepien, to represent him. Respondent instructed Hovsepien to tell the IJ that he had been called away on a family emergency when he had not, Hovsepien appeared more than one hour and twenty-five minutes late without good cause and without notifying the immigration court of her inability to appear by the 1:00 p.m. hearing. Because of his reckless method of practicing law, respondent's is responsible for attorney Hovsepien's late appearance, which the IJ judge refused to accept as an appearance.

We also adopt the hearing judge's conclusion that respondent willfully violated rule 3-700(A)(2) as charged in count 9 by improperly withdrawing from employment and abandoning Padilla without taking steps to protect his client's interests. "Whether or not an attorney's ceasing to provide services amounts to an effective withdrawal depends on the surrounding circumstances. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 641.) Moreover, "gross negligence in failing to communicate with clients may be construed as abandonment. [Citations.]" *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680.)

Even if respondent prepared, but did not file, a motion for late filing of Padilla's application, it is undisputed that respondent did not provide any legal services to Padilla after August or September 1996. At a minimum, respondent was reckless and grossly negligent in failing to communicate with Padilla. When respondent first appeared in court with Padilla in February 1996, he never told Padilla how he could be contacted. Respondent moved his law office without notifying Padilla. Respondent never told Padilla that he did not prepare and file Padilla's application for suspension of deportation. Nor did he tell Padilla the July 1996 merits hearing had

been continued until March 1997; the fact that Padilla somehow independently learned of the continuance does not excuse respondent's failure to tell Padilla of it in the first instance.

Respondent's complete cessation of work on Padilla's case and respondent's repeated and reckless, if not deliberate, failure to communicate with Padilla establish respondent's culpability for violating rule 3-700(A)(2). (*In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 641; *In the Matter of Hindin, supra*, 3 Cal. State Bar Ct. Rptr. at p. 680.)

Because we rely on respondent's repeated and reckless failure to communicate with Padilla to establish respondent's culpability for violating rule 3-700(A)(2), we do not adopt the hearing judge's conclusion that respondent violated section 6068, subdivision (m), as charged in count 10, by not adequately communicating with Padilla; to do so would be duplicative. (*Cf. In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 43.) Accordingly, we reverse the hearing judge's culpability determination under count 10 and dismiss that count with prejudice.

Finally, based on Padilla's credible testimony, we adopt the hearing judge's finding that, after the March 1997 hearing, Padilla was unable to obtain from respondent all of the documents that SIG and he had given to respondent and that respondent's failure to return those documents to Padilla was a willful, but uncharged violation of rule 3-700(D)(2), which is an aggravating circumstance. An express element of a rule 3-700(D)(2) violation is that the client make a request on his former attorney for the return of his documents or other property. Even though Padilla admitted that he never asked respondent to return all of his documents, he credibly testified that the reason he did not do so was that he could never find respondent after the March 1997 merits hearing and that respondent had never informed him how he could contact respondent. Respondent may not avoid culpability for not returning all of Padilla's important documents by failing to inform his clients of how to contact him. Nor may respondent avoid culpability for not returning all of Padilla's documents by claiming that Padilla's file was "missing" or that Lopez lost those documents out of Padilla's file while she was storing it and respondent's other client files after the November 1996 eviction because respondent was reckless and grossly careless in his handling and protecting his client files.

2. *The Gonzalez matter.*

On the recommendation of a friend, Calixto Gonzalez hired the nonattorney immigration services provider Consultorio Internacional (hereafter IC) in March 1996 to get a green card. Almost all Gonzalez's dealings were with the owner of IC, who is identified in the record only as Gaston. IC agreed to handle Gonzalez's case and to prepare his "paperwork" for \$1,500, which Gonzalez paid in installments; he made his final payment in September 1996. Gaston told Gonzalez that he had attorneys associated with him who would appear with Gonzalez in immigration court and that, each time one of his associate attorneys made an appearance, Gonzalez had to pay an additional \$300 fee.

Gonzalez is a national of Mexico. His highest level of education is one year of secondary school, which he completed as a child in Mexico. At all relevant times, he did not speak, read, write, or understand English. During the seven years before he testified in the hearing department, he supported himself by selling corn in the streets.

IC began representing Gonzalez by preparing an asylum application for him, which he signed under penalty of perjury and which IC later filed with the INS in May 1996 without signing the preparer's declaration to disclose that IC prepared the application and to certify that it read the completed application to Padilla in Spanish for verification before he signed it. Thereafter, the INS interviewed Gonzalez on his asylum application in June 1996. The INS denied Gonzalez's application and served a deportation OSC on Gonzalez ordering him to appear in immigration court on August 9, 1996. Thereafter, Gaston told Gonzalez to go to a lounge in the federal building on August 9, 1996, and to wait for the attorney who was going to represent Gonzalez in court. Gaston did not tell Gonzalez the attorney's name; instead, he told Gonzalez that the attorney would "call out" Gonzalez's name.

As a "professional courtesy" to Gaston and IC, Rene Reyes, another nonattorney immigration services provider who refers immigration clients to respondent and who often translates for respondent at the federal building, approached respondent in the federal building on the morning of August 9, 1996, and arranged for respondent to appear with Gonzalez at the hearing that

afternoon. Even though Gonzalez paid IC \$300 as respondent's legal fee for appearing at the hearing, IC paid respondent only \$100, which Reyes paid to respondent for IC. According to respondent, it is not unusual for nonattorney providers to assist each other in finding attorneys at the immigration court to appear with their alien clients in court and in paying the attorneys for their appearances.

Before the August 1996 hearing, respondent executed and filed a Form EOIR-28 in Gonzalez's case. Respondent spoke with Gonzalez right before the hearing, but did not discuss Gonzalez's case. At the hearing, respondent admitted the issue of Gonzalez's deportability and designated Mexico as Gonzalez's country of deportation. Respondent did not tell the IJ that IC had prepared Gonzalez's asylum application without signing the preparer's declaration.⁵¹ He did, however, withdraw Gonzalez's asylum application, request suspension of deportation relief for Gonzalez, and request voluntary departure in the alternative. Respondent told the IJ that he had a hearing before the IJ in another case on the morning of October 11, 1996, and asked if Gonzalez's application for suspension of deportation could be filed in court on that same date. The IJ agreed and instructed Gonzalez that, if he did not appear on October 11, the IJ would order him deported. Implicit in the manner in which respondent asked the IJ to have until October 11, 1996, to file Gonzalez's application was the representation that respondent, or perhaps respondent's law office, would be preparing Gonzalez's application. The representation was false because respondent knew that IC, not he, would be preparing Gonzalez's application.

Contrary to respondent's testimony, but consistent with Gonzalez's testimony, the hearing judge found that, after the August 1996, hearing, respondent did not give Gonzalez his business card or otherwise tell Gonzalez how Gonzalez could contact him. Instead, respondent gave him a slip of paper with only the date of October 11, 1996, written on it and then instructed him to go back to Gaston. Gonzalez's testimony is consistent with respondent's admission that IC was going to prepare Gonzalez's application for suspension of deportation and respondent's assertions that he

⁵¹For the reasons stated in footnote 47, *ante*, page 42, we do not consider, as aggravation, respondent's failure to disclose to the IJ that IC did not sign the preparer's declaration.

never agreed to prepare Gonzalez's application for suspension of deportation and that the scope of his representation of Gonzalez was limited to that of an "appearance attorney." Respondent did not remember if he ever disclosed his purported "limited" legal representation to Gonzalez. The hearing judge correctly found that he did not.

Shortly, before the October 11, 1996, hearing, Reyes gave respondent an application for suspension of deportation that IC had prepared for Gonzalez. Both respondent and Gonzalez appeared at the hearing, but it was continued because the IJ was ill. The court clerk gave respondent and Gonzalez a notice stating that the hearing was reset for January 17, 1997. Respondent did not file Gonzalez's application on October 11 because respondent recklessly assumed that, because the hearing was continued, the filing deadline was extended. Gonzalez paid IC \$300 for respondent's October 1996 appearance, but the record does not indicate if IC gave any portion of it to respondent.

Later in the day on October 11, 1996, the immigration court reset the hearing in Gonzalez's case again by moving it up from January 17, 1997, to November 22, 1996. On October 11, 1996, the court properly served notice of the new November hearing date on respondent by certified mail to his law office on Lankershim Boulevard. The return receipt for that notice establishes that the notice was actually delivered to and signed for by respondent's law office on October 16, 1996.⁵² Respondent, however, never told Gonzalez of the November hearing date.

Respondent appeared at the November hearing without Gonzalez and again without ever filing Gonzalez's application for suspension of deportation.⁵³ Respondent seeks to avoid responsibility for his failures to notify Gonzalez of the November hearing and to file Gonzalez's application by asserting that he did not receive the notice of hearing that the immigration court sent him. Respondent further asserts that the only reason he learned of and attended that hearing was because he saw it listed on the daily docket sheet of hearings that the immigration court posted on

⁵²Respondent's contention that this return receipt is for the notice of a December 13, 1996, hearing in the Gonzalez case is erroneous.

⁵³The parties, the hearing judge, and the reporter's transcript refer to this November 22, 1996, hearing as being held on November 7, 1996. However, the contents of the transcript and the immigration court's file clearly establish that the hearing was noticed for and held on November 22, 1996. Respondent's repeated testimony that he appeared at a November 7, 1996, hearing in Gonzalez's case, when it is clear that he did not, adversely reflects on respondent's credibility and candor.

November 22, 1996. Respondent testified that he checks the immigration court's posted docket sheet of hearings every day to make sure that he does not miss any hearings in his cases.

We reject respondent's assertions and his testimony in support of them. First, respondent's claim that he did not receive the court's notice of the November hearing is belied by the fact that, on October 16, 1996, the court's notice was delivered to and signed for by respondent's law office. "In the normal course of the operation of a law office an attorney should not be at risk of discipline for the failure to have knowledge of every item of information that comes to the office." (*In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 735.) However, this principle is based on the presumptions that the attorney has adequate office procedures in place for the proper operation of a law office (cf. *In the Matter of Respondent F, supra*, 2 Cal. State Bar Ct. Rptr. at p. 26; *In the Matter of Respondent E, supra*, 1 Cal. State Bar Ct. Rptr. at pp.726-727); that the attorney has trained his staff with respect those procedures; that the attorney employs adequate safeguards to insure that his staff actually follow the procedures; and that the attorney otherwise adequately supervises his staff to insure that they perform their jobs. To conclude otherwise would result in a distortion of justice.

Where the record shows that a court has properly served a notice of a trial setting on an attorney of record in a proceeding, the attorney's failure to appear will not be excused in a disciplinary proceeding even if the attorney credibly testifies that he did not have actual knowledge of the trial date unless the attorney also establishes that he had office procedures in place that, at a minimum, require his staff (1) to promptly inform him each time a notice of a court or administrative trial or hearing is delivered to his office, (2) to promptly record the date of the trial or hearing in his court calendaring system and in the client's file, and (3) to promptly give the client actual notice of the date, time, and location of the trial or hearing. (Cf. *Bruns v. State Bar, supra*, 18 Cal.2d at p. 672.) The record does not indicate, much less establish that respondent had any such office procedures in place. In fact, as noted *ante*, the record clearly and convincingly establishes that respondent did not have any such office procedures in place. Accordingly, he may not be

excused from his failures to notify Gonzalez of the November 1996 hearing; to prepare for that hearing; and to counsel and prepare Gonzalez for that hearing.

Second, at the November 1996 hearing, respondent did not claim that he did not receive the notice of that hearing that the court sent to him on October 11, 1996. Nor did he claim that he just learned of the hearing that day when he saw it on the immigration court's posted daily docket sheet. Instead, respondent told the IJ (1) that he believed that Gonzalez was supposed to appear with him and to file his application for suspension of deportation that day, (2) that he did not know why Gonzalez was not at the hearing, and (3) that he did not know the status of Gonzalez's application because all of his client files, including Gonzalez's file, were at his secretary's home because he and Baliozian had just recently been evicted from their offices.

At the November 1996 hearing, respondent asked the IJ for a short extension of time so that respondent could move into a new office, contact Gonzalez, and "prepare whatever needs to be prepared" for Gonzalez's case. The IJ offered "to cut [Gonzalez] some slack" and to continue the hearing until December 6, 1996. However, respondent pressed the IJ for additional time. After noting his displeasure over the fact that Gonzalez's application for suspension of deportation was not filed in October 1996 as it should have been and noting that respondent's conduct was "taxing the system," the IJ reluctantly agreed to give respondent additional time. The IJ continued the hearing until December 13, 1996, and expressly instructed respondent to give notice of the new hearing date to Gonzalez. Thereafter, the immigration court properly mailed written notice of the December 13, 1996, hearing to respondent at his address on Lankershim Boulevard. That notice was mailed to respondent's Lankershim Boulevard office because, after the eviction, he did not promptly notify the immigration court's central administrative office or the Postal Service of his new office address.⁵⁴

⁵⁴Because respondent had actual knowledge of the December hearing, it is immaterial whether this notice was ever delivered to respondent's office or whether it was even mailed to him by the immigration court.

Respondent never notified Gonzalez of the December hearing date, filed Gonzalez's application for suspension of deportation, or even attended the December 13, 1996, hearing.⁵⁵ Because respondent neither appeared at the December 13, 1996, hearing nor filed Gonzalez's application, the IJ ruled that all of Gonzalez's applications were deemed abandoned and denied, found that Gonzalez was deportable,⁵⁶ and ordered Gonzalez deported in absentia. On December 16, 1996, the immigration court properly served a copy of the IJ's December 13, 1996, deportation order on respondent at his office at 1543 West Olympic Boulevard, Suite 231, Los Angeles, California. Respondent, however, never notified his client of the deportation order.

Respondent seeks to avoid responsibility for his failures to appear at the December 1996 hearing and to file Gonzalez's application by claiming, inter alia, that they were the results of a simple "calendar error," which must have occurred because he forgot to record the new hearing date in his notebook-size calendar.⁵⁷ We reject respondent's claim. First, assuming that respondent missed the December hearing because he forgot to record it in his calendar and not because he had too many hearing schedule on the same day and recklessly overlooked Gonzalez's hearing, we cannot view his purported failure to record the hearing in his calendar as a simple calendar error because the setting was made in direct response to respondent's request for additional time to get prepared, because the IJ instructed respondent to notify Gonzalez of the December hearing date, which respondent did not do, and because respondent did not maintain an adequate calendar system. Second, the immigration court properly mailed respondent notice of the December hearing date. Third, even if respondent missed the hearing because he simply forgot to record the hearing in his calendar, we must review his failure to appear at the hearing in light of the record as a whole because, under the plain language of rule 3-110(A), even if an attorney does not intentionally or

⁵⁵In his decision, the hearing judge erroneously refers to this hearing as being held on December 18, 1996. These clerical errors are not material to any issue on review.

⁵⁶According to IJ's deportation, his finding of deportability was based on evidence the government presented at the December 13, 1996, hearing and not on respondent's prior admission of Gonzalez's deportability.

⁵⁷We note that respondent did not proffer any explanation as to why he did not learn of this hearing when he checked the immigration court's posted docket sheet of hearings on December 13, 1996, in accordance with his purported daily practice.

recklessly fail to competently perform legal services, he violates the rule if he repeatedly fails to competently perform. The record establishes that respondent's failure to attend the December hearing was not an isolated "failure to appear" at an immigration court hearing, but was one of many such failures.

Both respondent and Gonzalez appeared in court on January 17, 1997. Gonzalez appeared because he did not know that his hearing had been reset for November 1996 or that it had been reset for December 1996 at respondent's request. When Gonzalez appeared, he learned that he had been deported in absentia. Fortunately for Gonzalez, the IJ concluded that Gonzalez was not at fault for failing to appear at the two earlier hearings and even offered to let Gonzalez file a motion to reopen his case without having to pay a filing fee. Respondent and the State Bar agree that, on January 17, 1997, respondent told the IJ that he would prepare a motion to reopen and not charge Gonzalez. Respondent, however, never prepared or filed such a motion.

Accepting Gonzalez's testimony and rejecting respondent's, the hearing judge found that, even after the January 1997 appearance, neither respondent nor Gaston told Gonzalez how he could contact respondent. The hearing judge also rejected respondent's testimony that respondent told Gonzalez to come to respondent's office so that he could prepare a motion to reopen. The hearing judge found respondent's testimony that he never prepared the motion because Gonzalez never came to his law office as respondent instructed was misleading and lacked candor.⁵⁸ We agree. Respondent did not need Gonzalez's assistance in preparing the motion. It was respondent, not

⁵⁸Respondent admitted, while testifying in the hearing department, that he falsely answered, under penalty of perjury, the interrogatory the State Bar propounded to him regarding Gonzalez's complaints by falsely answering that the immigration court had initially set the hearing in Gonzalez's case for January 17, 1997, but that "unbeknownst to Respondent, the Court on or about November 22, 1996, sent notice that it was arbitrarily moving up the hearing date from January 17, 1997, to December 13, 1996. Said notice was apparently mailed to Respondent at his office on 4605 Lankershim, but Respondent had just moved from that address and did not receive actual notice of the new hearing date from the Court. Since Respondent was unaware of the advanced date, neither he nor the client appeared in December 1996. Respondent did appear in Court on behalf of Gonzalez on January 17, 1997, the original hearing date set by the Court, and learned at that time, for the first time, that the case had been called in December 1996." The facts that we recited *ante*, establish that respondent's answers were clearly false. Even though we do not consider these additional acts of misrepresentation under penalty of perjury as uncharged misconduct aggravation, we do consider them as significantly impeaching respondent's credibility and candor.

Gonzalez, that had to execute a supporting declaration that established that respondent never notified Gonzalez of the November or December 1996 hearings. Moreover, even if respondent needed Gonzalez's assistance, respondent had an affirmative duty to notify Gonzalez of that fact and give Gonzalez the address and telephone number of his law office, but he did not do so.

The only person Gonzalez was able to contact after the January 1997 appearance was Gaston, and he told Gonzalez that there was an additional fee of \$390 for the "attorney" (i.e., respondent) to prepare the motion to reopen. Gonzalez, believing that he had no other real alternative, paid Gaston an additional \$390 in January 1997. Yet, even then respondent still did not prepare a motion. Because respondent never prepared and filed a motion to reopen, Gonzalez was forced to retain other counsel.

We adopt the hearing judge's conclusion that respondent willfully violated rule 3-110(A) as charged in count 11 by repeatedly and recklessly failing to competently perform the legal services that he had a legal and professional duty to perform in Gonzalez's immigration case. Respondent did not meet with Gonzalez before the initial hearing in August to review his case and obtain the relevant evidence. Respondent never prepared and filed Gonzalez's application for suspension of deportation or counseled and prepared Gonzales for the November 1996 hearing. Respondent appeared at the November hearing unprepared and, as the IJ aptly noted, his misconduct was "taxing the system." Respondent failed to prepare for or attend the December 1996 hearing.

We also adopt the hearing judge's conclusion that respondent is culpable, as charged in count 12, of willfully violating his duty, under section 6068, subdivision (m), to adequately communicate significant developments to Gonzalez by failing to communicate with Gonzalez after the January 1997 appearance. We also adopt the hearing judge's determination that the following additional uncharged willful violations of section 6068, subdivision (m), are properly considered as aggravating circumstances. Respondent failed: to notify Gonzalez of respondent's addresses and telephone numbers; to contact Gonzalez between the October 11, 1996, and the January 1997 appearance; to notify Gonzalez of the November 1996 hearing; to notify Gonzalez of the December

1996 hearing as the IJ instructed respondent to do; or to promptly notify Gonzalez of the IJ deportation order and explain to Gonzalez why he had been ordered deported.

We adopt the hearing judge's conclusion that respondent willfully violated rule 3-700(A)(2) as charged in count 13 when he withdrew from employment without taking reasonable steps to protect Gonzalez's interest. Respondent's failure to take any steps to reopen Gonzalez's case and his failure to communicate or to attempt to communicate with Gonzalez after the January 1997 appearance establish respondent's culpability for violating rule 3-700(A)(2). (*In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 641; *In the Matter of Hindin, supra*, 3 Cal. State Bar Ct. Rptr. at p. 680.) Even if we accepted respondent's argument that he was unable to prepare the motion because Gonzalez never contacted him after the January 1997 appearance, "respondent could not simply let the months pass with no action. Respondent's choice was to either pursue [the motion to reopen that] was warranted by the facts and law . . . or to withdraw from [Gonzalez's] employment if and as appropriate under rule 3-700(C). [Citations.]" (*In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126, 133.)

3. *The Salgado matter.*

In 1995, Rodolfo Baza-Salgado (hereafter Salgado) hired JV (the nonattorney immigration services provider that respondent shared offices with on Garvey Avenue) to assist him and his wife, Paz Reynoso (hereafter collectively the Salgados) to obtain visas for them. The Salgados are nationals of Mexico. Salgado has no formal education other than elementary and secondary school, which he completed as a child in Mexico. He works as a tree trimmer for a Los Angeles area school district. At all relevant times, he did not speak, read, write, or understand English.

On October 27, 1995, Salgado met with Mr. Enriquez at JV and respondent's Garvey Avenue offices. At that meeting, Mr. Enriquez told Salgado that JV had a "good" attorney who would be representing the Salgados when they went to immigration court. Sometime shortly thereafter, Salgado was again in the Garvey Avenue offices, and Mr. Enriquez pointed to respondent and told Salgado that respondent as the attorney associated with JV who would represent the Salgados in court. During one of his office visits, Salgado was given one of paralegal Enriquez's

business cards, which as noted *ante*, has both the name “Law Offices of: James Robert Valinoti” and the insignia “JV & Associates” printed at the top.

The Salgados agreed to pay a \$4,000 flat fee for both JV’s and respondent's services. That \$4,000 fee was the combined total for handling both of the Salgados' cases. At the October 27, 1995, meeting, Salgado made a \$300 payment on and agreed to make an additional payment of \$500 before JV would begin working on the Salgados' cases. Salgado agreed to pay the remaining balance in monthly installments of \$125.

JV prepared asylum applications for the Salgados, had the Salgados sign them, and filed them without signing the preparer’s declarations. Salgado did not, and could not have, read his asylum application before he signed it; he relied on JV to prepare it honestly. The INS denied the Salgados’ applications and served them with deportation OSC's ordering them to appear in immigration court on June 12, 1996.

Norma, Mr. Enriquez's wife, took the Salgados to immigration court on June 12, 1996. When they arrived, she introduced them to respondent and paid respondent a \$300 cash fee. Respondent then executed and filed a “joint” Form EOIR-28 in the Salgados’ cases. At the hearing, respondent admitted the issues of the Salgados' deportability and designated Mexico as their country of deportation. Respondent did not tell the IJ that JV prepared and filed the Salgados’ asylum applications without signing the preparer’s declarations; however, he did withdraw the applications and request for suspension of deportation and voluntary departure in the alternative. The IJ set the matter for merits hearings on October 8, 1996, at 1:00 p.m.

As of the June 1996 hearing, the only address and telephone number the Salgados had for respondent were the address and telephone numbers of JV and respondent's Garvey Avenue offices. In the hearing department, respondent testified that, after the hearing, he instructed Salgado to come to his law office for help in preparing his paperwork or for him to review the Salgados' paperwork, but that Salgado told respondent that JV was going to prepare the paperwork. However, consistent with Salgado's credible testimony, the hearing judge found (1) that, after the hearing, respondent instructed Salgado to return to JV and told him that JV was going to be in charge of everything (i.e.,

preparing and filing the paperwork) and (2) that respondent did not give the Salgados his business card or otherwise inform them how they could contact him. We adopt the hearing judge's findings.

After the June 1996 hearing, Salgado went to the Garvey Avenue offices approximately eight times and made installment payments to JV. He also made several attempts to speak with respondent, but either Mr. Enriquez or Norma told him that he could not do so and that he would have to speak with them about his and his wife's cases. JV lied and told Salgado that their cases were going well. JV was able to accomplish this because respondent failed to tell the Salgados how they could contact him. Moreover, respondent admits that he never told the Salgados that the scope of his legal representation was limited to that of an "appearance attorney." He also admits that he never called or wrote the Salgados after the June 1996 hearing. Moreover, respondent never called JV to verify that it had prepared and filed Salgados' applications for suspension of deportation before the filing deadline, nor did respondent prepare and file the applications himself.⁵⁹

Respondent did not prepare for the October 8, 1996, merits hearings in the Salgados' cases. Nor did he meet with, counsel and prepare the Salgados for those hearings. As respondent admits, by not preparing for the merits hearings, he did not know whether the Salgados were even entitled to suspension of deportation relief or whether they were entitled to some other more favorable form of relief of which JV was unaware. Shortly before the merits hearings, Salgado went to the Garvey Avenue offices and found that they had been closed. Salgado could not find JV's new office. JV never notified the Salgados when it moved its offices. Finally, the night before the merits hearings, Norma telephoned Salgado and told him to come into JV's new office the next morning with his wife and to bring \$1,500 with him.

The Salgados arrived at JV's new office at 9:00 a.m. the morning of October 8, 1996, and were told that their applications for suspension of deportation were not ready. In fact, the

⁵⁹As in the Padilla matter, we do not rely on respondent's failure to call JV to verify that it had prepared and filed the Salgados' applications to support a finding of misconduct because, had respondent done so, he would have engaged in an additional act of aiding and abetting JV to represent aliens in violation of federal law and to engage in the unauthorized practice of law. Nonetheless, we do consider respondent's failure to contact JV as strong evidence of his inability to understand his professional obligation to competently represent his immigration clients and to comprehend the extreme peril to which he exposed his clients by relying on and permitting JV to prepare his clients' applications.

applications were not finished until 1:05 p.m., at which time the Salgados and Heidi, a JV secretary, left for the immigration court. By the time they arrived, paid the applications' filing fees, and found respondent, their cases had already been called. Because they did not appear in court when their cases were called at 1:20 p. m., the IJ ruled that they abandoned their requests for relief and then, based on respondent's prior admissions of their deportability, ordered them deported in absentia. Understandably, Salgado became upset when he learned that he and his wife had been deported in absentia because he knew that deportation meant he would lose both his job and house. Accordingly, Salgado wanted to speak with the IJ and explain that it was not his or his wife's fault that they missed their hearings, but respondent did not even attempt to find the IJ for Salgado. Instead, respondent told Salgado that the Salgados' only option was to file motions to reopen their cases, gave the Salgados one of his business cards, and handed Heidi copies of the IJ's deportation orders. After they retained new counsel, the Salgados were eventually able to have their cases reopened on the grounds that respondent's representation of them was incompetent.⁶⁰

When the IJ called Salgados' cases at 1:20 p.m., the IJ asked respondent where his clients were, and respondent replied: "I have absolutely no idea where my clients are, your Honor. They never came into my office for preparation of the suspension application. I advised them they should make an appointment at my office and either speak with me or one of my paralegals in my office so that we could assist in the preparation of their applications. [¶] They never came to my office, and I have not had physical contact. I have not – they have not been in my presence since the last hearing."

The IJ went on to state on the record that the Salgados had actual notice of the hearing and "also their failure to contact their attorney to file their applications for relief suggests their position with respect to these deportation proceedings. There certainly is no exceptional circumstances on

⁶⁰Salgado is one of the clients whose credibility respondent attacks on the ground that Salgado signed fraudulent declaration that JV prepared in support of a motion to reopen Salgado's case. Salgado admitted, in the hearing department, that he knew the declaration contained a false statement when he signed it, but explained that JV insisted that signing it was the only way he could have his case reopened and avoid being deported and losing his job and house. In light of Salgado's testimony, the hearing judge found that Salgado's execution of the fraudulent declaration did not impeach his credibility. We agree.

this record for their failure to appear. [¶] And before [the Salgados] are ordered deported to Mexico and all applications for relief are deemed abandoned, I am serving the written orders in this case. [The Salgados] do not have a right to appeal the decision in their case. Their remedy is to reopen, if in fact there were exceptional circumstances for their failure to be here.” Respondent then stated: “Your Honor, while we are still on the record, as my clients had never come to my office subsequent to the last hearing, I would make a motion to withdraw as attorney of record, as they have not assisted me in the preparation of their cases. And I would also, if that is granted, I would request that the notice of being deported in absentia be mailed directly to them.” The IJ promptly denied respondent’s motion.

The hearing judge found respondent misled and misrepresented the truth to the IJ “by making it seem that [Salgado] did not want to contact Respondent or one of his paralegals for assistance in the preparation of his application” The hearing judge further found that respondent misled the IJ into believing that the Salgados had abandoned their cases when respondent told the IJ “that he had absolutely no idea where his clients were.” We agree and adopt the hearing judge’s findings. Under section 6068, subdivision (d), attorneys have a duty “[t]o employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth. . . .”⁶¹ That statute “requires an attorney to refrain from misleading and deceptive acts without qualification. [Citation.] It does not admit of any exceptions.” (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 389.) “No distinction can therefore be drawn among concealment, half-truth, and false statement of fact. [Citation.]” (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) “A member of the bar should not under any circumstances attempt to deceive another. [Citations.] ‘An attorney’s practice of deceit involves moral turpitude.’ [Citation.]” (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 888.) In short, respondent had an affirmative duty to insure that all of his statements to the IJ were complete, true, and not misleading. With respect to his motion to withdraw as

⁶¹To the same effect is rule 5-200(A). Additionally, section 6128, subdivision (a), makes it a misdemeanor to intentionally deceive a court or a party.

attorney of record, this duty required him to fully and completely disclose all relevant facts and circumstances to the IJ. (Cf. *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 163.)

Contrary to respondent's statements to the IJ, respondent never told the Salgados to make an appointment at his office and to either speak with him or one of his paralegals so that he could assist them in preparing their applications. As noted *ante*, respondent told Salgado something completely different. He told Salgado to return to JV and that JV was going to be in charge of everything. Moreover, as note *ante*, respondent never even told the Salgados how to contact him after he appeared with them at the initial hearing in their cases; respondent moved out of the Garvey Avenue offices in late 1995 or early 1996. Moreover, respondent did not disclose to the IJ that he was relying on and permitting JV to prepare and the Salgados' applications for suspension of deportation. We hold that respondent made the foregoing false statements to the IJ and that respondent failed to tell the IJ the foregoing facts, which were unquestionably relevant to respondent's motions to withdraw, with the intent of misleading the IJ and of securing a favorable ruling on his motions to withdraw. (Cf. *Pickering v. State Bar* (1944) 24 Cal.2d 141, 144; *Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240.) Accordingly, we adopt the hearing judge's conclusion that respondent willfully violated section 6106 (moral turpitude) as charged in count 15 when respondent misled and misrepresented the truth to the IJ at the October 8, 1996, merits hearing.

In addition, we adopt the hearing judge's conclusion that respondent willfully violated rule 3-110(A) as charged in count 14 by repeatedly and recklessly failing to competently perform the legal services that he had a legal and professional duty to perform services in the Salgados' immigration proceedings as he did not meet and review the Salgados' case with them before the initial hearing in June 1996, and he never filed the Salgados' applications for suspension of deportation or prepared for the merits hearings on them. We also adopt the hearing judge's determinations that the State Bar failed to prove the violations of rules 3-700(D)(1) and 3-700(A)(2) as charged in counts 16 and 17, respectively. Accordingly, we dismiss those counts with prejudice.

Finally, we adopt the hearing judge's determinations that respondent is culpable of two counts of uncharged misconduct in this client matter, which are appropriately considered as

uncharged misconduct aggravation. First, we adopt the hearing judge's determination that respondent willfully violated rule 3-700(D)(1) by abandoning the Salgados after the October 8, 1996, merits hearings. Second, we adopt the hearing judge's determination that respondent willfully violated section 6068, subdivision (m), by failing to adequately communicate with the Salgados. Respondent never contacted the Salgados about filing motions to reopen their cases.

4. *The Israil matter.*

In 1992, Amilie Israil, a national of Syria, filed an application for asylum. At that time, she was widowed, 68 years' old, and had lived in the United States for about 13 years with one of her sons and his wife, Arpine Misislyan.

When she testified in the hearing department, Israil was 75 years' old. At all relevant times, she (1) did not speak, read, write, or understand English; (2) signed her name with an "x"; (3) suffered from high blood pressure; and (4) had little, if any, understanding of United States immigration laws and procedures, of her State Bar disciplinary complaint against respondent, or of these State Bar Court proceedings. Because of these facts and because he concluded that Israil had a propensity to be led while being questioned, the hearing judge found Israil's testimony to be "suspect" and concluded that the State Bar failed to establish respondent's culpability on any of the misconduct charged in this matter. We, however, hold that respondent's culpability on two of the counts of misconduct charged in this matter is clearly established by evidence independent of Israil's testimony.

The INS denied Israil's asylum application in 1994 and served a deportation OSC on her in February 1996. Soon thereafter, Misislyan saw one of Baliozian immigration services' advertisements on television. In February 1996, Misislyan and Israil met with Baliozian at his and respondent's offices on Lankershim Boulevard. At that meeting, Baliozian was retained to obtain a green card for Israil, Misislyan paid Baliozian \$500 in fees for Israil, and Misislyan took one of respondent's business cards that Baliozian had out on his (i.e., Baliozian's) desk. Thereafter, Misislyan paid Baliozian an additional \$1,000 in fees for Israil, and Baliozian referred Israil to his office-mate, respondent.

On April 15, 1996, respondent filed a Form EOIR-28 in Israil's case. On May 8, 1996, respondent and Israil appeared at the initial hearing in Israil's case, and respondent admitted to Israil's deportability, designating Syria as her country of deportation. Respondent then withdrew Israil's asylum application and requested suspension of deportation and voluntary departure in the alternative. Next, respondent told the IJ he intended to file, with the INS, an Application to Register Permanent Resident or Adjust Status (INS Form I-485 [Rev. 09/09/92]) (hereafter Form I-485 application) seeking to have Israil's immigration status adjusted to that of a lawful permanent resident. Respondent further stated that he would seek such an adjustment for Israil on the "preferential" basis of Israil being a relative of a United States citizen, as two of Israil's children were soon to become naturalized citizens. To obtain an adjustment on the basis of being a relative of a citizen, the citizen relative must execute and file, with the INS, a Petition for Alien Relative (INS Form I-130 [Rev. 4/11/91]) (hereafter I-130 petition). The IJ set a merits hearing in Israil's case for June 19, 1996, and ordered that Israil's application for suspension of deportation and the I-130 petition be filed by that same day.

Israil's daughter became a naturalized citizen on May 31, 1996, but respondent did not file the I-130 petition, or the Form I-485 application, until the morning of the June 19, 1996, merits hearing. Both of those documents were skeletal and supported with only limited documentation. Moreover, respondent never prepared an application for suspension of deportation for Israil. Instead, when he and Israil appeared at the June 19, 1996, merits hearing, he withdrew Israil's request for suspension of deportation and elected to pursue only her request to become a lawful permanent resident based on the citizenship of her daughter as set forth in the I-130 petition he filed with the INS earlier that morning. Obviously, the INS had not adjudicated the I-130 petition at the time of the June merits hearing; accordingly, the IJ did not have jurisdiction over it. In fact, if the INS granted the I-130 petition, Israil's deportation proceeding would effectively be moot and the IJ could dismiss the case. To give the INS time to adjudicate the I-130 petition, IJ rescheduled the hearing in Israil's case for November 14, 1996, at 8:30 a.m.

As of the November 1996 hearing date, the INS had still not adjudicated the I-130 petition; yet, respondent failed to file a motion to continue that hearing on that ground as required by the local operating procedures.⁶² Nor did respondent even appear at that hearing. Instead, he sent attorney Jensen from his law office in his place. Shortly before 8:30 a.m. on November 14, 1996, attorney Jensen filed a Form EOIR-28 with the clerk in the courtroom of the IJ presiding over Israil's case, but Jensen then left the courtroom without telling anyone.

Even though Israil was in the hallway outside of the courtroom no later than 8:15 a.m. on November 14, she did not go in the courtroom because she was waiting for respondent. Respondent never told her to go in even if he was not there. Israil's case was first called at 8:30 a.m., but no one appeared. Thus, the court's Arabic interpreter went out into the hallway and called Israil's name, but she did not hear him (she was 72 years old at the time). The IJ waited until 9:05 a.m. before he called Israil's case a second time, and when no one appeared, he deemed all of Israil's requests for relief abandoned, found her deportable based on respondent's prior admission, and ordered her deported in absentia.

Attorney Jensen returned to the courtroom at about 9:30 a.m. and learned that Israil's requests for relief were deemed abandoned and that she had been deported in absentia. The IJ told attorney Jensen (1) that Jensen's early morning check-in with his court clerk was not an appearance for Israil because he left the courtroom without telling anyone and (2) that the first appearance in Israil's case was when Jensen returned to court at about 9:30 a.m., which was 25 minutes after Israil's case had been called a second time and she had been ordered deported. Jensen asked the IJ to reopen Israil's case, but the IJ refused to do so because, as the IJ stated, respondent repeatedly failed to appear for immigration court hearings and to file properly prepared documents for his clients. The IJ informed Jensen that the pleading respondent had filed in Israil's case was "one of

⁶²Local operating procedure 1 provides: "All matters shall proceed at the time and date scheduled for hearing. Parties shall be prepared to go forward with their cases at that time." Local operating procedure 5 requires that all requests for continuance of individual calendar hearings, such as a merits hearings, be in writing, filed no later than 14 days before the scheduled hearing, and supported by declarations setting forth in detail the nature of the request and the reasons for it. Procedure 5 provides: "The request will be rejected unless all required information is provided."

the shoddiest” he “had seen in a long time” and indicated that there was no evidence in the record on which he could grant Israil relief even if he reopened her case. Jensen claimed to have such evidence with him, but the IJ refused to accept it because, under the local operating procedures, respondent was required to have filed it at least two weeks before the November hearing. The IJ further noted that respondent routinely failed to comply with the local operating procedures and that, therefore, “every case [respondent] has is a problem.”

The IJ reprimanded Jensen (1) for not knowing that the INS had still not adjudicated the I-130 petition, which meant that the IJ could not have ruled on Israil’s request for legal permanent residency status even if Jensen had appeared with Israil when her case was called, and (2) for not filing a motion for a continuance on that ground.

Israil and Misislyan believe that they hired Baliozian and that Baliozian hired respondent to represent them in court. They do not know if or how much Baliozian paid respondent. Israil does not know what duties, if any, respondent owed her. She blames Baliozian, not respondent, for being ordered deported. However, any confusion Israil and Misislyan have over the extent of respondent’s duties or whom they blame for Israil being ordered deported is immaterial. Once respondent filed the Form EOIR-28 in Israil’s case, he undertook the duties federal law places on him as an attorney of record to properly prepare and timely file all applications, pleadings, and other documents in his client's case and to timely appear at every hearing with his client ready to proceed.

We conclude that respondent willfully violated rule 3-110(A) as charged in count 18 by repeatedly and recklessly failing to competently perform the legal services that he had a legal and professional duty to perform in Israil’s immigration case, and we reverse the hearing judge's conclusion to the contrary. Respondent failed to adequately prepare the I-130 petition and to support it with sufficient evidence on which Israil could have prevailed, or with at least the supporting evidence that Jensen claimed to have had with him when he appeared in court for Israil. Respondent failed to file a motion to continue the November 1996 hearing on the ground that the INS had not yet adjudicated I-130 petition. Respondent did not appear at that hearing, but sent attorney Jensen in his place. Jensen did not properly and timely appear in respondent’s place;

Jensen was an hour late. Because respondent recklessly practiced law and failed to establish that he properly trained and supervised Jensen, he is ethically responsible for Jensen's failure to timely appear.

We also hold that respondent willfully violated rule 3-700(A)(2) as charged in count 19 when he withdrew from employment without taking reasonable steps to protect Israil's interest, and we reverse the hearing judge's conclusion to the contrary. Respondent withdrew his representation because he failed to properly prepare the I-130 petition, failed to contact Israil after the November 1996 hearing, and failed to take any steps to reopen Israil's case. Before respondent withdrew, he did not take steps to avoid reasonably foreseeable prejudice to Israil's rights. We agree with the hearing judge's determination that the State Bar failed to establish that respondent violated section 6068, subdivision (m), as charged in count 20. Accordingly, we dismiss count 20 with prejudice.

5. *The Calderon matter.*

Francisco Calderon and his wife, Bertha Gordillo (hereafter individually Calderon and Gordillo, respectively, and collectively the Calderons), nationals of Guatemala, filed applications for asylum. At all relevant times, the Calderons did not speak or have much, if any, knowledge of English. When Calderon testified in the hearing department, he and Gordillo had lived in the United States for eight years, during most of which Calderon was a machine operator in a paper bag factory in the City of Industry, California. In Guatemala, Calderon was a grammar school teacher.

The INS denied the Calderons' asylum applications in which the Calderons stated, that if they returned to Guatemala, they feared that they would be killed or jailed because of Calderon's activities as a student activist in Guatemala. After the INS served deportation OSC's on them, the Calderons hired the nonattorney immigration services provider INTI Immigration Service (hereafter IIS) to handle their cases. They initially paid IIS \$600. IIS hired respondent to represent the Calderons in immigration court beginning with hearings set for January 22, 1996. Respondent filed Forms EOIR-28 in the Calderons' cases on January 22, 1996.

Before the January 1996 hearings, Calderon gave respondent a folder containing extensive documentation of his life and activist activities in Guatemala. When respondent and the Calderons

appeared at the hearing, respondent renewed the Calderons' asylum applications and requested voluntary departure in the alternative. The IJ was quite accommodating with respondent in setting the merits hearing on the Calderons' asylum applications. Only after discussing multiple dates and times with respondent and after exacting an agreement from respondent that he would not have any conflicting court appearances and would be ready to proceed on the merits, did the IJ set the merits hearings for April 19, 1996, at 1:00 p.m. as an accommodation to respondent.

The only way the Calderons knew to contact respondent was through IIS. After the January 1996 hearing, respondent did not give the Calderons his business card. The Calderons were told to communicate with IIS, not respondent. Respondent did not communicate with the Calderons between the January 1996 hearing and the April 1996 merits hearing. Nonetheless, respondent claims that he prepared for the April merits hearing by reviewing the Calderons' applications and supporting documents, but it is undisputed that he never counseled and prepared the Calderons for their merits hearings.

Finally, respondent spoke with Calderon right before the April 1996 merits hearings outside of the immigration courtroom. Calderon gave respondent a note from Gordillo's doctor stating that she was unable appear at the hearings because she had recently had a baby. Respondent checked in with the clerk and told Calderon to wait for him in the courtroom. When the Calderons' cases were called, respondent was not there, and Calderon did not understand what was going on and became very confused. The IJ told Calderon to wait for respondent to return; however, respondent never returned because he went to appear in a hearing for another client. After all the other cases were called and after waiting for more than an hour, the IJ told Calderon that he would not wait any longer. The IJ told Calderon that he would give the Calderons new hearing dates and send the notices of the new dates to respondent, but Calderon did not completely understand what the IJ was doing or why. Accordingly, Calderon became more confused and upset, and he felt abandoned by respondent. Because respondent never contact them after the April 1996 hearing, the Calderons decided to hire a new attorney.

When the Calderons attempted to obtain their client files and all the documents that they gave to IIS and respondent to support their asylum claims, IIS told them that respondent had their files, but that it would try to get them from respondent. Calderon called IIS for the next two months, but never got the files or documents. Respondent's testimony as to whether IIS ever gave him the Calderons' and as to what happened to the Calderons' files and documents is vague and evasive; yet, he claims to have reviewed them all during his preparation for the April 1996 merits hearings. Beginning in July 1996, the Calderons' new attorney repeatedly asked respondent for the Calderons' files, but respondent informed the new attorney that IIS, not he, had them. Respondent never returned the Calderons' file or documents. We adopt the hearing judge's finding that respondent willfully violated section 6106 by misrepresenting to the Calderons, or to their new attorney, that he did not have their files and documents. However, because the State Bar failed to charge this violation, we consider it only for purposes of aggravation as did the hearing judge.

We conclude that respondent willfully violated rule 3-110(A) as charged in count 21 by repeatedly, recklessly, and intentionally failing to competently perform the legal services that he had a legal and professional duty to perform in the Calderons' cases, and we reverse the hearing judge's conclusion to the contrary. Respondent did not meet with, counsel, and prepare the Calderons for the April 1996 merits hearings; nor was respondent even in the courtroom when the Calderons' cases were called for hearings; nor did he contact the Calderons after the April 1996 merits hearings. Respondent intentionally failed to perform when he left Calderon in the immigration courtroom on April 19, 1996, and never returned.

We adopt the hearing judge's conclusion that respondent willfully violated rule 3-700(D)(1) as charged in count 23 by failing to return to the Calderons, or to their new attorney, their client files and documents notwithstanding their new attorney's repeated requests that he do so. Finally, we agree with and adopt the hearing judge's determinations that the State Bar failed to establish respondent's culpability of the violations of rules 3-700(A)(2) and 3-700(D)(2) charged in counts 22 and 24, respectively. Accordingly, we dismiss those counts with prejudice.

6. *The Guevara matter.*

In summer 1996, Ruben Torres-Guevara⁶³ (hereafter Guevara) and his wife, Silvia Torres (hereafter Torres) retained A.P. & Sons, a nonattorney immigration services firm owned by Alberto Perez (hereafter Perez), to obtain a work permit for Guevara and to handle the Guevara's, Torres's, and their oldest son's (hereafter collectively the Guevaras) immigration cases. The Guevaras are nationals of Mexico. All of their dealings with A.P. & Sons were through Perez. At all relevant times, Guevara spoke and read only a limited amount of English.⁶⁴ When he testified in the hearing department, he had worked for 11 years as an assembler in a factory in Moorpark, California.

When the Guevaras hired Perez in 1996, Guevara had lived in the United States for thirteen years, and Torres and their oldest son had lived in the United States for eight years. Perez charged Guevara \$600 or \$700. Perez told Guevara that he had attorneys associated with him who would appear in court with the Guevaras and that, each time one of his associate attorneys appeared in court, Guevara would have to pay an additional fee of \$225 for the attorney. Perez prepared an asylum application for Guevara, had him sign it, and filed it without signing the preparer's declaration.⁶⁵

During his asylum interview in August 1996, Guevara told an INS official that he was not seeking asylum in the United States, that he was not afraid of being persecuted if he returned to Mexico, but that he was seeking a green card based on his living in the United States for more than seven years. Accordingly, the INS denied Guevara's application and served a deportation OSC on him setting his initial hearing for October 28, 1996, at 8:30 a.m. (hereafter initial hearing).

Perez referred Guevara to respondent. Respondent filed a joint Form EOIR-28 in the Guevaras' case on October 28, 1996, before the initial hearing. Right before the hearing began,

⁶³Torres-Guevara is another witness whom the hearing judge expressly found to be credible notwithstanding respondent's attacks on Torres-Guevara's credibility. Again, we adopt the hearing judge's credibility determination.

⁶⁴The record does not indicate Torres's educational level or whether she understood English.

⁶⁵Many facts are not clear from the State Bar's presentation of this client matter in the hearing department. For example, at times, Guevara's testimony implies that Perez represented only Guevara and that only one application for suspension of deportation was to be prepared when it is appears that an application should have been prepared for each Guevara.

Perez paid respondent a \$225 cash fee, and respondent met the Guevaras for the first time, but did not speak with them about their case. At the initial hearing, respondent admitted the Guevaras' deportability and designated Mexico as their country of deportation. Respondent did not tell the IJ that Perez had prepared Guevara's asylum application without signing the preparer's declaration. He did, however, withdraw the asylum application and request suspension of deportation relief for the Guevaras and voluntary departure in the alternative. The IJ ordered the applications for suspension of deportation filed by December 6, 1996, and set them for a joint merits hearing on July 1, 1997 (hereafter merits hearing).

The hearing judge (1) properly rejected respondent's testimony that, immediately after the initial hearing, he met with Guevara in the hallway outside the courtroom and warned Guevara that Perez was unreliable and known not to file applications for his alien clients. The hearing judge also properly found that, immediately after the hearing, respondent "rushed off to another courtroom" without giving Guevara any instructions about preparing the Guevaras' applications for suspension of deportation.

Shortly after the initial hearing, Guevara gave (1) Perez a \$100 check for the filing fee for Guevara's application for suspension of deportation and (2) multiple documents supporting that application. Guevara thought Perez would be preparing his application under respondent's direction and that respondent would be filing the application with the court. At one point, Perez lied and told Guevara that his application had been filed. Guevara was unable to verify Perez's statement with respondent because he did not know how to contact respondent. Neither Perez nor respondent prepared an application for any of the Guevaras before the expiration of the filing deadline. In fact, Perez prepared an application only for Guevara and even then waited until June 30, 1997, which was the day before merits hearing, to prepare it.

On either the day before or on the morning of the merits hearing, respondent or his law office discovered, purportedly for the first time, that Perez never prepared or filed the Guevaras' applications for suspension of deportation before the December 1996 filing deadline, that the only person for whom Perez even prepared an application was Guevara, and that Perez had not filed the

application he prepared for Guevara. Respondent did not appear at the merits hearing; instead, he sent attorney Arias, an experienced immigration attorney from his law office, to appear in his place. When Arias and the Guevaras appeared at the hearing, the IJ properly required attorney Arias to file a Form EOIR-28 before he would proceed.⁶⁶

After she filed a Form EOIR-28 and the hearing began, Arias attempted to file the application that Perez had prepared for Guevara the day before, but the IJ refused to accept it because it was untimely. Arias explained to the IJ that she had just recently started working for respondent and did not know why the applications were never timely filed. Accordingly, she requested a continuance so that respondent could appear and explain why the applications were never filed. However, after briefly questioning Guevara and learning that respondent never contacted the Guevaras after the initial hearing in October 1996; that Guevara was not able to communicate with respondent after the initial hearing; that respondent had done nothing to prepare the Guevaras' applications during the seven or eight months since initial hearing; and that the application that Arias attempted to file with the IJ was prepared by "notary" Perez, the IJ rejected Arias's request for a continuance. The IJ stated that he held Arias and respondent "responsible for what has occurred; complete irresponsibility in terms of what has been going on. This is not the first time that this has happened. This has happened before, within the last month, with Mr. Valinoti. I do not know what his problem is." Arias agreed that it was respondent's responsibility to properly represent his clients and to prepare and timely file his clients' applications and other documents and that respondent's conduct was shameful. She advised the Guevaras to obtain new counsel and appropriately located new counsel for them.

Because respondent failed to file the Guevaras' applications, the IJ ruled that the Guevaras' requests for relief were deemed abandoned and granted them voluntary departure, but ordered them deported if they did not voluntarily depart. Thereafter, the Guevaras' new counsel filed a motion to reopen their cases, but the IJ denied the Guevaras' motion. The Guevaras then appealed the IJ's

⁶⁶The reporter's transcript of this hearing (State Bar exhibit 54) incorrectly refers to attorney Arias as Mimi Juarez; while the reporter's transcript of the hearing in the immigration court's file (State Bar exhibit 56) refers to her as "Maria Zarios (phonetic sp.)."

ruling to the BIA, but the BIA affirmed the IJ's order and dismissed the Guevaras' appeal⁶⁷ Next, the Guevaras appealed the BIA's decision to the United States Court of Appeals for the Ninth Circuit. In an unpublished opinion filed on June 29, 2000, the Ninth Circuit reversed the BIA and the IJ's rulings and remanded the cases for further proceedings.⁶⁸

We adopt the hearing judge's conclusion that respondent willfully violated rule 3-110(A) as charged in count 25 by repeatedly, recklessly, and intentionally failing to competently perform the legal services that he had a legal and professional duty to perform in the Guevaras' immigration cases. Respondent did not meet with the Guevaras and review their case before the initial hearing in October 1996. Respondent failed to prepare and file an application for suspension of deportation for each of the three Guevaras before the December 1996 filing deadline. Respondent admits that he never intended to prepare and file the Guevaras' applications, but relied on Perez to do so. Respondent failed to prepare for the July 1997 merits hearing and could not have prepared for that hearing since he had not prepared the Guevaras' applications for suspension of deportation. Respondent failed to meet with, counsel, and prepare the Guevaras for the merits hearing. In addition, we adopt the hearing judge's determinations that respondent's failure to communicate with the Guevaras between the October 1996 hearing and the July 1997 merits hearing (§ 6068, subd. (m)), and gross negligence in handling the Guevaras' cases (rule 3-110(A)), are both uncharged acts of misconduct, which are appropriately considered for purposes of aggravation.

7. *The Jerez matter.*

In June 1992, Megaly Hernandez-Jerez (hereafter Jerez), a national of Nicaragua, filed an asylum application. At all relevant times, she did not understand English. After her asylum interview in February 1996, the INS denied Jerez's application and served a deportation OCS on her

⁶⁷The BIA ruled that: "The record reflects that the Immigration Judge may have accepted the late-filed application of another alien who had been represented by [Valinoti]. However, the Immigration Judge chose not to accept [the Guevaras'] late-filed application. There does not appear to be any invidious reason underlying the Immigration Judge's decision and we therefore find that she acted within the authority granted her by regulation. Accordingly, we dismiss the [Guevaras'] appeal."

⁶⁸Even though the parties failed to call this opinion to our attention, we are required to take judicial notice of it sua sponte. (Rules Proc. of State Bar, rule 214; Evid. Code, §§ 451, subd. (a), 459, subd. (a).)

setting her initial hearing for May 10, 1996, at 8:00 a.m. Jerez appeared at that hearing in propria persona. The IJ continued the initial hearing until August 12, 1996, to allow her time to obtain an attorney. When Jerez was leaving the immigration court, nonattorney immigration services provider Isabel Bernal approached Jerez and gave Jerez a business card describing Bernal as a “Legal Assistant/Interpreter” and “A Professional Law Corporation [¶] Casos Legales/Immigration En General.”⁶⁹

Thereafter, Jerez met with Bernal, at which time Bernal told Jerez that she and “her attorneys” could take care of Jerez’s and her pre-school age daughter’s (hereafter collectively the Jerezes) immigration case. Jerez retained Bernal and paid her \$500 in fees on August 5, 1996. Next, Bernal retained respondent to represent the Jerezes and at the initial hearing, which had been continued to August 12, 1996, hearing. Respondent did not appear at the hearing. Instead, he sent attorney Kazaryan from his law office, who filed a Form EOIR-28 in the Jerezes' case designating “James Robert Valinoti, [¶] . . . Kazaryan” as the Jerezes attorneys of record. At the hearing, attorney Kazaryan renewed and requested a de novo hearing on the merits of Jerez's asylum. The IJ set such a hearing for January 14, 1997 (hereafter merits hearing).

Between the initial hearing in August 1996 and the merits hearing in January 1997, neither respondent nor anyone from his law office communicated with Jerez. Respondent did not meet, counsel, or prepare Jerez for the merits hearing. More importantly, respondent did not meet with Jerez before the merits hearing to determine whether her asylum application was fraudulent or meritorious or whether Jerez qualified for some other form of immigration relief. Had he done so, he would have learned that, since she filed her asylum application in June 1992, she had married a lawful permanent resident of the United States; had two daughters with her husband, who are both United States citizens by reason of their births in the United States; and had been physically and mentally abused by her husband, which would have supported a claim for suspension of deportation relief based on spousal abuse.

⁶⁹Bernal’s card was clearly deceptive because only attorneys (not legal assistants and nonattorney immigration services providers) may form a professional law corporation in the State of California. (§ 6165.)

The day before the merits hearing, in response to a demand from Bernal, Jerez gave Bernal a \$100 check made payable to respondent as respondent's attorney's fees. Bernal gave the check to respondent, and he cashed it. Respondent first met Jerez for the first time shortly before the merits hearing and, for the first time, asked her what evidence she had to support her claim for asylum. At that point, respondent determined for the first time that Jerez did not have enough evidence to support her claim for asylum. Accordingly, he told Jerez that her evidence was insufficient and that the best thing she could do was to permit him to withdraw her asylum application and get voluntary departure for her and her alien daughter. In shock from respondent's advice, she agreed. At the merits hearing, respondent withdrew her asylum application and requested voluntary departure, which the IJ granted.

Even after the merits hearing, respondent never communicated with Jerez or otherwise reviewed her case and determined whether she qualified for some form of relief other than asylum. Eventually, Jerez sought and obtained the assistance of Rosa Fregoso, an attorney with the Legal Aid Foundation of Los Angeles. Attorney Fregoso filed a motion to have the Jerezes' case reopened and the IJ's order of voluntary departure set aside based on respondent's incompetent representation, which the IJ granted. Thereafter, the Jerezes obtained legal permanent residency without their ever having to leave the United States under the IJ's order of voluntary departure, albeit under a law not in effect when respondent last represented the Jerezes in January 1997.

We conclude that respondent willfully violated rule 3-110(A) as charged in count 26 by repeatedly and recklessly failing to competently perform the legal services that he had a legal and professional duty to perform in the Jerezes' immigration case, and we reverse the hearing judge's conclusion to the contrary. Respondent recklessly failed to review Jerez's case and determine whether her asylum claim was appropriate or whether she was entitled to seek some other form of relief, and he recklessly failed to prepare himself and Jerez for the merits hearing. The fact that the Jerezes were eventually able to have their case reopened strongly suggests that respondent's representation of them was not just reckless, but clearly incompetent.

8. *The Ramirez matter.*

Rosa hired Bell Service, an immigration services provider that is owned and operated by nonattorney Roberto Lemus, to help her obtain legal residency. Bell Service prepared an asylum application for Ramirez, had her sign it, and filed it without signing the preparer's declaration. The INS denied the application and served a deportation OSC on Ramirez with the initial hearing set for November 13, 1996.

Ramirez retained respondent through Bell Service⁷⁰ and paid \$200 in advanced attorney's fees for his appearance with her at the initial hearing. Right before the hearing, respondent met Ramirez for the first time and filed a Form EOIR-28. At the hearing, respondent did not inform the IJ that Bell Service filed Ramirez's asylum application without signing the preparer's declaration; nor did respondent withdraw Ramirez's asylum application. Accordingly, the IJ set a merits hearing on the application for May 20, 1997.

It is undisputed that, at some point, the May 20, 1997, merits hearing was continued twice. The second time was on October 8, 1997, when the immigration court reset the hearing for November 28, 1997, and when the court properly mailed respondent notice of the November 1997 hearing date to his office address at 3540 Wilshire Boulevard, which was the address that court's central administrative office had on record for respondent. However, as note *ante*, respondent moved his office to 510 West Sixth Street, Suite 924 in July 1997, without properly notifying the immigration court's central administrative office until sometime after October 8, 1997.

Respondent admits that, for the year between November 1996 and November 1997, he did not speak with Ramirez. He also admits that he never prepared any documents to support Ramirez's

⁷⁰Immigration Judge Ohata, who presided in Ramirez's case, warned respondent in early 1997 that aliens were appearing in his court with Bell Service's business cards, on which Bell Service identified itself as an immigration and tax service and on which respondent's name and title of attorney was printed. Respondent denied being the attorney for Bell Service. Judge Ohata warned respondent that permitting Bell Service to put his name and title on its business cards could lead to serious problems and correctly "suggested" that respondent make sure that Bell Service removed his name from its business cards. Respondent did not do so, and six months later, aliens were again appearing in Judge Ohata's court with Bell Service's cards with respondent's name and title of attorney on them. Judge Ohata again suggested that respondent take care of the problem and keep his name off Bell Service's business cards and told respondent that Bell Service might well be engaging in the unauthorized practice of law.

asylum application and that he left all of the document preparation to Bell Services. In October 1997, Ramirez paid an additional \$200 in fees for respondent's appearance at the November 1997 merits hearing.

Respondent, however, did not attend that hearing. Minutes before the hearing was scheduled to begin, respondent approached Ramirez in the hallway outside the courtroom and told her that he was not going to appear at the hearing in her case that day because Bell Service had not instructed him to do so.⁷¹ Accordingly, Ramirez appeared at the hearing alone and told the IJ, on the record, what respondent had just told her in the hallway. Very fortunately for Ramirez, the IJ did not require her to proceed with the merits hearing on her application in propria persona, but granted her a continuance so that she could obtain other counsel or assistance from the Legal Aid Foundation. The IJ also instructed Ramirez to advise the State Bar of respondent's nonperformance. The IJ later told respondent of Ramirez's statements and that, in response to them, he continued Ramirez's merits hearing so that she could obtain new counsel. Respondent, however, never filed a motion to withdraw as counsel. Nor did he ever speak with Ramirez again.

Like the hearing judge, we reject respondent's testimony that he did not see Ramirez at the immigration court on November 28, 1997. In addition, we reject his testimony that he failed to attend the November 1997 merits hearing because he did not receive the notice of that hearing date that the immigration court sent him on October 8, 1997. Even if we were to find respondent's testimony credible, his failure to attend the hearing would still not be excused because of his reckless practice of law, and we would question why he did not learn of the hearing when he checked the immigration court's posted docket sheet of hearings on November 28, 1997, in accordance with his purported daily practice.

We adopt the hearing judge's conclusion that respondent willfully violated rule 3-110(A) as charged in count 27 by repeatedly, recklessly, and intentionally failing to competently perform the legal services that he had a legal and professional duty to perform in the Ramirez's immigration

⁷¹Ramirez did not testify in the hearing department, but the transcript of the November 1997 merits hearing was admitted into evidence without limitation. Like the hearing judge, we rely on and find Ramirez's statements in that transcript credible.

case. Respondent failed to prepare for and intentionally failed appear at the November 28, 1997, merits hearing in Ramirez's case without just cause. Respondent failed to meet with and prepare Ramirez for the November 28, 1997, merits hearing in her case.

We also adopt the hearing judge's conclusion that respondent willfully violated rule 3-700(A)(2) as charged in court 28 by deliberately abandoning Ramirez immediately before the November 1997 merits hearing without taking reasonable steps to avoid reasonably foreseeable prejudice to Ramirez's rights.

B. *The one client matter not referred to respondent by an immigration services provider – the Maya-Perez matter.*

Sometime in 1995, Maria Maya-Perez filed an application for asylum. While she was in the INS office in Anaheim, California for her asylum interview, an unidentified woman approached her, gave her respondent's business card, and recommended respondent to her. Thereafter, the INS denied Maya-Perez's asylum application and served a deportation OSC on her setting the initial hearing on November 13, 1995.

On November 8, 1995, Maya-Perez met with respondent at his and Baliozian's Garvey Avenue offices, during which an unidentified man arrived claiming to have referred her to respondent and acting as an interpreter for the meeting.⁷² At the meeting, Respondent agreed to represent Maya-Perez for a flat fee of \$2,900,⁷³ which respondent agreed to let Maya-Perez pay in installments. The fee included all court and filing fees. Moreover, at this meeting, Maya-Perez made a \$500 payment, and respondent told her that he could not appear at the initial hearing on November 13, 1995. He instructed her to go to the hearing and ask the IJ for a continuance based on her having just retained respondent to represent her. Maya-Perez did as respondent instructed and the IJ continued the initial hearing until January 16, 1996.

⁷²The record strongly suggests that the unidentified woman and man were soliciting employment for respondent, but respondent was not charged with using runners and cappers.

⁷³Maya-Perez testified that the \$2,900 fee was to represent both her and her daughter, but the hearing judge accepted respondent's contrary testimony and found that the \$2,900 fee was for representing only Maya-Perez. We adopt that finding.

When respondent and Maya-Perez appeared at the January 1996 initial hearing, respondent filed a Form EOIR-28 and an application for suspension of deportation that he had previously prepared for Maya-Perez. The IJ set that application for a merits hearing on March 27, 1996. After the initial hearing, Maya-Perez telephoned respondent's office and left messages for him about eight times regarding the preparation for the March merits hearing. Respondent did not return any of her calls. Nor did he otherwise meet with or speak to with her again before the March hearing. In fact, respondent failed to appear for two scheduled appointments he had with Maya-Perez.

During the March 1996 merits hearing, which respondent and Maya-Perez attended together, Maya-Perez told the IJ that she lived with a man who is a permanent United States resident and that she had two children: one who is an American citizen by birth in the United States, and one, a daughter, who is an alien who would be eligible for legal residency status on June 13, 1996. The IJ told respondent that he did not want to hear Maya-Perez's case separately from that of her daughter's case and instructed him to join the daughter and to file an application for her no later than July 10, 1996. The IJ then reset the merits hearing for September 25, 1996, to give respondent time to join the daughter and file her application and to give respondent additional time to request a criminal background check for Maya-Perez since he had failed to do so.

After the March 1996 hearing, Maya-Perez telephoned respondent's office about 20 times about filing an application for her daughter and preparing for the September 1996 hearing, but respondent would not accept or return her calls. In addition, respondent missed an appointment he had scheduled with Maya-Perez in April 1996. Finally, on June 13, 1996, respondent worked on the Maya-Perez case for the first time since the March hearing. Specifically, on June 13, respondent and Maya-Perez went to the INS office and requested an interview for her daughter. Respondent claims that he thereafter repeatedly checked with "a woman at the INS office" to see if an interview had been scheduled for the daughter, but respondent could not identify this woman other than to suggest a first name.

Respondent's next communication with Maya-Perez was on August 21, 1996, when they met in his office and he demanded that Maya-Perez pay him an additional \$1,650 before he would

perform any further services for her. As of that date, Maya-Perez had paid respondent a total of \$2,520 of his \$2,900 flat fee in her case and, therefore, owed him only \$380. Therefore, the difference of \$1,270 (\$1,650 less \$380) was presumably respondent's fee for handling the daughter's case. All that Maya-Perez could pay respondent that day was \$350, which respondent accepted. After this August 21 meeting, respondent did not return any of Maya-Perez's telephone calls about the up coming hearing on September 25.

Even though the hearing judge did not find that respondent failed to appear at the September 25, 1996, hearing, it is undisputed that respondent was not in the courtroom when Maya-Perez's case was called. Respondent asserts in his opening brief that he “appeared for the September 25, 1996, hearing on time; Perez was late. . . . After checking in twice, and Perez had still not arrived, [respondent] proceeded to another courtroom to make an appearance. While [respondent] was in the other courtroom, Perez arrived and requested a continuance from Judge Gordon, which he granted. . . . When [respondent] returned to Judge Gordon’s courtroom, he was advised of the continuance. He was also told that Perez no longer wished to be represented by him.” (Footnotes omitted.)

Even accepting respondent’s versions of the facts and ignoring Maya-Perez’s contradicting testimony on the issues,⁷⁴ we must reverse the hearing judge’s finding of no culpability of the charged violation of rule 3-110(A). We hold that respondent is culpable of willfully violating rule 3-110(A) as charged in count 1 by repeatedly and recklessly failing to competently perform the legal services that he had a legal and professional duty to perform in Maya-Perez’s and her daughter’s immigration case. Respondent failed to promptly file an application or request an INS interview for Maya-Perez’s daughter. Respondent was not in the courtroom when Maya-Perez’s case was called on September 25, 1996, as required. Respondent's argument that, even if he had been in the courtroom when the Maya-Perez's case was called, the hearing would have been continued since the

⁷⁴Respondent’s claims are inconsistent with Perez's unequivocal testimony (1) that, on September 25, 1996, she was not late for a pre-hearing meeting at the immigration court with respondent, (2) that she could not find respondent when she arrived at the immigration court, (3) that she was not late to the hearing, and (4) that respondent was never in court with her.

INS had still not interviewed Maya-Perez's daughter is meritless in light of the fact that he did not file a motion for continuance on that ground as required by the local operating procedures.

We adopt the hearing judge's conclusion that respondent willfully violated section 6068, subdivision (m), as charged in count 2 by failing to adequately communicate with Maya-Perez and failing to respond to her reasonable status inquiries. Respondent failed to keep his appointments to meet with Maya-Perez. He also failed to return her repeated calls without otherwise adequately communicating with her. Moreover, we adopt the hearing judge's conclusion that respondent willfully violated rule 3-700(A)(2) as charged in count 3 by intentionally withdrawing from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of Maya-Perez and her daughter. If respondent checked into the courtroom twice on September 25, 1996, and saw that Maya-Perez and her daughter were not there, he should have remained in the courtroom so that, if their case was called before they did arrive, they would have been represented at the hearing by counsel. Instead, respondent abandoned Maya-Perez and her daughter and proceeded to another courtroom to generate fees in another appearance.

Finally, we adopt the hearing judge's determinations that the State Bar failed to prove that respondent willfully violated rules 3-700(D)(1) and 3-700(D)(2) as charged in counts 4 and 5, respectively. Accordingly, we dismiss those counts with prejudice.

VI. Aggravating and mitigating circumstances.

A. Aggravating circumstances.

1. Pattern of misconduct and multiple acts of wrongdoing.

The hearing judge determined that respondent's misconduct evidenced a pattern of failing to competently perform legal services and of client abandonment and that respondent's remaining misconduct evidenced multiple acts of wrongdoing. (Std. 1.2(b)(ii).) Finding a pattern of misconduct or multiple acts of wrongdoing is not limited to the counts pleaded. (*In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 714, citing *Grim v. State Bar* (1991) 53 Cal.3d 21, 34.) Yet, to be considered pattern-of-misconduct aggravation, an attorney's misconduct must ordinarily include not only the type of serious misconduct found against respondent in this

proceeding, but it must also span over an extended period of time. (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149-1150 & 1150, fn. 14.) Whether the two and one-half year span of respondent's misconduct qualifies as an "extended period of time" to support determination of pattern of misconduct aggravation is a close question because of the seriousness of respondent's misconduct and the extensive number of repeated charged and uncharged ethical violations found in this disciplinary proceeding. Regardless of whether respondent's misconduct spanned the requisite "extended period of time," at the very least, his misconduct demonstrates repeated, similar acts of misconduct which we must consider to be serious aggravation. (*Ibid.*)

Because respondent's own testimony and the evidence establish his culpability on the counts of uncharged misconduct for aiding and abetting immigration services providers to represent aliens in violation of federal law and to engage in the unauthorized practice of law; for engaging in a course of practicing law that was reckless and involved gross carelessness; for improperly accepting legal fees from third parties; and for lack of candor on which we independently find, he has no grounds to challenge our findings of aggravation based thereon. (*In the Matter of Robins, supra*, 1 Cal. State Bar Ct. Rptr. at p. 714.)

2. *Aiding and abetting the representation of aliens in violation of federal law & the unauthorized practice of law.*

Without question, respondent's uncharged misconduct is aggravation for deliberately aiding and abetting nonattorney immigration services providers to represent aliens in immigration cases in violation of federal law and to engage in the unauthorized practice of law, from at least mid-1995 through late 1997. Relying on or permitting the providers to, inter alia, prepare and file immigration applications, pleadings, and other documents for his clients is extremely serious. There can be little doubt that the federal regulations precluding nonattorney providers from representing aliens in immigration cases are designed to protect aliens from the clear harm to their immigration cases that can result from inadequately or improperly completed immigration applications, pleadings, and other documents prepared and filed by nonattorney providers.

“Deportation is often tantamount to exile, with consequences which affect family members as well as the individual himself. In the worst case, inappropriate deportation can lead to incarceration, torture, or death at the hands of a prosecutorial government from which the consumer sought refuge. . . . To the layman or [even the] untrained attorney, immigration forms may appear to be simple biographic questionnaires; however the implications and possible pitfalls from their use or misuse are abundant” (Ashbrook, *supra*, 5 Geo. J. Legal Ethics at p. 252, quoting from comments of Immigration Judge Dana Marks Keener made in the Report of the Immigration Consulting Group, reprinted in Report of the State Bar of California Commission on Legal Technicians (July 1990).) It is not just the omission or misstatement of a substantial relevant fact on an immigration application, pleading, or document that can cause devastating and, at times, irreversible harm to an alien case. The failure to completely fill out the simplest of immigration forms can also cause such devastating harm, as well as the mere failure to timely file an immigration application, pleading, or other document. If an application, pleading, or other document is not filed within the time set by an IJ, the alien’s “opportunity to file that application or document *shall* be deemed waived.” (8 C.F.R. § 3.31(c) [emphasis added].)

Furthermore, a victim of unlawful representation and unauthorized practice of law by nonattorney immigration services providers “ ‘may forfeit his place on the years-long INS waiting list for immigration through family members, or lose all rights to apply for relief Unscrupulous consultants write down false asylum stories without the clients’ knowledge, which destroys the credibility of applicants who do have a strong asylum claim; charge money for non-existent “amnesty” programs or for immigration programs that exist but do not apply to the clients; and persuade unsophisticated clients to commit fraud by telling them that this is how it is done in America.’ [Citations.]” (*Notorious Notaries, supra*, 32 Ariz.St.L.J. at p. 305, fn. 110.)

In sum, by improperly limiting the scope of his representation of the clients referred to him by immigration services providers to that of an “appearance attorney,” respondent effectively provided them with no legal representation or services.

3. *Reckless and careless method of practicing law.*

Respondent's uncharged misconduct aggravation for engaging in a course of practicing law, from at least mid-1995 through late 1997, that was reckless and involved gross carelessness is also very serious aggravation. As noted *ante*, such recklessness and gross carelessness involved moral turpitude. (*Simmons v. State Bar, supra*, 2 Cal.3d at p. 729.) The extent and duration of respondent's recklessness and gross carelessness clearly lend support to the hearing judge's conclusion that respondent "wanted to make as much money as possible by taking on more cases than he could properly handle."

4. *Improperly accepting payment of legal fees from third party.*

The third count of uncharged misconduct aggravation that we independently find on review is respondent's repeated and deliberate violation of rule 3-310(F), which rose to a level involving moral turpitude in violation of section 6106. Respondent violated rule 3-310(F) by permitting the nonattorney immigration services providers who referred immigration clients to him to pay his attorney's fees for representing the clients they referred to him.

Under rule 3-310(F), an attorney may accept payment of his legal fees from a third party only if there is no interference with independence of attorney's professional judgment or the attorney-client relationship, information relating to the representation remain protected as client confidences and secrets, and the attorney obtains the clients' *informed written consent*. (See, generally, *People v. Merchants Protective Corp., supra*, 189 Cal. at p. 538 ["The essential relation of trust and confidence between attorney and client cannot be said to arise where the attorney is employed, not by the client, but by some corporation which has undertaken to furnish its members with legal advice, counsel, and professional services. The attorney in such a case owes his first allegiance to his immediate employer, the corporation, and owes, at most, but an incidental, secondary, and divided loyalty to the clientele of the corporation."])

The record clearly establishes that respondent permitted the referring immigration services providers who paid his legal fees for representing their clients in immigration court to interfere with his judgment, to restrict the nature and extent of the legal advice he provided to the alien clients, and

to restrict the legal services he provided to the alien clients, all to the detriment of the clients. The record also clearly establishes that respondent did not obtain the clients' *informed* consent (oral or written) to permit the immigration services providers to pay his legal fees. Respondent did not have written fee agreements with his clients, much less written authorization to receive payment of his legal fees from the immigration services providers.

5. Lack of candor.

a. Respondent's statements regarding IC & Gaston.

The hearing judge found that respondent's statement that "I have absolutely no relationship with Consultorio Internacional," in a February 28, 1998, letter that respondent sent to a State Bar investigator, who was investigating Gonzalez's complaints against respondent, was misleading and lacked candor. Respondent's statement was misleading because respondent knew that IC is a "d/b/a" for Gaston and because respondent admitted to taking at least two or three other referrals from Gaston.⁷⁵ Furthermore, respondent's statement in that same February 28, 1998, letter that "I am unaware of any monies that were paid to this 'Gaston' person" is also misleading because it clearly indicates that respondent does not even know Gaston when the opposite is true.

It is well established that, while "[a]n attorney has no obligation to produce incriminating evidence on his own initiative. . . ., he has an obligation to respond to the State Bar's inquiries in a manner which is 'consistent with [the] truth' (see Bus. & Prof. Code, § 6068, subd. (d))." (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 708-709.) In sum, respondent's statements in his February 1998 letter were not consistent with the truth.

b. Respondent's statements regarding IIS.

As the hearing judge found, respondent's testimony that he had no professional "association" with IIS is contradictory with respondent's admission that he had handled about 10 other cases for

⁷⁵Respondent's statement might be technically true in a limited sense because, by the time respondent wrote the February 28, 1998, letter, Gaston had stopped making immigration case referrals to respondent and, therefore, as of February 28, 1998, respondent had no relationship with IC. However, respondent did not state that he no longer had any relationship with IC or that, as of February 28, 1998, he had so such relationship. In any event, when respondent's statement is considered in context, it is clearly misleading.

IIS. Moreover, it lacks candor because the address of respondent's office in January 1996 was 124 West 2nd Street, Los Angeles, California (see respondent's January 2, 1996, Form EOIR-28 in the Calderons' case), which was the same address of IIS's office at that time (see respondent's exhibits BBB, DDD; State Bar exhibits 42, 44, 46).

c. *Misrepresentations to the State Bar.*

In March 1997, a State Bar investigator wrote respondent asking him to respond in writing to a complaint that Israil had filed against him with the Bar. Eleven months later, respondent finally responded to the investigators in a letter dated February 28, 1998, letter. In that letter, respondent stated that Israil's "allegations that I failed to appear at the [November 14, 1996,] scheduled hearing are inaccurate. On the morning in question, I checked into court to see if Ms. Israil, who is an elderly woman, was present. She was not. This was approximately 8:30 a.m."

Then, on January 22, 1999, 11 months later, respondent verified in his answers to the interrogatories that the State Bar propounded on him in this proceeding to be true of his own knowledge under penalty of perjury. In his answer to the interrogatory regarding Israil's complaint, respondent stated that he "arrived at the courtroom on time that day, but did not see Israil in or near the courtroom. [He] made contact with the Judge's clerk, advised that his client was not there yet, and left briefly to attend another matter. He returned to the courtroom without seeing Israil anywhere in or near the courtroom. Israil's case was called and she was ordered deported. [He] saw Israil for the first time out in the hallway after her case had already been called."

The record establishes that respondent's statements are false. As note *ante*, the only attorney who "appeared" for Israil on November 14, 1996, from respondent's law office was attorney Jensen, and he was an hour late; by 8:15 a.m. on the morning of November 14, 1996, Israil and Baliozian were outside the courtroom waiting for respondent who did not appear; and neither Israil nor any attorney from respondent's law office were in court when Israil's case was called shortly after 8:30 a.m. or when the case was called again at 9:05 a.m. By making these false statements in his letter to a State Bar investigator and in his verified answers to the State Bar's interrogatories, respondent engaged in acts involving moral turpitude in willful violation of section 6106. These two acts

involving moral turpitude are the fourth and fifth counts of serious uncharged misconduct that we independently find on review, which we consider only for purposes of aggravation because they were not charged.

As we held more than 10 years ago, when an attorney makes misrepresentations in his verified answers to interrogatories propounded to him by the State Bar, it “is a serious factor in aggravation” and might well constitute a greater offense than the underlying misconduct. (*In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 340.) Thus, we reject as meritless respondent's contention that he should not be held responsible for the misrepresentations in his verified answers to the State Bar's interrogatories because they were prepared for him by his prior counsel in this proceeding and because he purportedly relied on her to prepare the answers for him.⁷⁶ While it might be improper to penalize a lay client for not correcting mistakes that his attorney made in a pleading that the client verified, such reasoning carries little weight when the client is also an attorney. (See *Calaway v. State Bar* (1986) 41 Cal.3d 743, 754 (dis. opn. of Bird, C. J.) .)

We also reject as meritless respondent's contentions that he should not be held responsible for the misrepresentations in his interrogatory answers because they were the first interrogatories that he has ever answered and because, with respect to the nine client matters that are the subject of this disciplinary proceeding, he did not have adequate client files or complete copies of the immigration court files and transcripts of the immigration court hearings when he prepared his answers. Respondent had an affirmative duty to insure that his answers to the State Bar's interrogatories were true and correct even if he had to refresh his recollection of the facts by going to the immigration court and reviewing the complete court files and listening to the tapes of the relevant court hearings in each of the nine client matters. (§ 6068, subd. (d); *Franklin v. State Bar*, *supra*, 41 Cal.3d at pp. 708-709; *Rodgers v. State Bar*, *supra*, 48 Cal.3d at p. 389; *Grove v. State*

⁷⁶Not only is this his contention meritless, it is irreconcilable with respondent's contention that we should reject the adverse testimony of his alien clients because they signed, under penalty of perjury, the “fraudulent” asylum applications that were prepared and filed with the INS for them by immigration services providers.

Bar, supra, 63 Cal.2d at p. 315.) Of course, that affirmative duty is in addition to respondent's duty, under Code of Civil Procedure section 2030, subdivision (f)(1) (Civil Discovery Act), to answer each of the State Bar's interrogatories as complete and straightforward as the information reasonably *available* to him (e.g., the immigration court files and tapes of the court hearings) permitted. (See Rules Proc. of State Bar, rule 180 [Civil Discovery Act is applicable in State Bar Court proceedings except when modified by State Bar's Rules of Procedure].)

Also, we reject as frivolous respondent's claim that he had Israil confused with another client. Respondent took more than 11 months to respond to the State Bar investigator's letter. Thereafter, respondent had an additional 11 months to continue investigating the facts before he answered and verified his answers to the State Bar's interrogatories. Finally, respondent never retracted his letter to the investigator nor, as far as the record indicates, did he ever amend the answers to his interrogatories.

Finally, we reject respondent's statements that his interrogatories answers were incomplete and inaccurate because the information needed to answer the questions was stored in his computer, which he alleges was stolen out of his office by Baliozian's staff when respondent and Baliozian were evicted from their offices on Lankershim Boulevard in late 1996. The record herein clearly establishes that these statements, which are made in respondent's interrogatory answers, are false. Respondent admitted in the hearing department that the only real client records he kept were in his notebook-size calendars, a hand-held computer organizer, and 200 client files. Secretary Lopez credibly testified that they did not maintain a master list of his clients (either manually or on a computer), that respondent did not keep any client records on a computer, that respondent did not have a computer in his office on Lankershim Boulevard, but that Baliozian had one that respondent and his staff were allowed to use for drafting letters and notices.

6. *Substantial client harm.*

Respondent's repeated misconduct, particularly his failure to competently perform legal services, caused substantial harm to the Salgados, Gonzalez, the Guevaras, and Ramirez. (Std. 1.2(b)(iv); cf. *Gadda v. State Bar* (1990) 50 Cal.3d 344, 354-355 [client neglect in an immigration

case has “potentially serious consequences”].) Because respondent failed to competently represent the Salgados, Gonzalez, Israil, and the Guevaras, all had their applications for relief deemed abandoned and were either ordered deported or granted voluntary departure, which is effectively an order of deportation. They were all forced to hire new counsel to have their cases reopened, and having an immigration case reopened after an order of deportation in absentia is very difficult “ ‘because of the immigration service’s extremely hard line position.’ ” (*Gadda v. State Bar, supra*, 50 Cal.3d at pp. 354-355 [quoting testimony of Immigration Judge Dana Marks Keener].)

Having all of their requested relief deemed abandoned and being ordered deported not only delayed their immigration cases, but was personally devastating and stressful for all of the foregoing clients. In that regard, Salgado’s testimony establishes that he suffered substantial anguish. He worried for months that he and his wife would be deported, he would lose his job, and they would lose their house through foreclosure because they could not make their mortgage payments if Salgado did not have a job in the United States. It was only after one motion, two appeals, and three years that the Guevaras’ new counsel was able to remedy respondent’s misconduct by getting their case reopened by the Ninth Circuit. The stress of living under an order granting voluntary departure (which, contrary to respondent’s assertions, is effectively an order of deportation) while their motion to reopen was denied by the IJ and their appeal to the BIA was rejected was certainly extremely difficult for the Guevaras.

Similarly, there can be no question that it was emotionally very difficult on Israil to have her request for relief denied and ordered deported to Syria when she was more than 70 years old and after she had lived with her immediate family in California for 17 years.

7. *Lack of remorse and failure to accept responsibility for misconduct.*

We agree with the hearing judge’s finding that respondent lacks remorse for his misconduct. He still refuses to accept responsibility for his misconduct blaming his clients and the referring immigration services providers for his failures to perform the *legal* services for which respondent had a duty to perform for his clients. When asked, in the hearing department, the extent to which he accepts responsibility for his failures to properly prepare and timely file his clients’ immigration

applications, pleadings, and other documents, respondent testified that he will not accept any responsibility because as he stated without regret: “I never promised to do any paperwork and I never received money for paperwork.” And, as noted *ante*, respondent persistently argues that his continuing customary practices of relying on or permitting referring immigration services providers to, inter alia, prepare and file his clients’ applications, pleadings, and other documents and of representing the clients they refer to him only as an “appearance attorney” are legal, appropriate, and in his clients’ interests when the law is clearly to the contrary. In addition, he persists with his practices, notwithstanding the fact that at least two of the IJ’s in the nine client matters in this proceeding admonished respondent that it was his duty to properly prepare and timely file his clients’ “paperwork.”⁷⁷ This is all strong evidence of respondent’s inability or unwillingness to fulfill his professional obligation to competently represent his immigration clients.

B. *Mitigating circumstances.*

1. *Lack of harm.*

Respondent’s claims that a number of his clients did not suffer any harm as a result of his misconduct because they were not deported, but were granted voluntary departure in lieu of deportation is disingenuous and further evidence of his unwillingness to acknowledge or accept responsibility for his misconduct. Whether respondent’s client was deported or forced to leave the United States under an order of voluntary departure in lieu of deportation, the client still lost his right to remain in the United States. Respondent himself acknowledges that, if his client did not voluntarily depart in accordance with the terms of the IJ’s order, the client was ordered deported.

⁷⁷During the January 16, 1996, hearing in the Maya-Perez matter, Immigration Judge Nathan W. Gordon admonished respondent that, as Maya-Perez’s attorney of record, he was responsible for everything in her application. Likewise, Immigration Judge Ohata admonished respondent on multiple occasions in spring and summer 1996. On one such occasion, in which which Judge Ohata spoke to respondent at length about one of respondent’s cases that could not proceed to hearing because the client’s documents were inadequate and contained what Judge Ohata considered to be “suspect” (i.e., fraudulent) statements, respondent all but told Judge Ohata that he (i.e., respondent) was not responsible for the documents “if his client goes off to see a notary after he leaves court.” Judge Ohata again clearly told respondent that, as the attorney of record, he was responsible for his clients’ documents. Because respondent continued to disagree, Judge Ohata suggested, as he “picked up” the telephone, that they call the State Bar to get the issue resolved. Respondent declined to do so, and Judge Ohata hung the telephone up without calling the State Bar.

2. *Good character evidence.*

Respondent presented testimony as to his good character and abilities as an attorney from Immigration Judge Stephen L. Sholomson, whose testimony we discuss *post*; four attorneys, one of which used to work for respondent and one of which still works for respondent; an immigration court clerk; and three former clients. Like the hearing judge, we give respondent nominal mitigating credit for this testimony because it does not rise to the extraordinary demonstration of good character attested to by a wide range of references who are aware of the full extent of his misconduct as required under standard 1.2(e)(vi).

3. *IJs' testimony.*

a. *The State bar's motion to strike portions of respondent's brief.*

In response to various statements respondent made in his opening brief on review, the State Bar filed a motion to strike portions of respondent's brief, which we grant. In his opening brief, respondent recites that he subpoenaed Immigration Judges Sholomson, Lawrence Burman, and Richard D. Walton to testify as to his good character and professional competence. Respondent, however, asserts that the United States Department of Justice (1) greatly restricted the scope of the testimony that Judge Sholomson could give and (2) refused to permit Judges Burman or Walton to testify at all. Respondent argues that this was not fair because the Department of Justice may not limit the scope of testimony that Immigration Judge Ohata could give as a witness for the State Bar and against respondent. In an attempt to "correct" this perceived unfairness, respondent includes statements in his opening brief as to the favorable testimony he believes that Judge Sholomson would have presented had the Department of Justice not restricted his testimony and that Judges Burman and Walton would have given had they been permitted to testify. Respondent then appears to assert in his opening brief that we should consider these statements as evidence in this proceeding because the statements are supported by a declaration that his counsel executed and filed in the hearing department on February 1, 2000. Respondent argues that his counsel's declaration is, or should be treated as, a formal offer of proof. The State Bar requests that we strike from respondent's brief all statements based on that February 1, 2000, declaration.

Respondent's fails to cite any authority, and we are unaware of any, to support his assertion that his counsel's declaration is an offer of proof. Again, the law is to the contrary. An offer of proof is a summary of proffered evidence that has been 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. (Evid. Code, § 354; *People v. Whitt* (1990) 51 Cal.3d 620, 648.)

Respondent cannot plausibly argue that the hearing judge excluded any portion of Judge Sholomson's testimony, excluded the testimony of either Judge Burman or Judge Walton, or otherwise precluded Judges Burman and Walton from testifying. Judge Sholomson's testimony was restricted by the Department of Justice. And Judges Burman and Walton were prohibited from testifying by the Department of Justice. We lack jurisdiction to review the Department of Justice's actions. In short, the declaration of respondent's counsel filed on February 1, 2000, is neither an offer of proof nor otherwise part of the evidentiary record in this proceeding. We, therefore, grant the State Bar's motion and deem all of the statements in respondent's opening brief that are based on the declaration filed on February 1, 2000, to be stricken.

The State Bar also requests that we strike from respondent's opening brief the statement to the effect that Maya-Perez failed to appear for her deposition in this disciplinary proceeding without a valid excuse. According to the State Bar, the only thing in the record supporting that statement are the self-serving statements that respondent's counsel made "on the record" at Maya-Perez's deposition after she failed to appear. However, contrary to the State Bar's argument, the transcript of Maya-Perez's deposition was not admitted into evidence; accordingly, it is on that basis that we grant its request and must deem the statement in respondent's opening brief regarding Maya-Perez's failure to appear at her deposition to be stricken.

b. *Immigration Judge Sholomson's testimony.*

Judge Sholomson testified that, between mid-1995 through late 1997, respondent made too many immigration court appearances and had to go back and forth between courtrooms, but that,

since that time, he believes that respondent has since greatly reduced his appearances to a more manageable level, which has greatly reduced the number of client and judicial complaints against respondent. Judge Sholomson also testified that it was his experience that respondent almost always filed the necessary applications and pleadings in his cases, but that respondent's filings were also often deficient and had to be supplemented or modified. According to Judge Sholomson, however, many of the applications and pleadings filed in his court by other immigration attorneys are deficient and have to be supplement or modified. We accept Judge Sholomson's testimony as true, but are unable to consider it as substantial mitigation or as substantially rebutting the overwhelming adverse evidence in the record of respondent's incompetent, reckless, and grossly careless representation of his immigration clients or the extensive aggravating circumstances.

4. *Corrective measures*

While respondent still refuses to accept responsibility for his habitual, reckless, and intentional failures to competently perform legal services or his ethical obligations as the attorney of record in an immigration case, he has undertaken some corrective measures. Those measures include entering into a long-term lease for his law office, which is now located close to the immigration courts; hiring a full-time associate attorney; developing a method for tracking and meeting filing deadlines and court appearances; reducing the number of his immigration court appearances, using written fee agreements; and reducing the number referrals he accepts from nonattorney immigration services providers. We reject respondent's claim that his developing and using written disclosure forms of his limited scope of representation as an "appearance attorney" for the clients referred to him by immigration services providers as federal law clearly precludes such limited representation.

Like the hearing judge, we conclude that the mitigating weight of respondent's corrective measures is nominal. Respondent obviously ignored the warnings and admonitions from multiple IJ's before whom he appeared regarding his incompetent representations of his alien clients and failure to comply with applicable federal regulations and the immigration court's local operating procedures. Notably, almost all respondent's corrective measures were begun only after the State

Bar undertook substantial involvement in response to numerous client complaints made against respondent.

Moreover, we decline to characterize respondent's use of written fee agreements as a corrective measure. Section 6148 has mandated the use of written fee agreements since 1994. Similarly, we decline to characterize respondent's reduction of the number of immigration case referrals he accepts from nonattorney immigration services providers as a corrective measure. The terms and conditions under which respondent continues to accept referrals from such providers still amount to the aiding and abetting of the representation of aliens in immigration cases in violation of federal law and of the unauthorized practice of law in this state. Respondent's continued acceptance of any referrals from immigration services providers under the terms and conditions illustrated in this proceeding is an aggravating circumstance, not a mitigating circumstance.

VII. Degree of discipline discussion.

In determining the appropriate level of discipline, we first look to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Standard 1.3 provides that the primary purposes of discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (See also *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

The applicable sanction in this proceeding is found in standard 2.3, which provides that an attorney's culpability of an act of moral turpitude shall result in actual suspension or disbarment depending upon the extent of harm, the magnitude of the act, and the degree to which it relates to the attorney's practice of law. In the present proceeding, the magnitude of the misconduct is substantial. Thus, significant discipline is warranted under standard 2.3.

In the time period covered by this proceeding of more than two years (i.e., from mid-1995 through late 1997), respondent intentionally and recklessly failed to competently perform legal services in each of the nine different client matters and intentionally abandoned his client Ramirez minutes before the merits hearing was scheduled to begin on her application for asylum. " 'Asylum

cases are probably the most sensitive cases that the field of immigration deals with. They are like death penalty cases.’ ” (*Gadda v. State Bar, supra*, 50 Cal.3d at pp. 354-355.) Respondent’s misconduct not only presented the possibility of serious consequences, but actually resulted in substantial harm to many of his clients. In addition, respondent aided and abetted immigration services providers (1) in representing aliens in immigration cases in violation of federal law and (2) in engaging in the unauthorized practice of law in this state. He also improperly accepted his legal fees from the immigration services providers who referred cases to him and allowed, at least, two of them to put his name and title of attorney at law on their business cards.

Respondent continues to remain content to abdicate his role of attorney and officer of the court to nonattorney immigration services providers who refer clients to him regardless of the risks and dangers to the clients. Moreover, he continues to remain content to appear in immigration court proceedings seeking relief for his clients based on what could be fraudulent applications for relief. Respondent cannot plausibly deny that such a scenario is a real possibility in light of his knowledge that immigration services providers routinely prepare and file fraudulent applications for asylum. Respondent’s actions involve moral turpitude in violation of section 6106. (*In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615, 627.)

In addition, respondent failed to notify thousands of his clients when he moved his offices; failed to maintain his current office address with the State Bar and the immigration court; failed to maintain any real records regarding his clients and their names, addresses, and telephone numbers; and failed to exercise any care for the important documents that were given to him by his clients.

He also misled and misrepresented the truth to the IJ during the October 1996 hearing in the Salgado matter. Respondent intentionally attempted to deceive that IJ into granting respondent’s motion to withdraw as the Salgados’ attorney of record. Next, respondent misrepresented facts to State Bar investigator Doukakis in response to Doukakis’s inquiry as to the complaints made against him by Israil. Then, respondent repeated these false statements in his answers to the State Bar’s interrogatories.

Furthermore, respondent committed the foregoing misconduct while practicing law in a such a reckless and careless manner that additional misconduct and serious client harm were not just likely, but inevitable. What is more, even after the admonitions of at least two experienced IJ's, respondent continued to violate the federal regulations (1) requiring a party's attorney of record to prepare and file all applications, pleadings, or other documents in the party's case and (2) proscribing the preparation of immigration applications, pleadings, and other documents by nonattorney immigration services providers. (Compare *In re Morse, supra*, 11 Cal.4th at p. 209 [where Court held that attorney's "seeming unwillingness even to consider the appropriateness of his statutory interpretation or to acknowledge that at some point his position was meritless or even wrong to any extent . . . went beyond tenacity to truculence"].)

Respondent seeks to ameliorate the nature and extent of his misconduct by arguing that he committed his misconduct shortly after his admission to the bar and when he had little experience in immigration law. We reject respondent's argument. It is when an attorney is newly licensed or when an attorney begins to practice in a new area of the law that he should take the proper steps necessary to learn the governing law, rules, and regulations in that area of practice. (Rule 3-110(C) [if an attorney "does not have sufficient learning and skill when the legal service is undertaken, the [attorney] may nonetheless perform such services competently . . . by acquiring sufficient learning and skill before performance is required" or by associating with counsel who is competent].)

Next, we look to decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) The parties have not cited any prior case dealing with substantially similar misconduct as that present in this proceeding. There are only a few Supreme Court opinions and one review department opinion involving attorney misconduct in the area of immigration law.

In *Gadda v. State Bar, supra*, 50 Cal.3d 344 the misconduct included neglecting two immigration matters, instructing a client to lie to a government official, failing to properly supervise an associate attorney, and mailing between 500 and 800 letters falsely advertng his ability to provide legal services under a new immigration law that had not yet been passed by Congress. In

aggravation, the attorney failed to recognize the seriousness of his misconduct and to accept responsibility for his wrongdoing. In mitigation, he had substantial pro bono work. The discipline was two years' stayed suspension and three years' probation on conditions including six months' actual suspension and until restitution. Even though the misconduct in *Gadda* involved false advertising letters, "the discipline rested mainly on the attorney's [immigration law] misconduct." (*In re Morse, supra*, 11 Cal.4th at p. 208.)

In *Gadda* the attorney's failure to perform in the two immigration matters was less serious than respondent's and did not involve the numerous failures to appear for immigration court hearing that are present in this case; yet, the Supreme Court imposed six months' actual suspension on the attorney. (*Gadda v. State Bar, supra*, 50 Cal.3d at pp. 356-357.)

While the misconduct in *In re Aquino* (1989) 49 Cal.3d 1122, which led to disbarment, also involved the practice of immigration law, the attorney there was convicted in federal court on some 13 felony counts, each of which involved intentional dishonesty and fraudulent conduct. (*Id.* at pp. 112-1128.) In addition, the attorney there "not only countenanced perjury; he affirmatively and repeatedly counseled his clients to perjure themselves before the I.N.S." (*Id.* at p. 1130.) Even though respondent's misconduct also involves fraudulent and deceptive conduct, it does not rise to the level of that in *Aquino*. Accordingly, we cannot rely on *Aquino* as supporting a disbarment recommendation in this proceeding.

Finally, the misconduct in *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416 (hereafter *Gadda II*), which led to disbarment, also involved the practice of immigration law. Like respondent, the attorney in *Gadda II* was culpable of engaging in misconduct in nine immigration client matters. Even though the attorney in *Gadda II* was found culpable on 16 counts of charged misconduct and respondent is culpable on 18 counts of charged misconduct and 15 counts of uncharged misconduct, the attorney in *Gadda II* had a prior record of discipline involving similar misconduct (*Gadda v. State Bar, supra*, 50 Cal.3d 344), and respondent has no prior record of discipline.

Even though respondent has no prior record, his misconduct is extensive and repeated. It clearly mandates substantial discipline for the protection of the public, the profession, and the courts. We conclude that the appropriate level of discipline is five years' stayed suspension and five years' probation with extensive rehabilitative and supervisory probation conditions, including at base, a three-year period of actual suspension.

VIII. *Recommended discipline.*

We recommend that respondent James Robert Valinoti be suspended from the practice of law in the State of California for a period of five years; that execution of the five-year period of suspension be stayed; and that he be placed on probation for a period of five years on the following conditions.

1. Respondent shall be actually suspended from the practice of law in the State of California during the first three years of this probation and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all the conditions of this probation.
3. The State Bar's Probation Unit shall promptly assign a probation monitor referee to respondent. Respondent must promptly review the terms and conditions of this probation with the probation monitor referee and establish a manner and schedule of compliance with them. Such manner and schedule of compliance must, of course, be consistent with the terms and conditions of probation. Respondent must furnish such reports concerning respondent's compliance as may be requested by the probation monitor referee. Respondent must cooperate fully with the probation monitor referee to enable the referee to discharge the referee's duties. (See Rules Proc. of State Bar, rule 2702 [duties of probation monitor referees].)
4. Subject to the assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer all inquiries of the State Bar's Probation Unit and his assigned probation monitor referee that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.
5. Respondent must report, in writing, to the State Bar's Probation Unit in Los Angeles and his assigned probation monitor no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation ("reporting dates"). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of respondent's probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

- (a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, Rules of Professional Conduct of the State Bar, and other terms and conditions of probation since the beginning of this probation; and
- (b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, Rules of Professional Conduct of the State Bar, and other terms and conditions of probation during the period.

During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

- 6. In addition to maintaining an official address for State Bar purposes with the State Bar's Membership Records Office as required by section 6002.1 of the Business and Professions Code, respondent must maintain that official address with the State Bar's Probation Unit in Los Angeles and his assigned probation monitor. In addition, respondent must maintain with the Probation Unit in Los Angeles and his assigned probation monitor, a current office address and telephone number or, if respondent does not have an office, a current home address and telephone number. Respondent must promptly, but in no event later than 10 days after a change, report any changes in this information to the Membership Records Office, the Probation Unit, and his assigned probation monitor.
- 7. Within the period of his actual suspension, respondent must: (1) attend and satisfactorily complete the State Bar's Ethics School; and (2) provide satisfactory proof of completion of the school to the State Bar's Probation Unit in Los Angeles. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Accord Rules Proc. of State Bar, rule 3201.)
- 8. Each year of his probation, respondent must attend in person and complete a course on law office management that qualifies for at least eight MCLE credit hours and that meets with the prior approval of his assigned probation monitor. Each year respondent must provide satisfactory proof of his completion of such a course to his assigned probation monitor. In addition, each year, respondent must provide satisfactory proof of the prior approval and completion of such a course to the State Bar's Probation Unit in Los Angeles. This condition of probation is separate and apart from Respondent's MCLE requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing these courses. (Cf. Rules Proc. of State Bar, rule 3201.)
- 9. Within the period of his actual suspension, respondent must develop an extensive law office management/organization plan that meets with the approval of his assigned probation monitor. At a minimum, the plan must include procedures to send periodic status reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; calendaring of court appearance dates; withdrawing as attorney, whether of record or not, when clients cannot be contacted or located; and the training and supervision of support personnel. This condition of probation is separate and apart from respondent's MCLE requirements; accordingly, respondent is ordered not to claim any MCLE credit for developing this plan. (Cf. Rules Proc. of State Bar, rule 3201.)
- 10. Respondent's probation shall commence on the effective date of the Supreme Court order in this matter. And, at the end of the probationary term, if he has complied with the terms and

conditions of probation, the Supreme Court order suspending him from the practice of law for five years shall be satisfied, and the suspension shall terminate.

IX. *Professional responsibility examination, rule 955, and costs.*

We further recommend that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within the period of his actual suspension and to provide satisfactory proof of his passage of that examination to the State Bar's Probation Unit in Los Angeles and his assigned probation monitor within that same time period. Additionally, we recommend that Respondent be ordered to comply with the provisions of rule 955 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter. Finally, we recommend that the costs incurred by the State Bar in this matter be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be payable in accordance with Business and Professions Code section 6140.7.

STOVITZ, P. J.

I concur:

BACIGALUPO, J.*

*Hearing Judge of the State Bar Court designated by the Presiding Judge pursuant to rule 305(e) of the Rules of Procedure of the State Bar.

Concurring and Dissenting Opinion of O'Brien, J.

I concur fully with the majority's findings and conclusions of respondent's culpability and its analysis regarding mitigating and aggravating circumstances except in the two instances involving aggravating circumstances, which I discuss below. However, I dissent from the recommended level of discipline based on my conclusion that the appropriate level of discipline to recommend to the Supreme Court in this proceeding is disbarment.

I concur with the majority's conclusion that respondent's misconduct demonstrates repeated, similar acts of misconduct, which must be considered as serious aggravation. But, unlike the majority, I further conclude that respondent's misconduct evidences a pattern of misconduct, which is egregious aggravation under standard 1.2(b)(ii) of the Standards for Attorney Sanctions for Professional Misconduct (hereafter standards). Notwithstanding the facts, inter alia, that multiple immigration judges (hereafter IJ's) repeatedly reminded respondent of his duty to fully represent each immigration client for which he was the attorney of record and that his clients' cases were repeatedly being dismissed because of his misconduct, respondent began and continued a course of extensive misconduct that rises to the level of a "serious pattern of misconduct involving recurring types of wrongdoing." (*Garlow v. State Bar* (1988) 44 Cal.3d 689, 711; *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 737.) In that regard, when an attorney commits multiple acts of similar misconduct or recurring types of wrongdoing, as respondent did in the present proceeding, the gravity of each successive violation increases. (Cf. *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531.)

Moreover, I concur with the majority's conclusion that respondent's misconduct caused substantial harm in at least five of the nine client matters in this disciplinary proceeding, which must be considered as aggravation. However, I further note that, although none of respondent's clients suffered any irreparable harm because of his misconduct, it was only because the clients were eventually able to obtain relief from the adverse consequences of respondent's misconduct from either the immigration court or the United States Court of Appeals for the Ninth Circuit. Thus, I

conclude that respondent's misconduct harmed not only his clients, but also the administration of justice, which is additional aggravation under standard 1.2(b)(iv).

Furthermore, the Supreme Court has repeatedly stated: “ ‘willful failure to perform legal services for which an attorney has been retained in itself warrants disciplinary action, constituting a breach of the good faith and fiduciary duty owed by the attorney to his clients. [Citations.]’ [Citation.] Moreover, habitual disregard by an attorney of the interests of his or her clients combined with failure to communicate with such clients constitute acts of moral turpitude justifying disbarment. [Citations.]” (*McMorris v. State Bar* (1983) 35 Cal.3d 77, 85.) In the present proceeding, not only do respondent's repeated failures to perform the legal services for which he was retained and had a legal duty to perform, failures to communicate with his clients, and client abandonment constitute such acts of moral turpitude, his misleading statements to an IJ and misrepresentations to the State Bar also constitute acts of moral turpitude. Respondent did not establish any compelling mitigation, nor did he establish any meaningful reform. Accordingly, I would recommend that respondent be disbarred and that his name be stricken from the roll of attorneys admitted to practice in this state.

OBRIEN, J.*

*Judge Pro Tem of the State Bar Court appointed by the State Bar Board of Governors under rule 14 of the Rules of Procedure of the State Bar.

Case No. 96-O-08095

In the Matter of James Robert Valinoti

Hearing Judge

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