

**STATE BAR COURT  
REVIEW DEPARTMENT**

In the Matter of

**JUDSON D. LILLEY**

A Member of the State Bar

[No. 87-O-16728]

Filed May 1, 1991

**SUMMARY**

Respondent was found culpable by the hearing department of the former, volunteer State Bar Court of abandoning a client, failing to notify the State Bar of his change of office address, and failing to cooperate in the State Bar's investigation of his misconduct. Based on these findings, the hearing department concluded that respondent had violated sections 6002.1, 6068(a), 6068(i), 6068(m), and 6103 of the Business and Professions Code and former Rules of Professional Conduct 2-111(A)(2) and 6-101(A)(2). (Herbert Steinberg, Hearing Referee.)

On review, the review department adopted the hearing department's factual findings and most of its legal conclusions with minor modifications, but rejected, on the basis of recent Supreme Court precedent, the conclusions that respondent had violated sections 6068(a) and 6103. The review department interpreted section 6103 as not providing a basis for culpability except with regard to violations of court orders. The review department also rejected the State Bar's contention that section 6068(a) is automatically violated by virtue of a violation of any of the Rules of Professional Conduct or of any disciplinary provision of the State Bar Act. The review department concluded that section 6068(a) only provides a basis for culpability when an attorney violates: (1) a statute not specifically relating to the duties of attorneys; (2) a section of the State Bar Act which is not, by its terms, a disciplinable offense, or (3) an established common law doctrine which governs the conduct of attorneys and which is not governed by any other statute.

Based on respondent's misconduct, which was aggravated by harm to the client and a third party, but mitigated by respondent's 13 years in practice without a prior disciplinary record, the review department recommended a one-year stayed suspension, thirty days actual suspension, and one year of probation. The review department also recommended that respondent be required to complete a law office management course and to take and pass the California Professional Responsibility Examination.

**COUNSEL FOR PARTIES**

For Office of Trials: Russell G. Weiner

For Respondent: No appearance (default)

HEADNOTES

- [1 a, b] **220.00 State Bar Act—Section 6103, clause 1**  
**220.10 State Bar Act—Section 6103, clause 2**  
Prior to 1989, the Supreme Court customarily upheld charges that an attorney had violated the “oath and duties” provision of section 6103, but in 1989, the Supreme Court determined that an attorney charged with other statute and rule violations does not violate section 6103 because that section “defines no duties,” except with regard to violation of court orders.
- [2] **213.10 State Bar Act—Section 6068(a)**  
The Supreme Court has rejected the contention that the duty to uphold the laws of this state, as set forth in section 6068(a), is violated by an attorney’s violation of the Rules of Professional Conduct.
- [3 a, b] **106.30 Procedure—Pleadings—Duplicative Charges**  
**213.10 State Bar Act—Section 6068(a)**  
**220.10 State Bar Act—Section 6103, clause 2**  
Duplicative allegations of misconduct serve little purpose; if misconduct violates a specific disciplinary provision of the State Bar Act or a Rule of Professional Conduct, there is no need to charge the same misconduct as a violation of sections 6068(a) and 6103.
- [4] **199 General Issues—Miscellaneous**  
**204.90 Culpability—General Substantive Issues**  
The Rules of Professional Conduct are binding on attorneys, but are not the equivalent of statutes; they merely supplement the statutory provisions.
- [5] **213.10 State Bar Act—Section 6068(a)**  
**220.10 State Bar Act—Section 6103, clause 2**  
**802.40 Standards—Sanctions Available**  
**1099 Substantive Issues re Discipline—Miscellaneous**  
Sections 6068(a) and 6103 were not intended to refer to the Rules of Professional Conduct or to make disbarment available for violations of such rules.
- [6] **802.40 Standards—Sanctions Available**  
**1099 Substantive Issues re Discipline—Miscellaneous**  
Under section 6077, the discipline which may be recommended by the State Bar for a wilful violation of the Rules of Professional Conduct is limited to a maximum of three years suspension.
- [7 a, b] **193 Constitutional Issues**  
**802.40 Standards—Sanctions Available**  
**1099 Substantive Issues re Discipline—Miscellaneous**  
Section 6077 does not bind the Supreme Court, in the exercise of its inherent power, should it decide that greater discipline than three years suspension for violation of a Rule of Professional Conduct is needed to protect the public in a particular case; the Supreme Court is not limited by the Legislature in exercising its disciplinary authority.
- [8] **101 Procedure—Jurisdiction**  
**802.40 Standards—Sanctions Available**  
**1099 Substantive Issues re Discipline—Miscellaneous**  
Section 6078 authorizes the State Bar Court to hold a hearing on charged violations of law and to recommend disbarment in those cases warranting disbarment, but section 6077 declares that a Rule of Professional Conduct violation does not warrant discipline in excess of three years suspension.

- [9]       **101        Procedure—Jurisdiction**  
**220.00    State Bar Act—Section 6103, clause 1**  
**220.10    State Bar Act—Section 6103, clause 2**  
**802.40    Standards—Sanctions Available**  
**1099       Substantive Issues re Discipline—Miscellaneous**  
 Section 6103's authorization of discipline, including disbarment, is limited by its terms to occasions when an attorney violates the oath and duties defined in the Business and Professions Code or violates a court order.
- [10]       **199        General Issues—Miscellaneous**  
**802.30    Standards—Purposes of Sanctions**  
 Protection of the public, its confidence in the legal profession, and the maintenance of high professional standards are the greatest concerns of the State Bar Court.
- [11]       **176        Discipline—Standard 1.4(c)(ii)**  
**802.40    Standards—Sanctions Available**  
**1099       Substantive Issues re Discipline—Miscellaneous**  
**2402       Standard 1.4(c)(ii) Proceedings—Burden of Proof**  
 For an egregious rule violation, the State Bar may seek suspension of at least two years and application of standard 1.4(c)(ii); an attorney who can satisfy the showing required by standards 1.4(c)(ii) poses no continuing threat to the public warranting disbarment.
- [12]       **211.00    State Bar Act—Section 6002.1**  
**213.10    State Bar Act—Section 6068(a)**  
**214.00    State Bar Act—Section 6068(j)**  
 Section 6068(a) is not a proper basis for charging a violation of 6002.1, because section 6068(j) specifically makes it a duty of each State Bar member to comply with section 6002.1, and makes such compliance the subject of discipline.
- [13]       **106.20    Procedure—Pleadings—Notice of Charges**  
**211.00    State Bar Act—Section 6002.1**  
**214.00    State Bar Act—Section 6068(j)**  
 The failure to charge a violation of section 6068(j) in the notice to show cause was harmless error, where the notice clearly charged an alleged violation of section 6002.1.
- [14]       **106.20    Procedure—Pleadings—Notice of Charges**  
**169        Standard of Proof or Review—Miscellaneous**  
**213.10    State Bar Act—Section 6068(a)**  
 Charging a violation of section 6068(a) without specifically identifying the underlying provision of law allegedly violated not only fails to put the attorney on sufficient notice of the alleged violation, but also undermines meaningful review of any decision based on such general charging allegation.
- [15]       **194        Statutes Outside State Bar Act**  
**213.10    State Bar Act—Section 6068(a)**  
**401        Common Law/Other Violations in General**  
 Section 6068(a) is a conduit by which attorneys may be charged and disciplined for violations of other specific laws which are not otherwise made disciplinable under the State Bar Act, including a violation of: (1) a statute not specifically relating to the duties of attorneys; (2) a section of the State Act which is not, by its terms, a disciplinable offense, and (3) an established common law doctrine which is not governed by any other statute.

- [16]     **213.10 State Bar Act—Section 6068(a)**  
          **230.00 State Bar Act—Section 6125**  
          **231.00 State Bar Act—Section 6126**

Discipline may appropriately be imposed based on an attorney's unauthorized practice of law when the attorney is charged with violating sections 6068(a) and sections 6125 or 6126.

- [17]     **213.10 State Bar Act—Section 6068(a)**  
          **214.30 State Bar Act—Section 6068(m)**  
          **410.00 Failure to Communicate**

An attorney who failed to communicate adequately with a client prior to 1987 cannot be charged with a violation of section 6068(m), but can be charged with a violation of section 6068(a).

- [18]     **582.10 Aggravation—Harm to Client—Found**  
          **588.10 Aggravation—Harm—Generally—Found**

Attorney who represented the administrator of a decedent's estate owed a duty of care both to the client and to the estate's beneficiary; harm caused to these parties by the attorney's misconduct was an aggravating factor.

- [19]     **174 Discipline—Office Management/Trust Account Auditing**

Where respondent had abruptly abandoned both his client and his office, a requirement that respondent complete a course in law office management was an appropriate probation condition.

#### ADDITIONAL ANALYSIS

#### Culpability

##### Found

- 211.01 Section 6002.1
- 213.91 Section 6068(i)
- 214.31 Section 6068(m)
- 270.31 Rule 3-110(A) [former 6-101(A)(2)/(B)]
- 277.21 Rule 3-700(A)(2) [former 2-111(A)(2)]

##### Not Found

- 213.15 Section 6068(a)
- 220.15 Section 6103, clause 2
- 280.25 Rule 4-100(B)(1) [former 8-101(B)(1)]
- 280.55 Rule 4-100(B)(4) [former 8-101(B)(4)]

#### Aggravation

##### Declined to Find

- 515 Prior Record
- 525 Multiple Acts

#### Mitigation

##### Found

- 710.10 No Prior Record

#### Standards

- 802.21 Definitions—Prior Record

#### Discipline

- 1013.06 Stayed Suspension—1 Year
- 1015.01 Actual Suspension—1 Month
- 1017.06 Probation—1 Year

**Probation Conditions**

- 1022.10 Probation Monitor Appointed
- 1024 Ethics Exam/School
- 1025 Office Management

## OPINION

PEARLMAN, P.J.:

This is a default proceeding on a notice to show cause charging one count of client abandonment and separate counts of failure to cooperate and failure to submit a change of address in violation of Business and Professions Code section 6002.1 (a)(1). Respondent Lilley was admitted to the State Bar in 1974 and has no prior record of discipline. The referee recommended imposition of a one-year suspension, stayed, with a thirty-day actual suspension and probation for one year, coupled with a requirement that respondent take and pass the Professional Responsibility Examination (PREX) within one year. The examiner did not seek review of that decision.

Upon mandatory ex parte review of the referee's decision, this department issued a notice of its intent to adopt the decision with modifications not affecting the degree of discipline recommended, and extended the opportunity to the Office of Trial Counsel to object to our proposed modifications, if it so desired, by filing a request for review under rule 450(a) of the Rules of Procedure of the State Bar.<sup>1</sup> The Office of Trial Counsel requested review solely to challenge our proposed deletion of the findings that respondent violated Business and Professions Code sections 6068 (a) and 6103. The case then was scheduled for briefing and oral argument on those issues.

After full consideration of the Office of Trial Counsel's objections, we adhere to our prior conclusion set forth in the intended decision that the record does not support a finding that respondent violated Business and Professions Code sections 6068 (a) and 6103. We therefore adopt the recommendation of the referee with the modifications set forth in this opinion, and recommend that the respondent be suspended for one year, stayed, with one year of probation and thirty days of actual suspension.

## I. FACTS AND PROCEEDINGS BELOW

The respondent failed to file an answer to the notice to show cause which was served on him at his address of record, and his default was entered. (Bus. & Prof. Code, §§ 6002.1, 6088; rules 552 et seq., Rules Proc. of State Bar.) A default hearing was held before a referee of the former, volunteer State Bar Court who filed the amended decision we review on October 16, 1989.

We adopt the referee's findings of fact and law except as expressly modified herein. Respondent practiced law at an address in Long Beach, apparently without incident, from late 1982 until sometime just prior to May 1, 1987. In February 1983, respondent was hired by David Reed to handle the legal work for a decedent's estate of which Reed was the administrator. Until April 1987, respondent performed necessary legal services for the estate. In late April 1987, at a meeting between Reed, respondent, and representatives of one of the estate's beneficiaries (a church), it was brought to respondent's attention that closing the estate was a matter of some urgency because the church needed the money for already-scheduled renovation work. Respondent agreed to complete the final report and account within two weeks. Respondent had also agreed to prepare a satisfaction of a mortgage which had secured a debt he had collected for the estate.

Beginning around May 1, 1987, Reed's attempts to contact respondent at his Long Beach address, both by telephone and by personal visit, began to be unsuccessful. The telephone was disconnected, with a referral to a new telephone number, which turned out to belong to an attorney who shared office space with respondent; this attorney's staff disclaimed any knowledge of respondent's new address or telephone number. An Orange County telephone number of respondent's, and his residence telephone number, were also disconnected, with no referrals. Respondent had not filed a change of address with the post office.

---

1. As part of the transition to the new State Bar Court system, and under rules adopted by the State Bar Board of Governors, effective September 1, 1989, this review department must independently review the record of the State Bar proceedings

in matters such as this which were tried before September 1, 1989, before former referees of the State Bar Court, but assigned to this department after September 1. (Trans. Rules Proc. of State Bar, rules 109 and 452(a).)

Reed was forced to hire another attorney, William Hayter, to complete work on the estate, and the ensuing delay imposed a financial burden on the church beneficiary. Respondent failed to respond to Hayter's efforts to contact him and to obtain a signed substitution of attorney. Respondent did no further work on the estate, and had no further contact with Reed.

In June 1988, the State Bar investigator assigned to this matter began trying to contact respondent about it. After unsuccessful attempts to reach respondent by mail at his official address in Long Beach, the investigator managed to obtain respondent's residence address in Anaheim. Letters were thereafter sent to respondent at that address, but no response to them was received.

On August 31, 1987, four months after vacating his Long Beach address and abandoning Reed, and before the bar's investigation in this matter began, respondent had been suspended for nonpayment of dues. A year and two months later, on October 27, 1988, respondent paid his dues and was reinstated. Along with his delinquent dues, he submitted a change of address to the State Bar, using the Anaheim address which had previously been reported to the State Bar investigator as being respondent's home address. The notice to show cause in this matter was properly served on respondent at the Anaheim address on March 3, 1989 (less than five months later).<sup>2</sup>

The referee found that the facts as charged in count one supported the conclusion that respondent failed to perform the work for which he was hired, failed to turn over the file to his client, and abandoned his client in violation of Business and Professions Code sections 6068 (a), 6068 (m) and 6103 and former Rules of Professional Conduct 2-111(A)(2)

and 6-101(A)(2).<sup>3</sup> As charged in count two, the referee found that respondent's failure to respond to the State Bar's written inquiry and failure to cooperate in the State Bar's investigation supported a finding that respondent violated Business and Professions Code sections 6068 (a), 6068 (i) and 6103. The referee also found that, as charged in count three of the notice to show cause, respondent vacated his law office and abandoned his official address and failed to submit a change of address to the State Bar for approximately a year and a half thereafter in violation of Business and Professions Code section 6002.1 (a)(i).<sup>4</sup> The referee rejected as an aggravating factor respondent's prior suspension for nonpayment of dues and further found that the offenses in all three counts were interrelated and did not constitute a multiplicity of offenses which might otherwise be a basis for additional discipline. As indicated above, the referee recommended one year suspension stayed, conditioned on one year's probation and one month's actual suspension. He also recommended a requirement that respondent take and pass the Professional Responsibility Examination.

## II. ISSUES ON REVIEW

The examiner's sole reason for requesting review in this matter was to object to this department's stated intention to strike the referee's conclusion that the respondent, by virtue of the misconduct he was found to have committed in counts one and two of the notice to show cause, also violated Business and Professions Code sections 6068 (a) and 6103.

At the time that the notice to show cause was issued in this case it was customary for the Office of Trial Counsel routinely to charge members with violating their oath and duties under sections 6068 (a) and 6103 in addition to any other specific charges made. The examiner contends that Business and

2. The notice to show cause, notice of application to enter default, and notice of entry of default were served on respondent by certified mail, return receipt requested. None of these mailings was returned as undeliverable, but only one return receipt was received by the bar, showing delivery on June 16, 1989.

3. Charged violations of rule 8-101(B)(1) and 8-101(B)(4) were dismissed by the examiner.

4. The notice to show cause inexplicably did not charge respondent with violating Business and Professions Code section 6068 (j), which expressly makes it a duty of an attorney "to comply with the requirements of section 6002.1."

Professions Code sections 6068 (a)<sup>5</sup> and 6103<sup>6</sup> contemplate that an attorney violates those sections by committing a violation of any state or federal law, including any violation of the Business and Professions Code or the Rules of Professional Conduct.<sup>7</sup> Consistent with his reasoning, and relying on asserted ambiguity in the controlling case law, the examiner contends that a Rule of Professional Conduct violation could, under Business and Professions Code section 6068 (a) or 6103, result in the imposition of discipline ranging from suspension to disbarment, although he seeks no independent discipline based on these alleged statutory violations in this case. We have rejected such arguments in prior cases on the authority of *Baker v. State Bar* (1989) 49 Cal.3d 804, 815. The Supreme Court has since reaffirmed its ruling in *Baker* and we therefore reaffirm our intended decision and set forth at length herein our reasons for doing so.

#### A. The Impact of *Baker v. State Bar*

[1a] As the examiner points out, prior to 1989, the routine charge of a section 6103 “oath and duties” violation was customarily upheld by the Supreme Court.<sup>8</sup> (See, e.g., *McMorris v. State Bar* (1983) 35 Cal.3d 77, 80; *Carter v. State Bar* (1988) 44 Cal.3d 1091, 1096; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 654.) In 1989, the Supreme Court reexamined this charging practice and determined that an attorney charged with numerous rule and statutory violations had not violated section 6103 because that section “defines no duties.” (*Baker v. State Bar, supra*, 49 Cal.3d at p. 815; *Sands v. State Bar* (1989) 49 Cal.3d 919, 931.) It has since reiterated that ruling numerous times in cases involving the “oath and duties”

provision of section 6103. (See, e.g., *Middleton v. State Bar* (1990) 51 Cal.3d 548, 561; *Sugarman v. State Bar* (1990) 51 Cal.3d 609, 618.)

[1b] As the Supreme Court most recently stated in *Read v. State Bar* (1991) 53 Cal.3d 394, “With the exception of a wilful violation of a court order, ‘this section does not define a duty or obligation of an attorney but provides only that a violation of [an attorney’s] oath and duties defined elsewhere is a ground for discipline.’” (*Id.* at p. 406.) Apart from violation of court orders, section 6103 merely sets forth the discipline available for the violations of other statutes. (*Id.* at p. 407, fn. 2.) [2] The Supreme Court has expressly and specifically rejected the argument made here that the duty to uphold the laws of this state, as set out in section 6068 (a), is violated by a respondent’s violations of rules 2-111 and 6-101 of the Rules of Professional Conduct. (*Baker v. State Bar, supra*, 49 Cal.3d at pp. 814-816; *Sands v. State Bar, supra*, 49 Cal.3d at p. 931.)

The examiner points to a few recent opinions the Court has issued which the examiner interprets as a retreat from *Baker, supra*, and *Sands, supra*, and reimposition of prior law regarding routinely charged violations of “oath and duties.” We disagree.

In *Layton v. State Bar* (1990) 50 Cal.3d 889, the Supreme Court upheld a finding that an attorney violated sections 6068 (a) and 6103 without reference to *Baker v. State Bar, supra*.<sup>9</sup> General Counsel of the State Bar, acting on behalf of the Office of Trial Counsel, requested reconsideration, asking that the Court expressly disavow *Baker* decided only seven months before *Layton*. The Court declined to do so.

5. Section 6068 provides, in pertinent part: “It is the duty of an attorney to do all of the following: [¶] (a) To support the Constitution and laws of the United States and of this state.”

6. Section 6103 provides as follows: “A wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.”

7. Unless noted, all references to the Rules of Professional Conduct are to the former rules in effect between January 1,

1975, and May 26, 1989, which apply to respondent’s conduct.

8. Unless otherwise noted, all references to sections are to the Business and Professions Code.

9. In one count charging a violation of section 6068 (a), the Supreme Court held that the attorney’s pre-1987 failure to communicate with and attend to the needs of his client constituted the basis for discipline under section 6068 (a). (*Layton v. State Bar, supra*, 50 Cal.3d at pp. 903-904.) We believe that ruling is consistent with *Baker* and *Sands*. See discussion, *post*.

As the Court subsequently explained in *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060, cases decided by the Court after *Baker* which have found culpability for "oath and duties" violations based on section 6103 have either involved charges that were stipulated to or culpability findings which were in addition to a more specific charge on which the discipline order rested. Thus, the section 6103 finding had no impact on the degree of discipline imposed. (See, e.g., *Phillips v. State Bar* (1989) 49 Cal.3d 944; *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071.) In contrast, where the Supreme Court has expressly addressed the impact of *Baker*, *supra*, it has repeatedly reaffirmed its holding that section 6103 defines no general duties and section 6068 (a) has limited application not including a basis for recharging rule violations. (See, e.g., *Friedman v. State Bar* (1990) 50 Cal.3d 235, 245; *Middleton v. State Bar*, *supra*, 51 Cal.3d at pp. 561-562; *Sugarman v. State Bar*, *supra*, 51 Cal.3d at pp. 617-618; *Bates v. State Bar*, *supra*; *Lister v. State Bar* (1990) 51 Cal.3d 1117, 1123; *In re Kelley* (1990) 52 Cal.3d 487, 494.) [3a] Additionally, the Court in *Bates v. State Bar*, *supra*, 51 Cal.3d at p. 1060, stated that "little, if any, purpose is served by duplicative allegations of misconduct. If . . . misconduct violates a specific Rule of Professional Conduct, there is no need for the State Bar to allege the same misconduct as a violation of sections 6068, subdivision (a), and 6103."<sup>10</sup>

The examiner argues that removal of sections 6103 and 6068 (a) as an automatically chargeable offense for any act of attorney misconduct makes no sense because "the case law, the statutes and the logical reasoning process both before and after *Baker* and *Sands* support the conclusion that a wilful violation of the Rules of Professional Conduct or for that matter any wilful conduct that is found to be unprofessional on the part of an attorney . . . constitute violations of the attorney's oath and duties and are both a failure to support the laws of the State of California (section 6068 (a)) and a violation of the attorney's duties (section 6103)."

[4] The examiner's argument is that since the Rules of Professional Conduct are authorized by statute and are declared by statute to be binding on all members of the bar "the fact that the rules do not emanate directly from the Legislature does not mean that they are relegated to some lesser status than that of law." Indeed, he asks "if the rules of Professional Conduct are not laws then how can they be binding on an attorney whether or not the attorney is acting in the capacity of an attorney?" This argument is misconceived. The rules are clearly binding on attorneys. The rules are clearly also not the equivalent of statutes, but "merely supplement the statutory provisions." (1 Witkin, Cal. Procedure (3d ed. 1985) Attorneys, § 309, p. 343.) The issue therefore is not properly framed as whether the Legislature intended the rules to be binding or whether and to what extent the rules may properly be applied to conduct unrelated to an attorney's practice. (See *In re Kelley*, *supra*, 52 Cal.3d 487.) The precise issue before us is whether, by enacting sections 6068 (a) and 6103 of the State Bar Act, the Legislature intended to make disbarment available for rule violations.

[5] There is absolutely no evidence that either section 6103 or section 6068 (a) was intended to refer to the Rules of Professional Conduct or to make disbarment available for violations of such rules. To the contrary, the duties referred to in both sections appear to be terms of art referring to statutorily defined duties. [6] Indeed, the Legislature has specifically provided, in Business and Professions Code section 6077, that the discipline which may be imposed for a wilful violation of the Rules of Professional Conduct is limited to, at the most, three years of suspension. Section 6077 provides, "The rules of professional conduct adopted by the board, when approved by the Supreme Court, are binding upon all members of the State Bar. For a willful breach of any of these rules, the board has power to discipline members of the State Bar by reproof, public or private, or to recommend to the Supreme Court the suspension from practice for a period not exceeding three years of members of the State Bar." Thus, the

10. This department has applied the rationale of *Bates*, *supra*, to duplicative charges of violating a court order as well as other

types of duplicative charges. (See *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 237.)

Legislature, by virtue of Business and Professions Code section 6077, has not provided the State Bar with the ability to recommend any sanction greater than three years for a wilful violation of the Rules of Professional Conduct unaccompanied by any statutory violations. That is the plain and unavoidable meaning of section 6077.<sup>11</sup> [7a - see fn. 11] The contrary interpretation offered by the Office of Trial Counsel would violate basic principles of statutory construction. (See *Zorro Investment Co. v. Great Pacific Security Corp.* (1977) 69 Cal.App.3d 907; *Bergin v. Portman* (1983) 141 Cal.App.3d 23.)

The examiner next contends that section 6077's limitations on the discipline that may be imposed for rule violations are ineffectual when read in light of section 6078. Section 6078 provides in pertinent part, "After a hearing for any of the causes set forth in the laws of the State of California warranting disbarment, suspension or other discipline, the board has the power to recommend to the Supreme Court the disbarment or suspension from practice of members or to discipline them by reproof, public or private, without such recommendation." The examiner interprets section 6078 to mean that section 6077 does not limit this court's discretion in recommending discipline for a rule violation. We disagree. [8] Section 6078 authorizes the State Bar Court to hold a hearing on charged violations of law and to recommend disbarment in those cases *warranting* disbarment. Statutory violations may warrant disbarment. However, by virtue of section 6077, the Legislature has declared that a rule violation does not *warrant* discipline in excess of three years of suspension. The inclusion of the word "warranting" is a clear limitation of the power to recommend disbarment which excludes rule violations for which disbarment is not available.

In short, sections 6077, 6078, and 6103 must be read together. Section 6078 authorizes the State Bar to hold hearings and to impose reproofs or to recommend suspension or disbarment, where warranted, in the event of a violation of law for which discipline

may be imposed. Section 6077 is the Legislature's clear mandate that discipline greater than three years of suspension is unwarranted for a violation of the Rules of Professional Conduct. [9] Section 6103's authorization of discipline, including disbarment, is limited by its terms to occasions where an attorney violates his oath and duties as defined in the Business and Professions Code or where violation of an order of court is involved. We therefore reject culpability under section 6103 for respondent's violations of rules 2-111(A)(2) and 6-101(A)(2) of the Rules of Professional Conduct herein, just as the Supreme Court rejected culpability for these very same rule violations charged under sections 6103 and 6068 (a) in *Baker*. (See *Baker v. State Bar*, *supra*, 49 Cal.3d at pp. 814-816.)

The examiner argues that, absent the ability to pursue disbarment for rule violations, the State Bar will be unable adequately to protect the public. [10] Protection of the public, its confidence in the legal profession, and the maintenance of high professional standards are this court's greatest concerns. (See standard 1.3, Standards for Attorney Sanctions for Professional Misconduct (Trans. Rules Proc. of State Bar, div. V) ("standard(s)"); *Walker v. State Bar* (1989) 49 Cal.3d 1107, 1117.) Nonetheless, the examiner's policy argument is best addressed to the Legislature. We do note, however, that the examiner was unable to cite a single example of a case exclusively involving a charged rule violation, or even multiple rule violations, in which his office considered disbarment essential to protect the public. Here, for example, the examiner is satisfied with one month's actual suspension despite the fact that, in addition to the rule violations, respondent violated three statutes (section 6068 (i), section 6068 (j) [section 6002.1] and section 6068 (m)), for which disbarment *is* available on appropriate facts.

It is difficult to conceive of a set of circumstances in which an attorney's misconduct, egregious enough to warrant disbarment, would not involve one or more statutory violations for which disbarment is

11. [7a] Section 6077 does not bind the Supreme Court in the exercise of its inherent power should it decide in a particular case that more discipline is needed to protect the public. (See,

e.g., *Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300; *Stratmore v. State Bar* (1975) 14 Cal.3d 887, 889-890.)

expressly available upon an appropriate showing, such as misconduct involving moral turpitude, dishonesty or corruption (section 6106); failure to communicate with clients (section 6068 (m)); disrespect for the courts (section 6068 (b)); misrepresentation to the courts (section 6068 (d)), etc.<sup>12</sup> [11] Moreover, for an egregious rule violation the Office of Trial Counsel can always seek suspension of at least two years and further seek to protect the public by requesting the court to apply standard 1.4(c)(ii), which requires a showing of rehabilitation and fitness to practice of an attorney who has been actually suspended for two years or more before he or she can resume the practice of law. By definition, the attorney who can satisfy that requirement poses no continued threat to the public warranting disbarment. [7b] If for some reason disbarment were still considered necessary, the State Bar could request that the Supreme Court invoke its inherent power to disbar since the Supreme Court is not limited by the Legislature in exercising its disciplinary authority. (*Brotsky v. State Bar*, *supra*, 57 Cal.2d 287, 300 [“Historically, the courts, alone, have controlled admission, discipline and disbarment of persons entitled to practice before them”]; see also rule 951(g), Cal. Rules of Court.)

#### B. The Scope of Section 6068 (a)

Section 6068 (a) of the Business and Professions Code provides that “It is the duty of an attorney: [9] (a) To support the Constitution and laws of the United States and of this State.” The examiner contends that the violation of any section of the Business and Professions Code constitutes a violation of state law as well as any rule of the Rules of Professional Conduct and is therefore a failure to support the laws of this state as prescribed by section 6068 (a). In *Baker v. State Bar*, *supra*, 49 Cal.3d at p. 815 and *Sands v. State Bar*, *supra*, 49 Cal.3d at p. 931, the Supreme Court expressly rejected culpability under section 6068 (a) for violation of section 6106. This is because a section 6106 violation is directly chargeable as an offense and disciplinable as such. [3b] Therefore we find no reason to assume the Legisla-

ture, in enacting section 6068 (a), contemplated making section 6068 (a) a vehicle for charging violations of section 6106, nor is there any need for duplicative allegations charging the same misconduct. (See *Bates v. State Bar*, *supra*, 51 Cal.3d at p. 1060.) Similarly, there is no reason to conclude that the Legislature intended that a violation of section 6068 (b) violates section 6068 (a), and so forth.

We therefore reject culpability under section 6068 (a) by virtue of respondent’s culpability in this case for violation of sections 6068 (i) and 6068 (m) which are disciplinable offenses in and of themselves. Violations of sections 6068 (a) and 6103 were also originally found by the referee in count three, but deleted from his amended decision. [12] We also conclude that section 6068 (a) is not a proper basis for charging a violation of section 6002.1. While section 6002.1 does not itself define a duty, section 6068 (j) was added in 1986 specifically to make it a duty of each member to comply with section 6002.1. [13] No indication appears as to why a violation of section 6068 (j) was not charged here since it became effective in January of 1987 and the charged offense occurred later that spring. However, the failure to charge violation of section 6068 (j) is harmless error since the notice to show cause sets forth in its text clear notice of the alleged violation of section 6002.1. (Cf. *Brockway v. State Bar* (1991) 53 Cal.3d 51 [similarly upholding culpability under rule 5-101 when the charging allegations included the language of the rule but did not cite the rule by name].)

[14] The Supreme Court has decisively rejected the past prosecutorial practice of routinely charging an attorney with a violation of the duty under section 6068 (a) to support the “Constitution and laws of the United States and of this state” without specifically identifying the underlying provision of law allegedly violated. The Court held that such practice not only failed to put the attorney on sufficient notice of the alleged violation, it undermined meaningful review of any decision based on such general charging allegation. (*Baker v. State Bar*, *supra*, 49 Cal.3d at pp. 814, 815; *Sands v. State Bar*, *supra*, 49 Cal.3d at

12. See generally Business and Professions Code sections 6068 (b)-(m), 6101, 6104, 6105 and 6106.

p. 931; *Middleton v. State Bar*, *supra*, 51 Cal.3d at pp. 561, 562; *Sugarman v. State Bar*, *supra*, 51 Cal.3d at p. 618.)

[15] The requirement of specification of the underlying provision of law allegedly violated means that the Supreme Court interprets section 6068 (a) as a conduit by which attorneys may be charged and disciplined for violations of other specific laws which are not otherwise made disciplinable under the State Bar Act. While section 6068 (a) clearly does not apply to the statutory and rule violations involved herein, there are a number of circumstances which will support a finding of a violation of section 6068 (a), if properly charged in the notice to show cause.

1. Where there is a violation of a statute not specifically relating to the duties of attorneys. (See, e.g., *Sands v. State Bar*, *supra*, 49 Cal.3d at p. 931 [upholding a finding that an attorney who pled guilty to bribing a DMV official violated section 6068 (a)]; *Slavkin v. State Bar* (1989) 49 Cal.3d 894, 902 [holding that an attorney who was guilty of violations of Health and Safety Code sections 11350 and 11550 thereby violated section 6068 (a)].)

2. Where there is a violation of a section of the State Bar Act which is not, by its terms, a disciplinable offense. For example, State Bar Act sections 6125 and 6126, dealing with an attorney's unauthorized practice of law, do not state that an attorney may be disciplined for a violation of either of the sections. [16] We have therefore held that discipline may appropriately be imposed where an attorney is charged with violating sections 6068 (a) and sections 6125 or 6126 of the State Bar Act. (*In the Matter of Trousil*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 236.)

3. Where there is a violation of an established common law doctrine which governs the conduct of attorneys, which is not governed by any other statute. For example, subdivision (m) of section 6068 was not added until 1986. [17] If an attorney failed to communicate adequately with a client before 1987, the attorney could not be charged with violating that subdivision. (*Baker v. State Bar*, *supra*, 49 Cal.3d at pp. 814, 815.) Instead, the attorney could be charged with violation of section 6068 (a). (*Layton v. State*

*Bar*, *supra*, 50 Cal.3d at pp. 903-904 [holding that an attorney's pre-1987 failure to communicate with and attend to the needs of his client could constitute the basis for discipline under section 6068 (a)].)

None of these situations was involved in this case. For the foregoing reasons, consistent with *Baker*, *supra*, and its progeny, we determine that the statutory and rule violations charged herein are not the proper basis for a finding of a section 6068 (a) violation.

### III. OTHER MODIFICATIONS TO DECISION

Our notice to the examiner following our initial review of the decision in this matter mentioned minor modifications which we intended to make. The examiner raised no objection to these modifications. Accordingly, we make the following findings of fact and modify the referee's decision to reflect the changes.

[18] The record in this matter with respect to count one of the notice to show cause demonstrated that respondent's misconduct caused harm both to his client, the administrator of a decedent's estate, and to the estate's beneficiary. Respondent owed a duty of care to both of these parties. As a result of his actions, respondent's client was forced to hire another attorney to complete the probate. In addition, respondent knew that the church was relying on receiving its portion of the estate by a certain time in order to pay for planned renovations to the church's property. Respondent's delay and failure to complete the probate caused the church to incur a financial burden in connection with the renovation due to the delay in the availability of the funds. These facts are adopted as findings in aggravation. (Std. 1.2(b)(iv).)

Prior to the occurrence of the misconduct charged in this proceeding, respondent had been a member of the California Bar for 13 years with no prior record of discipline. This fact is adopted as a finding in mitigation. (Std. 1.2(e)(i); see *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1148.)

Taking into account both additional aggravating and mitigating factors, the examiner is of the view

that the referee's recommendation as to discipline is still within the appropriate range of discipline for the offenses committed here. The examiner cites *Van Sloten v. State Bar* (1989) 48 Cal.3d 921 in which six months stayed suspension and no actual suspension was imposed for a one-count abandonment and *Smith v. State Bar* (1985) 38 Cal.3d 525 in which the respondent also received six months stayed suspension and thirty days actual suspension with one year probation. Neither of these cases involved additional charges of failure to cooperate with the investigation and failure to comply with section 6002.1. We therefore examine the impact of culpability on these two additional charges.

Section 6068 (i) makes failure to cooperate with the investigation independent grounds for discipline. Section 6068 (j) specifically makes compliance with section 6002.1 the subject of independent discipline. (See *Bowles v. State Bar* (1989) 48 Cal.3d 100, 108 ["a disregard of the statutory duty [imposed by section 6002.1], particularly in combination with professional indifference, is [not] undeserving of discipline"].) While the three counts are interrelated, the failure to maintain a current address for a year and a half in and of itself demonstrates an indifference to one of respondent's essential duties apart from his abandonment of a client and failure to cooperate in investigating the bar matter. It also made the consequences of his abandonment more severe because neither the client nor the new counsel was able to contact him. Nonetheless, *Wren v. State Bar* (1983) 34 Cal.3d 81 involved a one-count abandonment based on 22 months' inaction in a case aggravated by culpability on the serious charge of misrepresentations to the client in violation of sections 6106 and 6128 of the Business and Professions Code, and harm to the client from delay in returning the file and advanced fee. The attorney was also found to have attempted to mislead the State Bar by giving false and misleading testimony before the hearing panel. However, in mitigation, the attorney had no prior record of discipline in 17 years of practice preceding the abandonment. He received a two-year stayed suspension with two years probation and a forty-five day actual suspension. *Wren* was more egregious than the present case. We therefore agree with the Office of Trial Counsel that the referee's recommendation of one year suspension stayed and thirty days

actual suspension is within the appropriate range of discipline. [19] However, in light of concern regarding the abrupt manner in which respondent abandoned his client and abandoned his office, we add as an additional condition that respondent take and complete a course in law office management within one year of the effective date of the Supreme Court order. We also recommend that respondent take the newly established California Professional Responsibility Examination tailored for members of the California State Bar in lieu of the national Professional Responsibility Examination.

#### IV. FORMAL RECOMMENDATION

It is therefore recommended to the Supreme Court:

1. That respondent be suspended from the practice of law for one (1) year.
2. That execution of respondent's suspension be stayed, and that he be placed on probation for one (1) year subject to the following conditions:
  - a. That during the first thirty (30) days of said period of probation, he shall be suspended from the practice of law in the State of California;
  - b. That during the period of probation, he shall comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California;
  - c. That during the period of probation, he shall report not later than January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect, in writing, to the Probation Department, State Bar Court, Los Angeles, which report shall state that it covers the preceding calendar quarter or applicable portion thereof, certifying by affidavit or under penalty of perjury (provided, however, that if the effective date of probation is less than 30 days preceding any of said dates, he shall file said report on the due date next following the due date after said effective date):
    - (1) in his first report, that he has complied with all provisions of the State Bar Act, and Rules of

Professional Conduct since the effective date of said probation;

(2) in each subsequent report, that he has complied with all provision of the State Bar Act and Rules of Professional Conduct during said period;

(3) provided, however, that a final report shall be filed covering the remaining portion of the period of probation following the last report required by the foregoing provisions of this paragraph certifying to the matters set forth in subparagraph (2) thereof;

d. That respondent shall be referred to the Department of Probation, State Bar Court, for assignment of a probation monitor referee. Respondent shall promptly review the terms and conditions of his probation with the probation monitor referee to establish a manner and schedule of compliance consistent with these terms of probation. During the period of probation, respondent shall furnish such reports concerning his compliance as may be requested by the probation monitor referee. Respondent shall cooperate fully with the probation monitor to enable him/her to discharge his/her duties pursuant to rule 611, Transitional Rules of Procedure of the State Bar;

e. That subject to assertion of applicable privileges, respondent shall answer fully, promptly and truthfully any inquiries of the Probation Department of the State Bar Court and any probation monitor referee assigned under these conditions of probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with these terms of probation;

f. That respondent shall promptly report, and in no event in more than 10 days, to the membership records office of the State Bar and to the Probation Department all changes of information including current office or other address for State Bar purposes as prescribed by section 6002.1 of the Business and Professions Code;

g. That the period of probation shall commence as of the date on which the order of the Supreme Court in this matter becomes effective; and

h. That at the expiration of the period of this probation, if respondent has complied with the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for a period of one (1) year shall be satisfied and the suspension shall be terminated.

i. That respondent provide satisfactory evidence of completion of a course on law office management which meets with the approval of his probation monitor within one (1) year from the date on which the order of the Supreme Court becomes effective.

3. That respondent be ordered to take and pass the California Professional Responsibility Examination administered by the Committee of Bar Examiners of the State Bar of California within one (1) year from the effective date of the Supreme Court's Order.

We concur:

NORIAN, J.  
STOVITZ, J.