

STATE BAR COURT  
REVIEW DEPARTMENT

In the Matter of

**HAROLD GENE COLLINS**

A Member of the State Bar

No. 87-O-13132

Filed January 22, 1992

**SUMMARY**

Respondent stipulated to professional misconduct in 14 matters over a six-year period. He admitted to a pattern of accepting employment, performing some service, failing to take action at an important point in each case, not communicating with the client thereafter and, finally, ceasing all performance on behalf of the client. In eight instances, the clients' causes of action were lost due to respondent's inaction. Respondent failed to account for and refund over \$17,000 in unearned fees and costs in nine matters and misappropriated most of the funds advanced for costs.

The hearing judge found that respondent had been cooperative in the disciplinary proceeding and his misdeeds did not involve moral turpitude. In aggravation, the judge concluded that respondent disregarded his duties to clients after becoming aware of his difficulties, had not made significant restitution to clients when he was financially able to do so, and was likely to repeat his misconduct. The hearing judge recommended a five-year stayed suspension with actual suspension for two years and until respondent showed restitution and rehabilitation under standard 1.4(c)(ii). (Ronald G. Dean, Judge Pro Tempore.)

The State Bar examiner requested review, seeking respondent's disbarment. The review department modified the decision to find that respondent's overall misconduct involved moral turpitude. After reviewing comparable Supreme Court decisions concerning a pattern of wrongdoing, and considering the extent of respondent's misconduct, the harm to his clients, and the lack of strong extenuating circumstances and sustained rehabilitation, the review department recommended that respondent be disbarred.

**COUNSEL FOR PARTIES**

For Office of Trials: Teresa J. Schmid

For Respondent: H. Gene Collins, in pro. per.

**HEADNOTES**

- [1 a-c]    **204.20 Culpability—Intent Requirement**  
              **221.00 State Bar Act—Section 6106**  
              **531 Aggravation—Pattern—Found**  
              **842.10 Standards—Failure to Communicate/Perform—Pattern—Disbarment**  
 Even though an attorney’s individual acts did not involve moral turpitude, the attorney’s pattern of misconduct amounted to moral turpitude; habitual disregard of client interests, even where grossly negligent or careless rather than wilful or dishonest, constitutes moral turpitude and justifies disbarment.
- [2]        **151 Evidence—Stipulations**  
              **166 Independent Review of Record**  
 Even where the record at the hearing level consists of stipulated facts and conclusions, the review department’s review is nevertheless independent, and it may adopt findings, conclusions, and a disciplinary recommendation different from those of the hearing judge.
- [3]        **151 Evidence—Stipulations**  
              **169 Standard of Proof or Review—Miscellaneous**  
              **199 General Issues—Miscellaneous**  
 Review department adopted parties’ stipulated facts, noting that the Supreme Court ordinarily will hold an accused attorney to stipulated facts even in a matter arising from a stipulation as to facts and disposition.
- [4]        **151 Evidence—Stipulations**  
              **162.20 Proof—Respondent’s Burden**  
              **204.90 Culpability—General Substantive Issues**  
              **221.00 State Bar Act—Section 6106**  
 Where the stipulation of the parties did not preclude a conclusion that respondent’s misappropriations were acts of moral turpitude, and given the number and similarity of the matters in which respondent admitted to misappropriating trust funds, the burden shifted to respondent to rebut the conclusion that moral turpitude was involved.
- [5]        **151 Evidence—Stipulations**  
              **169 Standard of Proof or Review—Miscellaneous**  
              **199 General Issues—Miscellaneous**  
 Whether or not review department adopted parties’ stipulated legal conclusions, the Supreme Court would not be bound by them in its independent review.
- [6 a, b]    **842.52 Standards—Failure to Communicate/Perform—Pattern—No Disbarment**  
 In cases involving a pattern of misconduct not primarily intentional in nature, and in which the attorney has no prior record of discipline, suspension and not disbarment is most likely to be deemed adequate to protect the public when a tragic event or similar set of circumstances contributed to and explained the attorney’s misconduct, and when evidence of subsequent rehabilitation gives the court confidence that the pattern of misconduct is not likely to be repeated.

- [7]      **531      Aggravation—Pattern—Found**  
         **571      Aggravation—Refusal/Inability to Account—Found**  
         **582.10   Aggravation—Harm to Client—Found**  
         **750.52   Mitigation—Rehabilitation—Declined to Find**  
         **801.45   Standards—Deviation From—Not Justified**  
         **822.10   Standards—Misappropriation—Disbarment**  
         **831.90   Standards—Moral Turpitude—Disbarment**  
         **842.10   Standards—Failure to Communicate/Perform—Pattern—Disbarment**

Where respondent had engaged in a pattern of misconduct involving 14 matters spanning six of his nine years of practice, and had misappropriated over \$17,000 of client funds and caused the extinction of legal claims for eight clients, and where respondent had engaged in further misconduct after he had recognized his case management difficulties, and had barely begun his rehabilitation, the fact that the parties did not stipulate that respondent engaged in acts of moral turpitude in any individual matter did not necessarily mean that his misconduct warranted less discipline than in comparable cases where disbarment was ordered.

- [8]      **802.30   Standards—Purposes of Sanctions**  
         **822.10   Standards—Misappropriation—Disbarment**

Discipline is imposed to protect the public, enforce professional standards and maintain public confidence in the legal profession, not to punish. Pursuant to these principles, the Supreme Court and State Bar Court are most concerned when it appears an attorney is likely to repeat very serious misconduct, and the misconduct is not excused by personal stress or dramatic misfortune, and the attorney has failed to make restitution to clients when the attorney had the means to do so.

- [9]      **582.10   Aggravation—Harm to Client—Found**  
         **591      Aggravation—Indifference—Found**  
         **831.10   Standards—Moral Turpitude—Disbarment**  
         **842.10   Standards—Failure to Communicate/Perform—Pattern—Disbarment**  
         **1093     Substantive Issues re Discipline—Inadequacy**

A lengthy suspension with a standard 1.4(c)(ii) showing was not adequate discipline, where respondent committed extensive misdeeds which became commonplace in respondent's practice, caused harm to a number of clients, and failed to rectify the harm.

#### ADDITIONAL ANALYSIS

#### Culpability

##### Found

- 213.11 Section 6068(a)
- 214.31 Section 6068(m)
- 221.19 Section 6106—Other Factual Basis
- 241.01 Section 6147
- 242.01 Section 6148
- 252.11 Rule 1-300(B) [former 3-101(B)]
- 270.31 Rule 3-110(A) [former 6-101(A)(2)/(B)]
- 275.01 Rule 3-500 [no former rule]
- 277.21 Rule 3-700(A)(2) [former 2-111(A)(2)]
- 277.51 Rule 3-700(D)(1) [former 2-111(A)(2)]
- 277.61 Rule 3-700(D)(2) [former 2-111(A)(3)]
- 280.01 Rule 4-100(A) [former 8-101(A)]

280.41 Rule 4-100(B)(3) [former 8-101(B)(3)]

280.51 Rule 4-100(B)(4) [former 8-101(B)(4)]

**Not Found**

277.55 Rule 3-700(D)(1) [former 2-111(A)(2)]

**Aggravation**

**Found**

521 Multiple Acts

**Mitigation**

**Found**

710.10 No Prior Record

**Found but Discounted**

735.30 Candor—Bar

740.33 Good Character

745.31 Remorse/Restitution

**Declined to Find**

725.59 Disability/Illness

760.59 Personal/Financial Problems

**Discipline**

1010 Disbarment

## OPINION

STOVITZ, J.:

In this original disciplinary proceeding, there is but one significant issue: whether respondent, Harold Gene Collins, should be suspended for at least two years as recommended by the State Bar Court hearing judge pro tempore (judge) or whether respondent should be disbarred as urged by the State Bar examiner in seeking our review of the judge's decision.

There is no dispute as to respondent's culpability of serious professional misconduct in fourteen matters which admittedly formed a pattern spanning six of his nine years of law practice. At the outset of the hearing below in this matter, respondent and the examiner signed a written stipulation evidencing that misconduct. The pattern revealed by the stipulation involved respondent accepting or appearing to the client to accept employment in a variety of matters, followed by his performance of some services in most matters (but no services in three matters), his failure to take action when an important development occurred in most of the cases and to communicate that action to his client and concluding with his refusal to take further steps for the client. In nine of the matters, he failed to account to his client for unearned advanced fees and costs totalling over \$17,000 and in seven matters misappropriated most of the sums advanced for costs. By his own admission, at the time of the hearing below, he still owed clients in seven matters a total of \$12,176 in restitution. Eight of respondent's clients lost their causes of action due to his inaction.

Influencing the judge's recommendation of suspension was the lack of any stipulation that respondent's misconduct involved moral turpitude or dishonesty. (See Bus. & Prof. Code, § 6106.)<sup>1</sup> The judge also concluded that respondent's acts were not venal but probably arose from a personality defect and an inadequate comprehension of the high duties of an attorney to clients. The judge also considered in mitigation, respondent's cooperation and candor with

the State Bar. Notwithstanding these factors in mitigation, the judge also concluded that respondent was likely to repeat his misconduct, that he admittedly disregarded obligations to some clients after he had realized problems handling his clients' cases and he had not undertaken significant restitution by the close of the hearing below even though he appeared to be able to make that restitution.

[1a] As we shall discuss in this opinion, the Supreme Court has held repeatedly that the type of extensive misconduct to which respondent stipulated involves moral turpitude even though individual acts might not themselves involve moral turpitude. Since the fundamental purpose of attorney discipline is protection of the public, we view comparable decisions of the Supreme Court to guide us to recommend disbarment, rather than suspension, considering the extent of respondent's misconduct, the harm to his clients, the degree to which it pervaded his relatively brief time in law practice and the lack of evidence of his sustained rehabilitation.

### I. THE RECORD

#### A. Procedural History.

The formal charges (notice to show cause) alleging 10 matters of misconduct were filed in late December of 1989 and respondent answered those charges the next month. On July 13, 1990, the parties submitted a stipulation as to facts and discipline but the judge rejected it. (Second Amended Stipulation as to Facts and Culpability (hereafter "S."), p. 2.) He requested that a second stipulation be prepared focusing on certain areas of fact and culpability.

After the judge's rejection of the first stipulation, the parties agreed to limit the stipulation to facts, mitigation and aggravation and omit stipulating to the degree of discipline. A trial on the issue of discipline took place on October 4, 1990. Respondent's testimony in explanation and mitigation was the only evidence received beyond a 41-page second amended stipulation and a number of attached

---

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

exhibits, including respondent's written statement in mitigation. The judge approved that stipulation with some relatively minor modifications.<sup>2</sup> The stipulation ultimately approved by the judge was one under rule 401 of the Transitional Rules of Procedure of State Bar concerning stipulations as to fact and not under the rules covering stipulations as to "facts and disposition." (Trans. Rules Proc. of State Bar, rules 405-408.) At the same time, the second amended stipulation stated in part: "D. It is understood and acknowledged by the parties that the Stipulation . . . shall bind the parties unless a judge of the State Bar Court, for good cause, rejects or relieves the parties from such binding effect." (S. p. 4.)

#### B. Summary of Respondent's Admitted Misconduct.

It is unnecessary to repeat here the full detail of the stipulated facts and conclusions in the 14 matters. However, understanding the essence of those stipulated facts is important when considering the decisive issue of the appropriate degree of discipline to recommend. The essential summary below, drawn from the stipulation and from the undisputed documentary evidence attached thereto, follows the order of the stipulation.

##### *Count 1 (Mahan). Civil business defense litigation.*

Mr. and Mrs. Gary Mahan, existing clients, hired respondent in November 1987 to defend business litigation pending against them in a King County, Washington, superior court. In January 1988, although not a member of the Washington State Bar Association, respondent filed a "general

denial" in the King County court. (S. p. 5; attached exhs. A-C.)<sup>3</sup> In April 1988, opposing counsel moved and obtained an order of the Washington court striking the general denial and entering the Mahans' default. Respondent was unaware of the default and the resulting \$129,051 judgment against the Mahans; and being so unaware, did not move to set it aside. Respondent stipulated that he attempted to appear in a jurisdiction in which he was not licensed (former rule 3-101(B)),<sup>4</sup> and failed to take reasonable steps to avoid foreseeable prejudice to the Mahans (former rule 2-111(A)). He also failed to respond promptly to all but a few of the Mahans' requests for information. (Bus. & Prof. Code, § 6068 (m).) Finally, respondent, with reckless disregard, did not act competently to keep himself aware of the status of the litigation. (Former rule 6-101(A)(2)<sup>5</sup>; S. pp. 5-6.)

In September 1988, when Ms. Mahan discovered the default judgment, she hired new counsel who was unsuccessful in attempting to vacate the default judgment. The Mahans ultimately filed bankruptcy and thereby discharged the judgment. (S. pp. 6-7.)

##### *Count 2 (Ashton). Plaintiff employment discrimination.*

In October 1987, Stephen Ashton, a former employee of a state agency, hired respondent to represent him. Ashton alleged that he had been the victim of race discrimination in employment. Respondent accepted the case on a contingent fee basis and Ashton advanced \$1,500 in costs to be placed in respondent's trust account. Respondent corresponded with the agency and the Equal Employment Oppor-

2. The judge has detailed these changes on pages 7-8 of his decision filed April 18, 1991. In addition, the stipulation included respondent's admission to four "investigation" matters not charged in the original notice to show cause.

3. When filing his "general denial" in the Washington court, respondent used a standard California Judicial Council form patterned after the California Code of Civil Procedure and rule 982, California Rules of Court.

4. In each recital of a violation required to be "wilful" as a prerequisite to discipline (see Bus. & Prof. Code, § 6077), respondent admitted in the stipulation that his violation was wilful. Because this stipulation involves misconduct occur-

ring under the Rules of Professional Conduct in effect before May 27, 1989, as well as under the rules in effect on and after that time, we shall use the term "former rule" to refer to the rules in effect before May 27, 1989, and the term "rule" to refer to those in effect on and after May 27, 1989.

5. In this and the other nine matters wherein respondent admitted to violations of rule 3-110(A) or its predecessor, former rule 6-101(A)(2), the hearing judge found from either the face of the admissions or the stipulated facts sufficient evidence that the violations met the prerequisites of the rule to be causes for discipline. (Decision pp. 7-8.) We adopt the judge's findings in this regard.

tunity Commission (EEOC). In July 1988 Ashton terminated respondent's services but a month later re-hired him. In December 1988, after some delays not attributable to respondent, respondent filed suit on Ashton's behalf in San Bernardino County Superior Court. The state's demurrer to the complaint was sustained without leave to amend.<sup>6</sup> (S. p. 9.)

Respondent appealed the order sustaining demurrer. In May 1990 the Court of Appeal notified respondent he had appealed from a non-appealable order (Code Civ. Proc., § 904.1) and that unless he filed within 20 days proof of entry of a formal judgment on which to base a jurisdictionally proper appeal, the court would dismiss the appeal. Although respondent contacted opposing counsel to discuss the need for a judgment, he did not obtain it and the Court of Appeal dismissed Ashton's appeal. Respondent stipulated that he: failed to act diligently to perfect an appealable judgment (rule 3-110(A)) and to keep Ashton informed of the dismissal of his appeal (§ 6068 (m)), ceased activity on Ashton's appeal, effectively withdrawing without taking steps to avoid foreseeable prejudice to Ashton (rule 3-700(A)(2)) and kept the advanced costs in his trust account, misappropriating them for attorney fees (former rule 8-101(A) and rule 4-100(A)). (S. pp. 9-11.) Respondent owes Ashton \$1,500 restitution, less the amount he actually expended in costs. (S. p. 47.)<sup>7</sup>

*Count 3 (Worden). Plaintiff action against department store.*

In December 1985 Beth Worden hired respondent to pursue her claim against a department store. Respondent took the case on a contingent fee basis

and accepted \$2,000 in costs he was to keep in trust. In mid-1987, respondent settled Worden's case for \$10,000 and sent her \$6,000 of that sum after deducting his attorney fee. (S. pp. 11-12.) Between August and October 1987 Worden repeatedly sought an accounting of settlement funds and costs and return of her files. In October 1987, after Worden complained to the State Bar, respondent returned her file to her. Two weeks later, he gave her an accounting showing all advanced costs were applied to fees. However, he had already kept the part of Worden's settlement he was entitled to as fees under his fee agreement. Respondent stipulated that he misappropriated the \$2,000 in costs<sup>8</sup> (former rule 8-101(A)), failed to maintain complete records of Worden's funds, failed to promptly account to her for those funds (former rule 8-101(B)(3)), and failed to promptly deliver her unearned costs (former rule 8-101(B)(4)).<sup>9</sup> Respondent has yet to repay Worden the unearned costs. (S. p. 47.)

*Count 4 (Lacey). Decedent's estate.*

In August 1987 Robert Lacey hired respondent to handle the estate of one Randy Moore, apparently then in probate. (S. pp. 13-14.) At the time of Lacey's first meeting with respondent, he also met respondent's office manager, Susan O'Quinn. Following O'Quinn's directions, Lacey gave her \$1,500 to pay a "probate fee" and another \$1,000 to establish a joint trust account with O'Quinn and Lacey the signatories.<sup>10</sup>

Unknown to respondent (until later), O'Quinn put Lacey's \$1,000 check in her personal account and misappropriated that money. Between August

6. In correspondence to respondent two months prior to demurrer, the deputy attorney general assigned to defend the matter related to respondent the precise legal defects she identified in Ashton's civil complaint and previewed the grounds on which she was later to demur. (S., attached exh. E.)

7. An exhibit attached to the stipulation (exh. E) shows what appears to be a filing fee cash register imprint on Ashton's superior court civil complaint in the amount of \$109. The hearing judge afforded respondent a method during probation of establishing proof of amounts he had expended for several clients as a credit to restitution he recommended.

8. An accounting respondent provided Worden earlier in the case showed he had used only \$130 of the \$2,000 in advanced costs. (S. p. 11.)

9. Page 13, line 13 of the stipulation mistakenly refers to respondent's violation of a non-existent provision, former rule 8-101(A)(4). In oral argument before us, the parties agreed that that reference should be to former rule 8-101(B)(4).

10. The stipulation does not detail the nature of this "probate fee" nor the purpose of the other \$1,000 requested for the joint trust account.

and November 1987 Lacey tried unsuccessfully to communicate with respondent about the probate's progress and to get an accounting of funds. O'Quinn intercepted Lacey's calls and respondent was not informed about them. In December 1987 O'Quinn left respondent's employ and Lacey's attempts to communicate with respondent were also unsuccessful. In May 1988 Lacey discharged respondent. Respondent had not, as of October 1990, accounted for Lacey's \$2,500 advances nor returned Lacey's original papers. Respondent admitted his failure to: communicate reasonably with Lacey (§ 6068 (m); rule 3-500); ever initiate steps to probate the case, effectively withdrawing from employment prejudicially to Lacey (rule 3-700(A)(2); former rule 2-111(A)(2));<sup>11</sup> supervise O'Quinn (former rule 6-101(A)(2)); maintain in trust the \$1,500, instead misappropriating it for fees to which he was not entitled (rule 4-100(A); former rule 8-101(A)); give accountings to his client and maintain complete records of Lacey's funds (rule 4-100(B)(3); former rule 8-101(B)(3)) and promptly deliver Lacey's property (rule 4-100(B)(4); former rule 8-101(B)(4)). (S. pp. 14-17.)

As of the State Bar trial in this matter, respondent had still not restored Lacey's \$2,500. (S. p. 47.)

*Count 5 (Clark I). Plaintiff corporate securities civil action.*

In August 1985 Kenneth Clark hired respondent to sue certain people for fraud under the federal Securities Act and other causes. Clark advanced respondent \$2,000 towards fees and costs. In December 1985 respondent filed suit for Clark in United States District Court, Central District of California. On respondent's motion in October 1986, the district court entered the default of one defendant. Respondent failed to cause the default judgment to be entered. In June and July 1987 respondent failed to

comply with court rules to prosecute Clark's suit and, after three orders to show cause, the court dismissed it. (S. pp. 18-19; attached exh. M.)<sup>12</sup> Respondent stipulated that he ceased activity for Clark thereby withdrawing prejudicially to him. (Former rule 2-111(A)(2).) Meanwhile, respondent failed to communicate with Clark between October 1986 and August 1987 (§ 6068 (m)) and respondent's failure to get a judgment against one of Clark's defendants impaired Clark's ability to collect funds owed him. (S. pp. 19-20.)

*Count 6 (Clark II). Plaintiff breach of contract action.*

In September 1985 Clark had also hired respondent to sue a business and an individual for breach of contract. For this matter, Clark advanced respondent \$500 toward attorney fees and \$124 for costs. (S. p. 20.) The next month, respondent filed suit for Clark and performed services in the matter until August 1986. By that time, Clark's advance fees had been used up and respondent failed to have Clark make a necessary decision as to whether or not Clark wanted to pay the cost of taking two depositions. Between August 1986 and October 1987 respondent failed to perform any further services for Clark, failed to correspond with him and failed to formally withdraw. By such failure respondent violated former rule 2-111(A)(2)<sup>13</sup> and failed to act competently per former rule 6-101(A)(2). (S. pp. 20-21.)

Clark hired new counsel who was able to resolve the case in Clark's favor. (S. p. 21.)

*Count 7 (Belz). Plaintiff corporate securities civil action.*

Raymond Belz and others hired respondent in October 1985 to sue certain people for fraud under

11. We follow the hearing judge's rejection of the stipulation's conclusion of a rule 3-700(D)(1) violation (upon withdrawal, failure to promptly return client papers) since the facts supporting it occurred prior to the effective date of the rule. (See decision p. 7.)

12. Documents attached to the parties' stipulation show that respondent was unable to effect service of New York defen-

dants either personally or through the Secretary of State. (S., attached exh. M.)

13. At oral argument before us, the parties agreed that the reference on page 21, lines 24-25 of the stipulation to a former rule should read: "2-111(A)(2)."

the federal Securities Act and other causes. Belz advanced respondent \$1,000 for costs. One year later, respondent filed a federal district court suit for Belz and the other plaintiffs. Between February and April 1987 the district court directed respondent twice to show cause why Belz's suit should not be dismissed for failure of prosecution. In April of 1987 the court dismissed the suit. (S. pp. 22-23; attached exh. Q.)

After hiring respondent, Belz made many unsuccessful attempts to contact him. Belz's last successful contact with respondent was in May 1986, almost a year before the court dismissed Belz's case. Respondent admittedly violated section 6068 (m). (S. pp. 23-24.) Respondent failed to tell Belz that the case had been dismissed. In July 1987 respondent moved his office, notified other clients of the move, but Belz did not receive the notice. These facts, together with respondent's cessation of activity in Belz's matter amounted to a violation of former rule 2-111(A)(2). Moreover, respondent violated former rule 8-101(A) by failing to maintain in trust \$676 of Belz's \$1,000 cost advance, misappropriating that sum for fees contrary to respondent's fee agreement with Belz. (S. pp. 23-24.) Respondent had not made restitution of the \$676. (S. p. 48.)

The stipulation does not state whether Belz and his co-plaintiffs were able to ultimately prevail against the defendants. However Belz hired another attorney who sued respondent for legal malpractice. That case was settled in Belz's favor for defense costs. (S. p. 23.)

*Count 8 (Barranco). Plaintiff wrongful termination suit.*

After termination from employment, Maria Barranco hired respondent in February 1988 to press legal action against her former employer. In September 1988 Barranco advanced respondent \$2,500 in costs. Between November 1988 and February 1989 respondent failed to communicate with Barranco

despite her many telephone calls and one visit to respondent's office at a time when he was in the office.<sup>14</sup> At the end of January 1989 Barranco discharged respondent and requested a cost refund. Ten days later, respondent wrote Barranco that he was ceasing all work on her case and was returning her cost advance but he did not actually return the \$2,500 until April 21, 1989, after being contacted by the State Bar. Respondent stipulated that his misconduct in this matter violated former rules 2-111(A)(2), 8-101(B)(3) and 8-101(B)(4). (S. pp. 24-27.)

Respondent also admitted that he performed no substantial services for Barranco and failed to communicate with her on a regular basis in violation of section 6068 (m). Respondent was waiting for additional information from Barranco to proceed on her behalf but Barranco was unaware of the need for that information. (S. p. 26.)

*Count 9 (Campbell). Plaintiff legal malpractice suit.*

In June 1983, two years after respondent was admitted to the practice of law, he accepted employment from James Campbell to pursue a legal malpractice action against Campbell's former lawyers. Campbell advanced respondent \$865 toward fees and costs. In May 1984 respondent filed suit for Campbell; but, except for filing a successful opposition in August 1987 to the court's motion to dismiss Campbell's suit, respondent failed to perform services. After successfully opposing the dismissal, respondent failed to move the case along because Campbell's defendant "was in bankruptcy." (S. p. 27.)

In October 1987 Campbell added respondent to the list of lawyers he was suing for legal malpractice. Respondent withdrew as counsel of record for Campbell on the ground of Campbell's suit against respondent, but respondent's withdrawal was not until April 1989, less than one month before the five-year statute was to run. This withdrawal was

---

14. At oral argument before us, the parties agreed that the reference on page 25, line 8 of the stipulation to "early February" was to the year 1989.

prejudicial to Campbell in violation of former rule 2-111(A)(2). (S. pp. 27-29.)

In the meantime, between January and September 1987 respondent violated section 6068 (m) since Campbell was unsuccessful in communicating with respondent despite placing at least 44 phone calls to his office and writing one certified mail letter to recover an accounting (of advanced funds) and his (Campbell's) file. (S. p. 28.) At times, during this period, Campbell was able to speak to respondent's secretary, O'Quinn, who cancelled appointments with respondent and blocked Campbell's attempts to review his file. O'Quinn also falsely told Campbell that his case was moving properly. Respondent failed to supervise O'Quinn in violation of former rule 6-101(A)(2). Respondent also admitted his failure to provide Campbell with an accounting of funds in violation of former rule 8-101(B)(3).

*Count 10 (Randell). Plaintiff wrongful termination suit.*

In January 1987 respondent was "consulted" but did not consider himself retained by Gladys Randell in a wrongful termination matter. Respondent had no retainer agreement with Randell and received no advance fees or costs. That month, after reviewing Randell's documents, respondent wrote a letter to a federal agency informing it of Randell's desire to sue. (S. p. 30; attached exh. U.) The next month, the EEOC wrote to respondent as to its requirements and requesting that within 10 days, Randell furnish specified information. (*Id.*; attached exh. W.) Respondent failed to inform Randell of the EEOC demand, failed to reply to the EEOC demand and failed to protect her interests or to withdraw properly, thereby prejudicing her. Respondent did not advise Randell until late June 1987 that he would not represent her, after respondent received a June 7 letter from the EEOC "cancelling [Randell's] complaint for failure to prosecute." Respondent agreed that his failures amounted to violations of section 6068 (m) and of former rules 2-111(A)(2) and 6-101(A)(2). (S. pp. 31-32.)

Not until July 11, 1987, four days after the EEOC limitations period ran, did Randell receive her file. In the meantime, Randell had unsuccessfully tried to contact respondent between January and July 1987 because she was aware of the limitation period for her claim. Respondent's staff misrepresented that Randell's case was proceeding and respondent failed to supervise his staff in violation of former rule 6-101(A)(2).

*Investigation matter 89-O-14039 (West).  
Marriage dissolution.*

In February 1988 Elvira West consulted with respondent to seek a marriage dissolution. He told her he would require advance fees and costs of \$1,500. In May 1988 West hired respondent and paid the \$1,500 advance.<sup>15</sup> A short while later, respondent told West he would file and serve a dissolution petition by August 1988. In a mid-summer 1988 meeting with West, respondent told her that his office was backlogged and he would file her petition soon. (S. p. 33.)

In October 1988, after respondent had prepared but before he had filed West's petition, the couple reconciled. West asked respondent for a refund of unearned fees. After respondent asked West to put her request in writing, she did so but between December 1988 and March 1989, respondent ignored West's five phone messages and another letter. He failed to maintain in his trust account the \$1,500 for advance fees and costs, instead misappropriating the sum in violation of former rules 8-101(A), 8-101(B)(3) and 8-101(B)(4). By failing to promptly return upon withdrawal, West's papers and unearned fees, respondent violated former rules 2-111(A)(2) and 2-111(A)(3).

*Investigation matter 89-O-16734 (Hill). Plaintiff wrongful termination suit.*

After being terminated from employment with a Southern California city, Alexander Hill hired re-

15. The stipulation is unclear as to whether this \$1,500 was to cover only fees or both fees and costs. At oral argument, the

parties agreed that this amount was to cover both fees and costs.

spondent to represent him in June 1988. Hill advanced respondent \$2,500 for fees but respondent did not enter into a written retainer agreement with Hill in violation of sections 6068 (a) and 6148 (a). (Decision pp. 8-9; S. pp. 35, 37.) Respondent told Hill he would file suit for him and it would take 12 to 18 months to get a court date. Respondent failed to perform any services for Hill, thus withdrawing prejudicially in violation of former rule 2-111(A)(2) and rules 3-700(A)(2) and 3-700(D)(1).

Between August and November 1989 Hill contacted respondent five times to learn the status of his case. Respondent spoke to him once during this period, had no record of his case, later searched for Hill's file but failed to respond to his inquiry. Respondent stipulated to his violation of section 6068 (m) and rule 3-500. Although respondent received Hill's October 1989 certified letter requesting return of his documents and \$2,500, respondent failed to comply until March of 1990 after a State Bar complaint had been filed. At that time, he returned Hill's \$2,500. Respondent has not been able to find Hill's file or original records including tape recordings and transcripts. Respondent agreed that he had violated former rule 6-101(A)(2) and rule 3-110(A). Respondent's failure to repay Hill promptly Hill's unearned fees and failure to account for them violated former rules 8-101(B)(3) and 8-101(B)(4) and rules 4-100(B)(3) and 4-100(B)(4). (S. pp. 36-38.)

*Investigation matter 89-O-16896 (Lancaster).  
Plaintiff wrongful termination suit.*

Robert Lancaster was terminated from his job with a corporation in February 1986. One month later, he hired respondent on a contingent fee basis. Lancaster advanced respondent \$3,000 for costs. Respondent gave no written retainer agreement to

Lancaster in violation of sections 6068 (a) and 6147 (a). (Decision pp. 8-9; S. pp. 38, 40; attached exh. Z.) In November 1986 respondent filed a superior court suit for Lancaster.

After not communicating with Lancaster for five months (from November 1986 to April 1987), respondent had four conversations with him between June 1987 and April 1989. At each contact, respondent told Lancaster that his case was "proceeding along well." (S. p. 38.) In July 1989 Lancaster's former employer filed a motion for judgment on the pleadings, or, in the alternative, to strike portions of Lancaster's complaint. In August 1989 respondent met with Lancaster and told him he had no case based on a recent Supreme Court decision. (S. p. 39.)<sup>16</sup> Meanwhile, six days earlier, respondent had filed a statement of non-opposition to the defense motion, requesting 30 days leave to amend the complaint. The court granted the defense motion but allowed Lancaster 30 days to amend. Although respondent received the court order, he failed to amend his complaint. Instead, on October 26, 1989, respondent filed a dismissal with prejudice of Lancaster's entire suit. Respondent admitted his violation of rule 3-110(A).

On October 10, 1989, Lancaster requested of respondent an accounting of unused costs. Respondent promised it twice during that month but never furnished it and never refunded Lancaster's \$3,000 advance. Respondent's cost ledger sheet shows no expenditures of the \$3,000 cost advance (even though respondent did file a civil complaint which required a superior court filing fee). With regard to his failure to render Lancaster his requested accounting and his retention of unearned costs, respondent admitted that he violated rules 3-700(D)(1), 4-100(A), 4-100(B)(3) and 4-100(B)(4). (S. pp. 39-42, 47; attached exh. HH.)

---

16. The Supreme Court case referred to was not identified in the record. *Foley v. Interactive Data Company* (1988) 47 Cal.3d 654 eliminating tort causes of action in certain wrongful termination cases was filed in December 1988, well before respondent's August 1989 conversation with Lancaster and during the time that respondent was telling Lancaster his case was proceeding well. However, in May 1989, the Supreme Court filed *Newman v. Emerson Radio Corp.* (1989) 48 Cal.3d 973, 976, which made the *Foley* doctrine retroactive to

cases not final as of January 30, 1989. In moving for judgment on the pleadings, Lancaster's defendant relied on both *Foley* and *Newman* as well as other legal principles to defeat Lancaster's suit, such as that the suit was preempted by federal law ("ERISA") (S., attached exh. Z.) The cited wrongful termination cases did not eliminate the ability to sue for wrongful termination but limited the causes or theories which could be the basis of recovery.

*Investigation matter 90-O-10258 (Williams).  
Plaintiff sex discrimination suit.*

Gary Williams had been employed as an accounting supervisor by a public agency. In April 1988 he was terminated from employment. He claimed that agency management had subjected him to verbal abuse of a sexual nature, causing him to take a disability leave. On May 6, 1988, he hired respondent to represent him. Respondent agreed to file an action against the agency for sex discrimination and to represent Williams at a board hearing on unemployment benefits. Respondent and Williams entered into a fee agreement and Williams advanced \$1,000 toward costs. (S. p. 42; attached exh. BB.)

Respondent failed to appear at the August 1988 unemployment hearing due to a date conflict. It was continued several times but another attorney who ultimately appeared for respondent was not successful in getting benefits for Williams. Williams appealed the denial in pro. per. and was able to get his unemployment benefits. (S. p. 42.)

In April 1989 respondent filed suit for Williams based on sex discrimination. In August 1989 defendants moved for summary judgment. Respondent reviewed the motion, discovery and law and concluded that Williams would not probably succeed. He did not oppose defendants' motion and in October 1989, judgment was entered for defendants. After entry of judgment, respondent met with Williams, told him about the judgment, advised him to "put the matter behind" him and told him that all of the \$1,000 in costs had been used up. (S. p. 43.) Williams told respondent he wanted to appeal and understood that respondent would handle the appeal, conduct research to define appeal grounds and inform Williams if no appeal grounds existed. Williams repeated his instructions twice in letters to respondent sent in October and November 1989. On November 27, 1989, respondent told Williams he would not file an appeal for him because of lack of merit. This was respondent's first express statement

of withdrawal from Williams's case. Respondent failed to return Williams's documents as requested, failed to provide an accounting for costs and failed to maintain in trust the \$1,000 costs, misappropriating them for attorney fees.<sup>17</sup> Respondent did not repay Williams the unearned costs. (S. pp. 43-44.)

As a result of his misconduct in this matter, respondent admitted violating section 6068 (m) and rule 3-500 by not informing Williams of a significant development in his matter such as having filed no opposition to the summary judgment motion. Respondent also violated rules 3-110(A) and 3-700(D)(1) and the trust account rules: 4-100(A), 4-100(B)(3) and 4-100(B)(4). (S. pp. 44-46.)

#### C. Evidence re Mitigation and Aggravation.

In mitigation, the parties stipulated that respondent was admitted to practice law in 1981 and has no prior discipline, that he was candid and cooperative with the State Bar during formal proceedings and that he has expressed remorse and a desire to improve his office practices to better inform his clients. The parties agreed to attach respondent's written statement in mitigation, nine character reference letters and a commendation by the Board of Governors of the State Bar given respondent in 1988 for outstanding contributions to delivery of pro bono legal services. (S. p. 46; attached exh. CC.) However, the parties did not stipulate as to whether this material constituted mitigation under the Standards for Attorney Sanctions for Professional Misconduct ("stds.").

At trial, respondent also testified briefly in mitigation. His testimony was consistent with his written statement. Collectively, that evidence shows: respondent served as a police officer and deputy sheriff for 17 years before becoming a lawyer. After admission to the practice of law, he went right into solo practice. Fearing not enough work, he took on an ever-increasing number of cases until, at one point, he had 180 active cases. He also had a problem with being unable to turn down clients or client requests.

---

17. As in the Ashton and Lancaster matters, respondent properly used a small but unstated portion of the cost advance for the court filing fees of Williams's suit.

Many of respondent's cases required much court appearance time, thus taking him away even more from the office and communication with his many clients.

Respondent never had a business background and he began to realize he had office management problems in late 1988. At that time, he began to reduce his caseload. By the time of trial, he had reduced his caseload to 40 matters and had improved his ability to return client phone calls. Yet he reported that he still had a heavy court appearance calendar. Starting in July 1990 respondent has consulted a psychologist to help him better understand his situation. That psychologist reported noting no evidence of any personality disorder but that respondent did appear to be a "super-responsible" type who took on more than he could handle, given the limitations of his staff. Respondent never asserted any domestic, financial, drug, alcohol, health or other pressures, stresses or problems which underlay his misdeeds.

Respondent testified that he was waiting until State Bar proceedings concluded to make restitution (R.T. p. 14), but he appeared to be both able and willing to repay his clients promptly (R.T. pp. 29-30.). He had not acknowledged that he owed his clients any refunds until he reached the first (rejected) stipulation with the State Bar examiner. Respondent expressed regret and distress about the clients he harmed. He felt he did a good job for the vast majority of his clients. He acknowledged, however, that "some" clients "fell through the cracks." (R.T. p. 30.) Respondent assured the hearing judge he was doing all possible to prevent a recurrence and had plans, depending on the outcome of the matter, to associate with other lawyers in order to achieve the structured environment he knew he needed.

Respondent's nine character letters were from a mixture of sources: lawyers, clients and one law enforcement officer. None stated awareness of the nature or extent of respondent's misdeeds, most focused on his good work in recent years (1988-1990) and a few commented mostly on respondent's community service or general integrity. These letters praised respondent and those that focused on his attorney skills praised his diligence, integrity and moral character. (S., attached exh. CC.)

In aggravation, the parties stipulated that respondent's misconduct evidenced multiple acts and a pattern, that it involved mishandling of and failure to account for trust funds, that his acts caused significant harm to clients in eight of the matters resulting in loss of causes of action in each of those matters, that respondent failed to take prompt or spontaneous steps to atone by failing to make restitution in seven of the matters and that respondent failed to return Williams's files and property. (S. pp. 47-48.)

#### D. The Judge's Decision and Recommendation.

In his decision, the judge posed the question whether respondent was likely to repeat his misconduct and concluded that he was. (Decision pp. 10, 13.) The judge noted in part that 13 of the 14 matters involved respondent's abandonment or disregard of client interests and 10 of the matters involved trust account violations, 5 involving misappropriation of advanced costs. (*Id.*, pp. 10-11.) The judge also noted respondent's attribution of his problem to having taken on too many cases but concluded that that explanation could justify neither his misappropriation of funds nor his misconduct in 1989 and 1990 after he had realized his office management and too-heavy caseload problems. (*Id.*, pp. 11-12.)

Further, the judge observed that not until July 1990 did respondent make an effort to identify the restitution owed to clients and had not yet repaid the amounts. Respondent's character references were not considered to be an "extraordinary" showing of good character. The judge did consider significant, respondent's exemplary candor and cooperation and the lack of any finding or conclusion in the stipulation of moral turpitude. The judge concluded that respondent's actions were not venal, but that "while respondent has certainly a determination for rehabilitation, that process is barely out of infancy." (Decision p. 14.)

The judge distinguished several of the cases cited by the examiner who had sought disbarment. Concluding that "[s]trictly applied," the applicable standards would call for respondent's disbarment, the judge believed that disbarment was too harsh in light of respondent's remorse and determination for

rehabilitation. Nevertheless, in view of respondent's persistent failure to make restitution and the need for a "substantial period of rehabilitation" before allowing respondent to practice law, the judge recommended suspension for five years, stayed on conditions of a like period of probation and actual suspension for two years and until respondent makes a rehabilitative showing required by standard 1.4(c)(ii). Other duties recommended included the making of restitution, participation in psychiatric or psychological counselling, completion of a course on law office management, development of a law office organization plan, and completion of the State Bar's "ethics school."

## II. DISCUSSION

### A. Culpability and the Appropriate Conclusion re Moral Turpitude.

Neither party contests the judge's findings and conclusions including that portion of the judge's decision pointing out the lack of any stipulated fact or conclusion of moral turpitude arising from respondent's misconduct. Before passing to the issue which is contested—the appropriate degree of discipline—we observe that the issue of discipline is obviously influenced by the appropriate findings and conclusions to be drawn from the record.

[2] Although this record rests centrally on stipulated facts and conclusions, our review is nevertheless independent. We may adopt findings, conclusions and a disciplinary recommendation different from those of the hearing judge. (Trans. Rules Proc. of State Bar, rule 453(a); see *Fitzsimmons v. State Bar* (1983) 34 Cal.3d 327, 332-333.) [3] On independent review as to the facts, except where noted *ante* in insignificant aspects, we have adopted those contained in the parties' second amended stipulation, noting that the Supreme Court ordinarily will hold the accused attorney to stipulated facts even in a matter arising from a stipulation as to facts and

disposition.<sup>18</sup> (See, e.g., *Pineda v. State Bar* (1989) 49 Cal.3d 753, 756; *Schneider v. State Bar* (1987) 43 Cal.3d 784, 793-794.)

[4] We also agree with the judge's conclusions as to the 14 individual matters with one very important reservation. As to respondent's admitted misappropriations in the Ashton, Worden, Lacey, Belz, West, Lancaster and Williams matters, we believe that the record may well warrant the conclusion that those misappropriations were not merely violations of the Rules of Professional Conduct but were also acts of moral turpitude proscribed by section 6106. In the first place, in agreeing that respondent had misappropriated funds, two of the three Supreme Court opinions cited by the parties in the stipulation held that the attorney had engaged in a wilful misappropriation. (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 795; *Jackson v. State Bar* (1979) 25 Cal.3d 398, 403-404.) The Supreme Court has stated, "There is no doubt that the wilful misappropriation of a client's funds involves moral turpitude." (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034; *Bate v. State Bar* (1983) 34 Cal.3d 920, 923.) Second, there is no language in the stipulation which precludes a conclusion that respondent violated section 6106 and three of the original charges alleged that he had violated that section. Third, given the number of matters in which respondent admittedly misappropriated trust funds and the similarity of those misdeeds, we believe that the burden shifted to respondent to show that moral turpitude was not involved. This respondent did not do. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475.)

[1b] However, we need not determine whether any of respondent's *individual* acts of misconduct involved moral turpitude<sup>19</sup> [5 - see fn. 19] because his admitted *pattern* of misconduct clearly amounts to moral turpitude under our reading of Supreme Court decisions.

18. As noted, this stipulation was only as to facts and conclusions.

19. [5] Whether or not we adopted the stipulated conclusions would not bind the Supreme Court in its own independent

review of the record. (See *Schneider v. State Bar*, *supra*, 43 Cal.3d at p. 794.)

[1c] The Supreme Court has decided a number of similar “pattern” misconduct cases in the past. The Court has often stated that habitual disregard of client interests is ground for disbarment. “Even when such neglect is grossly negligent or careless, *rather than wilful and dishonest*, it is an act of moral turpitude and professional misconduct justifying disbarment.” (*Stanley v. State Bar* (1990) 50 Cal.3d 555, 566, emphasis added; *Walker v. State Bar* (1989) 49 Cal.3d 1107, 1117, and cases cited by both opinions.) Thus we must conclude that the effect of respondent’s admitted misconduct in the 14 matters warrants the conclusion that respondent habitually disregarded his client’s interests and therefore committed acts of moral turpitude, particularly in light of the similarity of misconduct, the frequency thereof and its admitted pattern.

#### B. Degree of Discipline.

In urging that we recommend respondent’s disbarment, the examiner points to the seriousness of admitted aggravating factors surrounding respondent’s misdeeds compared to the judge’s recognition of the limitations of respondent’s mitigation. The examiner distinguishes the cases relied on by the judge as involving either less serious misconduct or greater mitigation. We agree with the examiner’s overall position and have concluded that the magnitude and severity of respondent’s offenses, together with the weakness in the mitigative or rehabilitative showing as determined by the judge below warrant our recommendation of disbarment.

[6a] Our review of the record and our own research have led us to five opinions of the Supreme Court in similar “pattern-type” misconduct cases in which the attorneys had no prior record of discipline and in which intentionally dishonest acts did not form the essence of the misconduct:

*In re Billings* (1990) 50 Cal.3d 358 (15 matters of partial or complete abandonment of clients; one conviction of driving while intoxicated; disbarment);

*Walker v. State Bar, supra*, 49 Cal.3d 1107 (abandonment of entire law practice, coupled with attempted misappropriation of some clients’ funds; disbarment);

*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 (14 matters of misconduct including 13 instances of failure to perform services, dishonest acts in four of the matters; suspension);

*Pineda v. State Bar, supra*, 49 Cal.3d 753 (seven matters of failure to perform services including failure to refund unearned fees in four of the matters, one matter of misrepresentation and one of misappropriation; suspension); and

*Coombs v. State Bar* (1989) 49 Cal.3d 679 (13 matters of failure to perform services with misrepresentation in four of the matters, one conviction of driving while under influence of alcohol; disbarment).

[6b] Our review of these cases has led us to conclude that when the Supreme Court has deemed suspension adequate, it has considered most significant the existence or non-existence of a tragic event or set of circumstances which altered the attorney’s behavior, which could explain the attorney’s misconduct followed by sufficient evidence of rehabilitation to give the court confidence that the attorney’s pattern would not repeat. Also significant were the specific recommendations, respectively, of the hearing referee and former review department.

For example, in *Silva-Vidor v. State Bar, supra*, 49 Cal.3d 1071, where the Supreme Court imposed only one year of actual suspension for 14 matters of misconduct, the referee had recommended only a 30-day actual suspension and the former review department recommended a two-year actual suspension. In addition, the attorney had suffered a series of tragic personal and health calamities, had stipulated to her misconduct and had presented clear evidence of two or three years of trouble-free conduct with a great deal of her recent practice representing the disadvantaged.

In *Pineda v. State Bar, supra*, 49 Cal.3d 753, relied on by the judge, only half the number of matters were involved as in the matter we review. The referee approved a stipulation for five years stayed, and one year actual suspension. The attorney petitioned for review when told that the Supreme Court was considering greater discipline. After con-

sidering disbarment, the Court increased the actual suspension to two years. It noted the cooperation shown by Pineda's stipulation, the remorse and determination to improve his practice, the reforms he had undertaken, and that some of his misconduct happened during the breakup of his marriage.

[7] Here, we have fourteen matters of admitted misconduct spanning six of respondent's nine years of law practice. While there was no evidence of intentional acts of dishonesty, respondent has admitted misappropriating over \$17,000 of advance fees or costs (mainly costs) in seven of the matters. Eight clients were harmed by extinction of their causes of action. The hearing judge noted that respondent's rehabilitation is "barely out of its infancy" (decision p. 14); and, unlike, Pineda and Silva-Vidor, here respondent committed misconduct in several matters *after* he had realized his problem of mismanagement and had taken steps to deal with it in late 1988. We believe that the judge's suspension recommendation was influenced significantly by his assumption that because the parties did not stipulate that moral turpitude was involved in any of the individual matters, this case is deserving of less discipline than comparable "pattern-offense" cases in which the Supreme Court ordered disbarment.

[8] We recommend discipline to protect the public, enforce professional standards and maintain public confidence in the legal profession, not to punish. (See *Walker v. State Bar*, *supra*, 49 Cal.3d at p. 1117; see also std. 1.3.) Measured by these principles, we should be most concerned, as is the Supreme Court, when it appears that an attorney is likely to repeat the very serious misconduct of which he has been found culpable. (See *Cooper v. State Bar* (1987)

43 Cal.3d 1016, 1029.) That is exactly what the hearing judge opined in this case. Respondent's mitigation is not of the type of dramatic misfortune or personal stress which could excuse an otherwise diligent practitioner's errors. Moreover, his cooperation and candor to the State Bar is undermined by the fact that he has yet to make amends to seven of his clients while appearing to have the resources to do so.

[9] In our view, lengthy suspension with a standard 1.4(c)(ii) showing is not adequate in this case to address respondent's extensive misdeeds which became commonplace in his law practice and which harmed a number of clients, which harm has yet to be rectified. (See *Martin v. State Bar* (1991) 52 Cal.3d 1055, 1065 (dis. opn. of Lucas, C.J.)) As to the protection afforded the public by a reinstatement proceeding after disbarment, see *Stanley v. State Bar*, *supra*, 50 Cal.3d at p. 570.

### III. RECOMMENDATION

For the foregoing reasons, we recommend<sup>20</sup> that respondent, Harold Gene Collins, be disbarred from the practice of law in this state and that his name be stricken from the roll of attorneys in this state. We further recommend that he be required to comply with the provisions of rule 955, California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the Supreme Court's order. We also recommend that costs be awarded the State Bar.

We concur:

PEARLMAN, P.J.  
NORIAN, J.

---

20. We note that over six weeks after this review proceeding was submitted, respondent tendered his resignation from membership in the State Bar. It has not yet been accepted by the Supreme Court which has the sole authority in this state to accept such a resignation. (See Cal. Rules of Court, rule 960(c).) Since we were close to filing our opinion at the time

respondent tendered his resignation, we have decided to file this opinion for greater guidance of the parties and Supreme Court on the issue of respondent's resignation; and, if the Court accepts the resignation, for the assistance of all should respondent thereafter seek reinstatement.