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**THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of
STEPHEN J. BUCHANAN,
Member No. 142640,
A Member of the State Bar.

Case Nos. **00-O-10471-JMR; 00-O-11477**
00-O-12152; 00-O-14066;
00-O-14148; 00-O-14626 (Cons.)

DECISION

The Office of the Chief Trial Counsel of the State Bar of California ("State Bar") was represented by Jayne Kim. Respondent Stephen J. Buchanan was represented by counsel, David A. Clare.

After considering the matter, the court recommends, among other things, that Respondent be actually suspended for three years and until he makes restitution and until he complies with standard 1.4(c)(ii) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

SIGNIFICANT PROCEDURAL HISTORY

The parties entered into a stipulation regarding undisputed facts and partial stipulation re conclusions of law and, later, into a modification thereto, as well as a joint stipulation regarding the testimony of certain witness, all of which the court hereby approves. The parties stipulated to Respondent's culpability in Counts Three, Nine, Ten, Eleven, Seventeen and Nineteen of the First Amended Notice of Disciplinary Charges. Moreover, in his closing brief, Respondent admitted culpability in Counts One, Two, Five, Six, Twelve, Thirteen, Fourteen, Fifteen, Twenty, Twenty-One, Twenty-Three and Twenty-Four.

1 The matter was submitted for decision on July 12, 2002, following the filing of closing briefs.

2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3 **Jurisdiction**

4 Respondent was admitted to the practice of law in California on December 11, 1989, and
5 has been a member of the State Bar at all times since.

6 **Background**

7 During 1998 and through May 2000, Respondent and his attorney partner, Andrew J. Field,
8 maintained a law office in San Bruno and then Daly City, California. Respondent was to be
9 responsible for running the office since Field lived in Illinois. Respondent also maintained an office
10 in Los Angeles, where he lived.

11 In February 1999, Respondent decided to close the Daly City office and began preparing for
12 that eventuality. From February 1999 through May 2000, Respondent primarily worked from his
13 Los Angeles office.

14 In 1998 and thereafter, Respondent maintained the following client trust accounts at Wells
15 Fargo Bank: (1) no. 426-266375 ("CTA1"), used for the Daly City office; (2) no. 288-361769
16 ("CTA2"); and (3) no. 693-280067 ("CTA3"). Only one account was used for the Daly City office
17 and only Respondent and Fields were signatories on it. According to Respondent, he and his
18 secretary, Cora Luna, would reconcile that trust account about once per quarter.

19 Respondent would visit the Daily City office every two or three weeks and would stay
20 between one and four days. He never spent more than one month away from that office. Fields
21 visited the office about 10 or 12 times during its existence. There was no attorney to supervise office
22 staff in Daly City on most days.

23 In Respondent's absence, the office was run by his office manager, Alfredo Coh, and his
24 secretary, Cora Luna, both of whom are Filipino and speak the dialects of that language. As office
25 manager, Coh was responsible for marketing the business and bringing in clients. The Daly City
26 office had 200 to 300 cases. Its marketing was targeted to the Filipino community, many of whom
27 did not speak English. Respondent did not speak their language so he relied on his office staff to
28 communicate with them. Respondent met only about half of the clients.

1 Respondent frequently relied on his office staff to discuss initial settlement offers with
2 insurance companies in personal injury matters. Specifically, Respondent relied on them to negotiate
3 first and second settlement offers with the insurance companies. Respondent directed them to bring
4 him into a case after a third settlement offer was made by the insurance company.

5 Between November 1998 through January 1999, Respondent paid Coh approximately \$4800
6 from CTA1. Respondent testified that he believed that these were reimbursement checks to Coh for
7 out-of-pocket and trial expenses Coh incurred for work on particular cases. Respondent testified that
8 he based his belief on check stubs that he reviewed before testifying in court but he failed to bring
9 the check stubs to court with him.

10 On May 12, 1999, Coh and Luna, were arrested by the California Department of Insurance,
11 Fraud Division. Shortly thereafter, Respondent learned of Coh's arrest for allegedly submitting false
12 insurance claims from the Daly City office in a case. The alleged false claims were unrelated to
13 Respondent's cases. Coh and Luna have yet to go to trial on these charges. Despite the arrests,
14 Respondent made no changes in procedures or supervision in the Daly City office to ensure cases
15 were being handled properly. Respondent and Field believed that Coh and Luna were innocent.

16 From May through September 27, 1999, Respondent was preoccupied with preparation for
17 his tax trial regarding an audit for the years 1992, 1993 and 1994. In May 1999, Respondent's tax
18 defense attorney lost all of the records needed for the trial, so Respondent was trying to reconstruct
19 the lost documents. Respondent spent 300 to 500 hours working on the reconstruction of the
20 records. This took time away from the supervision of the Daly City office.

21 In July or August 1999, Respondent became concerned because he was settling cases but not
22 receiving the checks. During this time, there were telephone calls from about a half a dozen clients
23 to the Los Angeles office that they were not receiving funds. After the arrests of Coh and Luna,
24 Respondent instructed the insurance companies to send settlement checks to him in Los Angeles,
25 but sometimes, the checks were sent to Daly City. Respondent also tried to find out the status of the
26 claims, when they settled and why there was no check, but he did not get answers from his staff. He
27 testified that he called the clients but does not recall their names, did not keep a record of who they
28 were and did not send any correspondence in response to their calls. Respondent believes he

1 reviewed each of those files and that, ultimately, he paid the clients that called. He did not confront
2 Coh or change procedures or increase supervision in the Daly City office.

3 In September 1999, Respondent confronted Coh about missing client funds. At that time,
4 Coh admitted to stealing about \$50,000 to \$75,000 from 10 to 12 clients. Coh provided Respondent
5 with the names of the clients whose funds had been stolen. Respondent believes he reviewed these
6 clients' files to determine what funds were owed to them. He did not inform the clients about their
7 stolen settlement funds. He did not keep a record of the clients involved, did not reconcile their
8 settlement funds, and did not reconcile his CTA1 until sometime after August 1999.¹ He believed
9 things were all right unless a client complained.

10 After he learned that Coh had stolen clients' funds, Respondent did not terminate his
11 employment nor did he contact law enforcement or the victims. Coh remained employed at the Daly
12 City office until it closed in May 2000. He told Coh not to touch settlement checks. Respondent
13 believed that, since he was closing the Daly City office, he had little choice but to continue
14 employing Coh. Luna stopped working at the office after about August 1999. Coh spoke the
15 language of many of the clients. Respondent did not. Moreover, Coh was familiar with the cases.
16 Respondent tried to bring in new Filipino employees to the office but it was difficult to retain them
17 because of the taint acquired after the arrests of Coh and Luna.

18 In November 1999, Respondent refinanced his home with Ameriquest Mortgage Company
19 and borrowed approximately \$35,000. On May 2, 2000, he took out a second mortgage from
20 Sunflower Defined Benefit Plan and borrowed \$40,000.

21 From June 1999 through June 2000, Respondent deposited a total of \$49,700 in nonclient
22 funds in CTA1. About \$13,500 of that sum was deposited in cash. The deposits into CTA1 were
23 as follows: (1) \$4,000 on June 22, 1999; (2) \$4,700 on August 9, 1999; (3) \$2,700 on August 26,
24 1999; (4) \$300 on September 20, 1999; (5) \$4,500 on January 31, 2000; (6) \$16,700 on February 28,
25 2000; (7) \$15,000 on May 10, 2000; (8) \$1,800 on May 22, 2000.

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28 ¹Respondent testified that as a result of his tax trial, he probably did not reconcile his
CTA1 from May to December 1999.

1 Respondent was unable to explain at trial why he made deposits of nonclient funds in CTA1
2 between June and September 1999.

3 As of May 2000, Respondent was not certain whether there were still some clients that had
4 not been reimbursed from Coh's theft. The deposit of \$15,000 of nonclient funds to CTA1 on May
5 10, 2000, was because he felt there were shortages and the amount was based on what he determined
6 the shortages to be, looking at settlements that should have been there but were not. He does not
7 know how he arrived at this amount. He may have made a guess.

8 Respondent did not keep records of restitution paid or owing to clients and did not account
9 for the disbursement of nonclient funds from CTA1.

10 Respondent now has a small, sole practice in which he does criminal defense. He has four
11 or five personal injury cases. He has one or two paralegals that work on a contract basis and a part-
12 time secretary. He handles settlements and disbursement of funds.

13 Respondent handles the client trust account and believes he reconciles it quarterly. He does
14 not review the bank statements monthly. At the time of trial, he had last reviewed the statements
15 three or four months prior. He was surprised to learn of a trust account check returned on April 18,
16 2002, for insufficient funds. He thought there were enough funds to cover the check.

17 In 2001, Respondent represented Mathilde Leggitt, a German-speaking client. After the State
18 Bar notified him that Leggitt had been trying to contact him, he located a message from her to that
19 effect. Respondent relied on a German-speaking paralegal to communicate with Leggitt. Paralegal
20 Koch had Leggitt sign the release and settlement check in her personal injury case. Respondent was
21 not present. Respondent testified that there were problems in paying her quickly and he got an
22 explanation as to why from Koch. He is unsure if Koch discussed an issue regarding a medical
23 provider with Leggitt prior to her signing the release.

24 Apart from his law office and since 1999, probably after the tax trial, he does some credit
25 repair work for about six hours a week and on weekends. He has had about 150 customers since he
26 started and presently has about 30 or 40. He has made about \$10,000 to \$15,000 at \$150 to \$175
27 per person.

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1 **Case No. 00-O-10471: Counts One through Five (The Manigas and Hernandez Matters)**

2 **Facts**

3 In August 1998, Celso Manigas employed Respondent to represent him in a personal injury
4 matter. At no time did Respondent meet or talk with Manigas. Coh handled all communications
5 from Respondent to Manigas. Respondent has no recollection of Manigas or his case.

6 In February 1999, Respondent executed a lien for medical treatment Manigas received from
7 Dr. Ishan Vest. On March 5, 1999, Respondent wrote Vest requesting an itemization of services
8 rendered to Manigas.

9 In June 1999, Coh conveyed a settlement offer to Manigas, which Manigas accepted.

10 In July 1999, 20th Century Insurance sent a settlement check made payable to Manigas and
11 Respondent's law office to Respondent, in the amount of \$9,000. In July 1999, 20th Century
12 Insurance also notified Manigas about the settlement check sent to Respondent.

13 On August 5, 1999, Coh cashed the \$9,000 settlement check at Checkers International by
14 forging Manigas' and Respondent's signatures. Coh did not notify Manigas or Respondent that he
15 had received or cashed the settlement check. Respondent did not properly supervise his staff and
16 delegated his fiduciary duties to them. He knew or should have known that Manigas' settlement
17 funds had not been deposited in his CTA1.

18 On August 26, 1999, Respondent deposited a settlement check in the amount of \$7,000,
19 which Respondent received on behalf of his client, Earl Hernandez. At that time, the balance in
20 CTA1 was \$459.17.

21 On August 27, 1999, Respondent issued a check from CTA1 to Manigas, in the amount of
22 \$4,000, as Manigas' share of the settlement funds. Respondent used part of Hernandez' client funds
23 to pay Manigas his share of his settlement funds.

24 On January 27, 2000, Respondent paid \$2,500 to Vest as payment of Manigas' medical lien.

25 From June 1999 through June 2000, Respondent deposited a total of \$49,700 in nonclient
26 funds in CTA1. About \$13,500 of that sum was deposited in cash.

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1 **Conclusions of Law²**

2 **Count One - Rule 3-110(A) of the Rules of Professional Conduct (Failing to Perform**
3 **Competently)**

4 Rule 3-110(A) of the Rules of Professional Conduct prohibits an attorney from intentionally,
5 recklessly or repeatedly failing to perform legal services competently.

6 By not properly supervising his office staff and delegating his fiduciary duties to his staff for
7 over two years, Respondent intentionally, recklessly or repeatedly did not perform competently in
8 wilful violation of Rule 3-110(A).³

9 **Counts Two through Four - Rule 4-100(A) (Failure to Maintain Client Funds in Trust**
10 **Account)**

11 Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the benefit
12 of clients, including advances for costs and expenses, in a client trust account.

13 **A. Count Two.** There is clear and convincing evidence that Respondent wilfully violated
14 Rule 4-100(A) by not placing Manigas' settlement funds in the client trust account.

15 **B. Count Three.** The parties stipulated that, by using Hernandez's client funds to pay
16 Manigas' share of the settlement, Respondent wilfully violated Rule 4-100(A).

17 However, insofar as the facts establishing Respondent's culpability of violations in Counts
18 One, Two and Three include the facts establishing his culpability under section 6106 of the Business
19 and Professions Code in Count Five (see *infra*), the court shall attach no additional weight to such
20 duplication in determining the proper discipline. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060.)

21 **C. Count Four.** By depositing nonclient funds in CTA1 between June and August 1999,
22 prior to knowing of Coh's theft of client funds, there is clear and convincing evidence that
23 Respondent commingled funds in his trust account in wilful violation of Rule 4-100(A).

24 Respondent did not learn of Coh's theft until sometime in September 1999, and he was
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26 ²The parties stipulated to culpability on Count One, and Respondent admitted to
27 culpability as to Counts One, Two and Five in his closing brief.

28 ³Unless otherwise noted, all further references to "Rule" refer to the Rules of Professional
 Conduct.

1 unable to provide an explanation as to why he deposited nonclient funds in the CTA1 prior to
2 September. Thus, as to funds deposited between June and August 1999 (a total of \$11,400), it is
3 disingenuous for Respondent to argue that there was no rule violation because these deposits were
4 made to restore funds that were improperly withdrawn when he also claims he did not know about
5 the improper withdraws during this time period. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 978.)

6 **Count Five - Section 6106 (Dishonesty or Moral Turpitude)**

7 Section 6106 makes it a cause for disbarment or suspension to commit any act involving
8 moral turpitude, dishonesty or corruption, whether the act is committed in the course of his or her
9 relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

10 There is clear and convincing evidence that Respondent violated section 6106 of the Business
11 and Professions Code.⁴ He failed to control his law practice and delegated his fiduciary duties to
12 nonlawyers. Respondent's detachment from his practice enabled Coh to engage in dishonesty and
13 theft. Even after Coh confessed to theft, Respondent did not report Coh to the authorities, fire Coh,
14 or take appropriate action to protect his client's funds from further theft or to identify the extent of
15 harm to his clients. Respondent's departure from a proper standard of care is best described as
16 reckless. (*In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708, 714.)
17 Respondent's reckless failure to supervise his practice amounts to moral turpitude within the
18 meaning of section 6106. (*Id.*)

19 As to Manigas' and Hernandez' funds, Respondent's gross negligence in the management
20 and control of his client trust account resulted in the misappropriation of these funds. (*Edwards v.*
21 *State Bar* (1990) 52 Cal.3d 28, 37 [misappropriation caused by serious, inexcusable violation of duty
22 to oversee entrusted funds is deemed wilfull even in the absence of deliberate wrongdoing];
23 *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) Accordingly, he committed acts of moral
24 turpitude, dishonesty or corruption in wilful violation of section 6106.

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28 ⁴Unless otherwise noted, all references to sections denote provisions of the Business and Professions Code.

1 **Case No. 00-O-11477: Counts Six through Eight (The Escobar and CTA3 Matters)**

2 **Facts**

3 **1. The Escobar Matter**

4 On March 17, 1999, Respondent deposited \$3,500 of settlement funds belonging to Elodia
5 Escobar in CTA2. At that time, the balance in CTA2 was \$50.

6 From March 17 through April 7, 1999, Respondent withdrew a total of \$2,600 in cash from
7 CTA2. By April 7, 1999, the balance in CTA2 dropped to a negative balance of \$62.27.

8 Prior to trial, the parties stipulated that at no time from March 17 through April 7, 1999, did
9 Respondent disburse settlement funds to Escobar.

10 Respondent's testimony at trial on the Escobar matter was inconsistent and lacking in
11 credibility. Respondent stated that he withdrew \$1,500 in cash from his CTA1 on March 18, 1999,
12 as payment to Escobar for her portion of the settlement funds. He claimed that Escobar could not
13 cash a check because she did not have proper identification, therefore Escobar went with Respondent
14 when he withdrew the cash for her. Respondent does not recall Escobar or her case. He does not
15 remember if she speaks English. He is unsure of her nationality or her legal status. However, he is
16 certain he provided her with a cash payment over three years ago. Nonetheless, as for a \$1,000 check
17 dated June 30, 1999, three months after he allegedly provided Escobar with the cash payment,
18 Respondent testified that at the time he drafted the check for Escobar's portion of the settlement, he
19 was not aware that he already paid Escobar with cash.

20 The court rejects Respondent's testimony regarding the cash withdrawal of \$1,500.
21 Respondent's testimony is inconsistent with the parties' stipulation as to facts, contradicted by
22 Respondent's issuance of a check in the amount of \$1,000 to Escobar on June 30, 1999, and
23 unreliable.

24 **2. CTA3 Matter**

25 From May through August 5, 1999, Respondent maintained \$339.20 of non-client funds in
26 CTA3. On August 5, 1999, the balance in CTA3 was \$339.20; however, Respondent withdrew \$650
27 from CTA3. He knew or should have known that there were insufficient funds in CTA3 to withdraw
28 \$650. The withdrawal resulted in a negative balance of \$326.80. On September 27, 1999,

1 Respondent paid Wells Fargo Bank the \$326.80 which was overdrawn on CTA3.

2 **Conclusions of Law**⁵

3 **Counts Six and Seven - Rule 4-100(A) (Failure to Maintain Client Funds in Trust Account)**

4 A. **Count Six.** By withdrawing Escobar's funds from CTA2 without disbursing any of the
5 funds to her, Respondent failed to maintain Escobar's funds on deposit in his trust account in wilful
6 violation of rule 4-100(A).

7 However, insofar as the facts establishing Respondent's culpability of a violation in Count
8 Six includes the facts establishing his culpability under section 6106 of the Business and Professions
9 Code in Count Eight (see *infra*), the court shall attach no additional weight to such duplication in
10 determining the proper discipline. (*Bates v. State Bar, supra*, 51 Cal.3d at p. 1060.)

11 B. **Count Seven.** By keeping personal funds in his client trust account, Respondent
12 commingled funds in wilful violation of Rule 4-100(A). Respondent's contention that this count
13 should be dismissed because \$339.20 constituted funds "reasonably sufficient to pay bank charges"
14 is rejected. (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 312, fn 18.)

15 **Count Eight - Section 6106 (Dishonesty or Moral Turpitude)**

16 Based on Respondent's gross negligence, there is clear and convincing evidence that
17 Respondent wilfully violated section 6106 based on his misappropriation of Escobar's funds from
18 CTA2 and by withdrawing funds in excess of those on deposit in CTA2 and CTA3.

19 **Case No. 00-O-12152: Counts Nine through Thirteen (The Viajar Matter)**

20 **Facts**

21 In November 1998, Remedios Viajar employed Respondent to represent her in a personal
22 injury claim in connection with an accident. At no time did Respondent meet or talk with Viajar.
23 Coh handled all communication with Viajar.

24 Following her accident, Viajar received medical treatment for her injuries from the following
25 medical providers: CA Emergency Physicians, in the amount of \$200; American Medical Response,
26 in the amount of \$794.69; El Camino Hospital, in the amount \$330.88; and Family Health

27 _____
28 ⁵Respondent admitted to culpability on Count Six in his closing brief.

1 Chiropractic, in the amount of \$756.

2 From and after January 1999, Viajar repeatedly called Respondent's Daly City office to
3 discuss her case, in particular the payment of the medical bills. While she was never able to speak
4 with Respondent, each time she left Respondent a message requesting a return call. At no time did
5 Respondent return any of Viajar's telephone calls.

6 On May 28, 1999, Respondent settled Viajar's personal injury case, and thereafter received
7 a settlement draft from Hertz Claim Management, made payable to Viajar and Respondent's law
8 office, in the amount of \$5,500. Respondent did not advise Viajar of the receipt of the settlement
9 draft.

10 On June 4, 1999, Respondent deposited Viajar's settlement draft in CTA1 and immediately
11 issued CTA1 check no. 2344, made payable to himself, in the amount of \$1,766, as attorney fees.
12 Respondent paid no portion of the funds to Viajar. Respondent also did not pay Viajar's medical
13 bills.

14 After the disbursement for attorney fees, Respondent was in possession of \$3,734 for Viajar.

15 Thereafter, Respondent, or someone from Respondent's staff, mistakenly closed out Viajar's
16 client file. From June 4, 1999, through September 1999, Respondent failed to pay Viajar her portion
17 of the settlement funds.

18 From June 4, 1999, through August 20, 1999, Respondent made five cash withdrawals from
19 CTA1, totaling \$6,234. By June 22, 1999, the balance in CTA1 was \$943.17,⁶ despite the fact that
20 Respondent should have had on deposit \$3,734 for Viajar. By August 20, 1999, the balance in
21 CTA1 was \$459.17, despite the fact that Respondent still had disbursed neither the client's nor the
22 medical providers' share of the settlement funds.

23 In October 1999, after realizing that Viajar's case had been mistakenly closed out,
24 Respondent issued CTA1 check no. 2393, in the amount of \$1,766, payable to Viajar as her portion
25 of settlement funds. However, Respondent did not pay Viajar's medical providers. From June 4,
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28 ⁶That same day, the bank paid check no. 2361 in the amount of \$1,225 and Respondent deposited \$4,000 in cash, leaving a balance of \$3,718.17. (See Exhibits 2 & 14.)

1 1999, through June 26, 2000, Respondent failed to settle or pay Viajar's medical providers.

2 In May 2000, because she had been unable to contact Respondent by telephone, Viajar wrote
3 a letter to Respondent at the Daly City office, asking why the medical providers had not been paid.
4 At no time did Respondent respond to Viajar's letter.

5 In May 2000, the Daly City office was closed. At no time did Respondent inform Viajar
6 about the closing of the Daly City office or provide her with a change of address.

7 On June 26, 2000, Respondent issued CTA1 check no. 2414 to Accelerated Recovery Service
8 for \$851.86. Respondent did not pay the other medical providers. At no time did Respondent
9 disburse the remaining \$1,116.14 of the settlement funds to Viajar.

10 **Conclusions of Law⁷**

11 **Count Nine - Rule 4-100(B)(4) (Failure to Pay Client Funds Promptly)**

12 By not paying all of Viajar's medical providers, Respondent failed to pay promptly, as
13 requested by a client, funds in his possession which the client was entitled to receive, in violation
14 of Rule 4-100(B)(4).

15 **Count Ten - Section 6068(m) (Failure to Communicate)**

16 Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries of
17 clients and to keep clients reasonably informed of significant developments in matters with regard
18 to which the attorney has agreed to provide legal services.

19 By not returning any of Viajar's repeated telephone calls or responding to her letter, and by
20 not informing Viajar about the closure of the Daly City office, Respondent failed to respond to the
21 client's reasonable status inquiries, and failed to inform the client of significant developments in her
22 case, in violation of section 6068(m).

23 **Count Eleven - Rule 4-100(A) (Failure to Maintain Client Funds in Trust Account)**

24 By not maintaining funds belonging to Viajar and Viajar's medical providers, Respondent
25 failed to maintain client funds in his trust account, in wilful violation of Rule 4-100(A).

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28 ⁷Respondent stipulated to culpability on Counts Nine, Ten and Eleven. He also admitted
culpability on Counts Twelve and Thirteen in his closing brief.

1 **Count Twelve - Rule 3-110(A) (Failing to Perform Competently)**

2 By not properly supervising his office staff, which resulted in Viajar's file being mistakenly
3 closed, Respondent intentionally, recklessly or repeatedly did not perform competently in wilful
4 violation of Rule 3-110(A). Insofar as the facts establishing Respondent's culpability of a violation
5 in Count Twelve includes the facts establishing his culpability under section 6106 of the Business
6 and Professions Code in Count Thirteen (see *infra*), the court shall attach no additional weight to
7 such duplication in determining the proper discipline. (*Bates v. State Bar, supra*, 51 Cal.3d at p.
8 1060.)

9 **Count Thirteen - Section 6106 (Dishonesty or Moral Turpitude)**

10 By delegating his fiduciary duties and by misappropriating Viajar's funds from CTA1
11 through his gross negligence, Respondent committed acts or moral turpitude, dishonesty or
12 corruption, in wilful violation of section 6106.

13 **Case No. 00-O-14066: Counts Fourteen through Sixteen (The Palma Matter)**

14 **Facts**

15 In September 1998, Daniel Palma employed Respondent to represent him in a personal injury
16 matter.

17 In September 21, 1998, Respondent wrote to the California State Automobile Association
18 Inter-Insurance Bureau ("CSAA") regarding Palma's damage claims. Respondent admitted at trial
19 that his office staff corresponded with CSAA without his knowledge and he allowed staff to sign his
20 signature on correspondence without his knowledge. On November 30, 1998, January 9 and 13,
21 February 28 and May 31, 1999, CSAA wrote to Respondent requesting documentation of Palma's
22 injuries. On March 8, 1999, Respondent sent CSAA a letter indicating that Respondent would
23 provide Palma's medical reports to CSAA. Respondent did not do so.

24 Respondent did not attempt to negotiate a settlement or file a lawsuit on behalf of Palma nor
25 did he advise Palma about the statute of limitations on his personal injury claims. The statute of
26 limitations ran out on Palma's claims during the time Respondent represented Palma. Accordingly,
27 Palma would be unable to recover damages although, as a result of the accident, he incurred
28 approximately \$4200 in medical bills and \$5618.75 in lost wages.

1 From October 1998 through May 2000, Palma telephoned Respondent at the Daly City office
2 numerous times. Each time Palma telephoned, he left a message for Respondent to call him back
3 about his personal injury case. Respondent did not return Palma's telephone calls. He did not
4 respond to reasonable status inquiries from his client.

5 Respondent did not advise Palma that he was closing the Daly City office.

6 On May 18, 2000, the State Bar of California opened an investigation, case no. 00-O-14066,
7 pursuant to Palma's complaint.

8 On January 17 and April 23, 2001, State Bar investigator Sarah Bridge wrote to Respondent
9 regarding the Palma matter. Bridge's letters asked Respondent to respond in writing to specified
10 allegations of misconduct being investigated by the State Bar in the Palma matter. Respondent
11 received Bridge's letters. At that time, Respondent was represented by other counsel.

12 Respondent did not provide a written response on the Palma matter inquiry either to his then-
13 counsel or to the State Bar. However, Respondent did meet with a State Bar investigator and
14 provided his explanation of the Palma matter before the Notice of Disciplinary Charges was filed.

15 Conclusions of Law⁸

16 Count Fourteen - Rule 3-110(A) (Failing to Perform Competently)

17 By not providing documentation to CSAA, not trying to settle Palma's case and not filing
18 a lawsuit on his behalf, Respondent intentionally, recklessly or repeatedly did not perform
19 competently in wilful violation of Rule 3-110(A).

20 Count Fifteen - Section 6068(m) (Failure to Communicate)

21 By not advising Palma about the statute of limitations or of the closure of the Daly City
22 office, Respondent did not keep his client reasonably informed about significant developments in
23 a matter in which he had agreed to provide legal services and wilfully violated section 6068(m).

24 Count Sixteen - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)

25 Section 6068(i) requires an attorney to participate and cooperate in any disciplinary
26 investigation or other disciplinary or regulatory proceeding pending against himself.

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28 ⁸Respondent admitted to culpability on Counts Fourteen and Fifteen in his closing brief.

1 Based on the evidence presented, the State Bar has failed to establish by clear and convincing
2 evidence that Respondent failed to cooperate in the investigation based on his meeting with the State
3 Bar investigator prior to the filing of the Notice of Disciplinary Charges. (*In the Matter of Blum*
4 (*Review Dept. 1994*) 3 Cal. State Bar Ct. Rptr. 170; *In the Matter of Hindin* (*Review Dept. 1997*)
5 3 Cal. State Bar Ct. Rptr. 657.) Accordingly, Respondent did not violate section 6068(i).

6 **Case No. 00-O-14148: Counts Seventeen through Twenty-Two (The Filardo Matter)**

7 **Facts**

8 In September 1998, Aurea Filardo employed Respondent to represent her in a personal injury
9 matter. At that time, Respondent knew that Mercury Casualty Company ("Mercury") had a lien for
10 \$2,417 on Filardo's settlement funds.

11 In September 1999, Respondent's office settled Filardo's case and received a settlement check
12 in the amount of \$5,500, payable to Filardo and Respondent's law office. Respondent did not inform
13 Filardo that he had settled her case.

14 On September 21, 1999, Respondent deposited the \$5,500 settlement check in CTA1 without
15 Filardo's knowledge or consent. Respondent or one of his staff endorsed Filardo's name on the
16 settlement check. That same day, Respondent disbursed \$1,966 of Filardo's settlement funds to
17 himself for attorney fees and costs without Filardo's knowledge or consent.

18 From September 22 through October 25, 1999, Mercury wrote letters to Respondent at the
19 Daly City office, notifying him about the medical lien against Filardo's settlement funds.

20 From November 1999 through April 2000, Filardo repeatedly telephoned Respondent at the
21 Daly City office and left a message each time asking Respondent to return her call. He never did nor
22 did he inform her that he was closing the Daly City office.

23 On June 19, 2000, after inquiry by the State Bar, Respondent issued CTA1 check no. 2427
24 to Filardo in the amount of \$1,733, as Filardo's share of the settlement funds. He also prepared a
25 settlement distribution sheet without review of Filardo's file or knowledge of her case. The sum of
26 \$1,801 of Filardo's funds still remain unaccounted for and unpaid.

27 Prior to the disbursement of any settlement funds to Filardo or to Mercury, the balance of
28 CTA1 dropped to \$1505.09 on November 26, 1999, and to \$46.09 as of February 22, 2000.

1 In June through July 1999, Mercury wrote two letters to Respondent at the Daly City office,
2 notifying Respondent about the medical lien against Filardo's settlement funds. He did not respond
3 to Mercury's letters or pay the medical lien. Mercury pursued an action against Filardo for the
4 medical lien. Filardo, without Respondent's assistance, settled the medical lien with Mercury. She
5 paid Mercury \$1,116.89.

6 Filardo did not retain an attorney to help her with Mercury's lawsuit because, after the
7 experience with Respondent, she no longer trusts lawyers. Respondent settled her case without her
8 input or knowledge and left her subject to a lawsuit by Mercury which caused her an enormous
9 amount of stress and anxiety.

10 **Conclusions of Law⁹**

11 **Counts Seventeen and Eighteen - Rule 4-100(A) (Failure to Maintain Client Funds in Trust**
12 **Account)**

13 **A. Count Seventeen.** By not maintaining Filardo's settlement funds in CTA1 as evidenced
14 by the dips in the account balance, Respondent wilfully violated Rule 4-100(A).

15 **B. Count Eighteen.** The charge of depositing nonclient funds in CTA1 is duplicative and,
16 therefore, is dismissed with prejudice. (See, culpability finding in Count Four, *supra*.)

17 **Count Nineteen - Rule 4-100(B)(4) (Failure to Promptly Pay Out Funds)**

18 By not paying Filardo's share of settlement funds from September 21, 1999, through June 19,
19 2000, and by not paying Filardo's medical lien to Mercury, Respondent wilfully violated Rule
20 4-100(B)(4).

21 **Count Twenty - Section 6068(m) (Failure to Communicate)**

22 By not returning Filardo's telephone calls, Respondent failed to respond to his client's
23 reasonable status inquiries in wilful violation of section 6068(m).

24 **Count Twenty-One - Rule 3-100(A) (Failure to Perform)**

25 By not adequately supervising his office staff and permitting them to negotiate Filardo's
26

27
28 ⁹Respondent stipulated to culpability on Counts Seventeen and Nineteen. He also
admitted culpability on Counts Twenty and Twenty-One in his closing brief.

1 settlement, Respondent wilfully violated Rule 3-110(A).

2 **Count Twenty-Two - Section 6106 (Dishonesty or Moral Turpitude)**

3 By settling Filardo's case without her consent, endorsing the settlement draft when Filardo
4 was unaware of the settlement, and by misappropriating the settlement funds through his gross
5 negligence, Respondent committed an act of moral turpitude, dishonesty or corruption in wilful
6 violation of section 6106.

7 **Case No. 00-O-14626: Counts Twenty-Three and Twenty-Four (The Visor Matter)**

8 **Facts**

9 On October 29, 1998, Annette Visor employed Respondent to represent her in a personal
10 injury matter. In November 1998, Visor met with Respondent in person. In November 1998, Visor's
11 previous attorney forwarded her client file to Respondent, who received it.

12 On November 11, 1998, Respondent sent a letter to the San Francisco City Attorney's Office
13 advising them that Respondent was representing Visor in a claim against the City and County of San
14 Francisco ("San Francisco").

15 Respondent did not communicate with Visor after November 29, 1998.

16 In December 1998, Respondent filed a complaint, *Annette Visor vs. City and County of San*
17 *Francisco*, San Francisco Municipal Court, case no. 162868. He did not tell Visor that he had done
18 so.

19 On February 9, 1999, San Francisco sent and Respondent received a letter denying Visor's
20 claim for lack of information.

21 On February 16, 1999, the court in the Visor lawsuit filed an Order to Show Cause why the
22 Visor lawsuit should not be dismissed due to lack of proof of service on San Francisco.
23 Respondent's office received a copy of said order.

24 On March 23, 1999, the court filed a sanction order against Visor. Respondent's office
25 received a copy of the order. Respondent did not advise Visor about the sanction order.

26 On April 1, 1999, the court filed another order to show cause why the Visor lawsuit should
27 not be dismissed due to Respondent's failure to file timely a status conference statement.
28 Respondent's office received a copy of the order. On May 14, 1999, the court again filed a sanction

1 order against Visor. Respondent's office received a copy of the order.

2 On April 8, 1999, Respondent filed a status conference statement without advising Visor.
3 He also did not advise Visor of a May 14, 1999, sanction order.

4 On June 25 and August 19, 1999, the court again filed sanction orders against Visor.
5 Respondent's office received copies of the orders but did not advise Visor about the orders.

6 In September 1999, Respondent paid the court's sanction orders. He did not tell Visor that
7 he had paid them.

8 On October 4, 1999, Respondent filed a status and setting conference statement. He
9 thereafter performed no legal services in the Visor lawsuit nor did he tell Visor that he was no longer
10 working on the case. Respondent never withdrew as counsel.

11 On October 24, 2000, Visor visited the Daly City office, but the office had already been shut
12 down. Respondent never told her that he was closing the Daly City office.

13 In April 2002, the court dismissed Visor's lawsuit for lack of prosecution. Respondent was
14 unaware of the dismissal.

15 Due to her accident, Visor is unable to work and receives disability benefits from Social
16 Security of \$666 per month.

17 **Conclusions of Law**¹⁰

18 **Count Twenty-Three - Rule 3-100(A) (Failure to Perform)**

19 By not pursuing Visor's lawsuit after October 4, 1999, Respondent intentionally, recklessly
20 or repeatedly failed to perform legal services for which he was retained in wilful violation of Rule
21 3-110(A).

22 **Count Twenty-Four - Section 6068(m) (Failure to Communicate)**

23 By not telling Visor about filing the lawsuit, about the several sanction orders and about the
24 closing of the Daly City office, Respondent did not keep his client reasonably informed of significant
25 developments in wilful violation of section 6068(m).

26
27
28 ¹⁰In his closing brief, Respondent admitted culpability on Counts Twenty-Three and
Twenty-Four.

1 LEVEL OF DISCIPLINE

2 Aggravating Circumstances

3 Respondent's prior discipline record is an aggravating circumstance. (Standard 1.2(b)(i),
4 Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional
5 Misconduct ("standards").) In Supreme Court Case No. S098529 (State Bar Court Case Nos. 97-O-
6 10047; 98-O-03316 (Con.)), effective September 30, 2001, the Supreme Court suspended
7 Respondent from the practice of law for 30 days and until he made specified restitution, execution
8 of suspension was stayed, and Respondent was placed on probation for one year on conditions
9 including restitution. Respondent was found culpable of trust account violations, specifically,
10 maintaining a negative balance in the client trust account and issuing trust account checks when he
11 knew, or should have known, that there were insufficient funds in the account to pay the checks, and
12 failing to promptly pay to a client, Robert Narvios, funds in his possession which the client was
13 entitled to receive. The client never received his portion of the settlement funds, despite the fact that
14 a check was issued to the client and cashed by someone signing the client's name and negotiating
15 the check at a checking cashing business named Checker's International, which is where Coh,
16 Respondent's office manager, cashed the Manigas settlement check. (See Counts One through Four
17 *supra.*)

18 The window of time for the misconduct in the prior discipline was October 1996 through
19 January 1997 for the NSF checks and negative balance in Respondent's trust account, and April 1998
20 for the failure to promptly pay funds in his possession, although the latter violation is one of a
21 continuing nature. Therefore, at least part of the prior misconduct occurred during the same time
22 period as the misconduct that is now before the court. Generally, if the prior misconduct occurred
23 during the same time period as the misconduct in the second matter, the aggravating force of the
24 prior misconduct is "diminished" because the attorney has not been afforded an opportunity to heed
25 the import of the earlier discipline. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar
26 Ct. Rptr. 153, 171.) In addition, the aggravating force of prior misconduct is "diluted" when the
27 misconduct in the second matter occurred before the notice in the prior matter was served. (*In the*
28 *Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631 646.) The *Bach* court reasoned

1 that the subsequent misconduct does not reflect a failure on the attorney's part to learn from the
2 prior misconduct.¹¹

3 While it could be argued that the aggravating force of the prior misconduct is somewhat
4 "diluted" because the misconduct in the instant matter occurred before the notice of disciplinary
5 charges in the prior was served on October 16, 2000, the court concludes, nevertheless, that the
6 misconduct found herein reflects a failure on Respondent's part to appreciate his duties, specifically,
7 his non-delegable duty to maintain and protect all money that comes into his possession for the
8 benefit of his clients. Further, the notice of NSF checks from the bank should have put Respondent
9 on notice that he was not adequately reconciling his client trust accounts. Likewise, the problem
10 with the Narvios check served to put Respondent on notice by January 1999 (i.e., when opposing
11 counsel contacted Respondent in that matter) of problems in the disbursement of client funds, and
12 yet, he failed to heed the import of the earlier problem. The court, therefore, is not "diminishing"
13 or "diluting" the aggravating force of the prior, despite the fact that it occurred in the same time
14 period and the misconduct found herein occurred prior to the service of the notice in the prior
15 discipline.

16 Respondent's misconduct evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).)
17 These acts include multiple instances of misappropriation of client funds, commingling personal
18 funds in his CTAs, failing to adequately supervise his office staff, failing to communicate with
19 clients, as well as the commission of acts of dishonesty or moral turpitude.

20 There were uncharged acts of misconduct. (Standard 1.2(b)(iii).) Respondent admitted that
21 he essentially fabricated the information on Filardo's disbursement sheet. Moreover, he paid himself
22 from Filardo's settlement funds immediately yet she had to wait about nine months to be paid. This
23 uncharged misconduct violates section 6106. Also, Respondent improperly withdrew from
24 representation in the Visor matter in violation of Rule 3-700(A)(2).

25 Respondent's misconduct significantly harmed clients. (Standard 1.2(b)(iv).) As a result of
26

27
28 ¹¹ It should be noted, that while *Bach's* prior was "diluted" it was, nevertheless, a factor
in aggravation and the discipline in the second matter was greater than the previous matter.

1 Respondent's failure to supervise his office staff and to properly manage his client trust account,
2 Respondent's clients lost money, were exposed to collection actions or lawsuits (Filardo), lost their
3 causes of action because the statute of limitations had passed (Palma) or were dismissed for lack of
4 prosecution (Visor). Further, Filardo lost faith in the legal profession and suffered great stress due
5 to Respondent's misconduct.

6 Respondent's indifference toward rectification requires some consideration as an aggravating
7 circumstance pursuant to standard 1.2(b)(v). After becoming aware that there were client funds
8 missing, he did not take personal responsibility to ensure the proper handling of client funds. He did
9 not keep track of the funds misappropriated or reimbursed or of which clients were affected. Thus,
10 the full extent of the harm to Respondent's clients is unknown. He did not take a personal interest
11 in safeguarding entrusted funds. He recently (April 2002) had another NSF client trust account
12 check. He does not review the bank statements monthly. At the time of trial, he had last reviewed
13 the statements three or four months prior. Moreover, his conduct in the Liggett case indicates that
14 he has not learned from his prior mistakes. He returned Liggett's call after the State Bar intervened
15 on her behalf. He relied on a paralegal to communicate with his German-speaking client and is
16 unsure whether the paralegal addressed an issue relating to a medical provider prior to Liggett's
17 signing the release. Respondent was not present during the discussion with Liggett.

18 Respondent lacked candor before the State Bar Court during the hearing. (Standard
19 1.2(b)(vi).) The court found Respondent's testimony to be lacking in credibility on several points,
20 including his testimony regarding payments to Coh out of CTA1; the \$1,500 cash withdrawal on
21 March 18, 1999; and his efforts to rectify the trust problems after he learned of Coh's theft (i.e., that
22 he reviewed each clients' file but could not contact them because of the language barrier).
23 Respondent's testimony was inconsistent, self-serving and unreliable.

24 **Mitigating Circumstances**

25 Respondent demonstrated cooperation with the State Bar during these proceedings.
26 (Standard 1.2(e)(v).) He stipulated to facts and to culpability in several instances as well as to the
27 admissibility of several declarations from clients in lieu of requiring their live testimony at trial.

28 Several witnesses attested to Respondent's good moral character whose testimony is given

1 only some weight as they were not fully aware of the facts and circumstances surrounding
2 Respondent's practice and misconduct. (Standard 1.2(e)(vi).)

3 Thomas Celli, a California attorney since 1971, knows Respondent from when their offices
4 were on the same floor for at least four years. He saw Respondent three or four times per week
5 during that time. He handled three or four personal injury cases with Respondent, the first one
6 commencing about five years ago and the last one about three years ago. They also have a quasi-
7 social relationship. Celli and his wife went to Respondent's house once and Respondent has been
8 to Celli's house three times. Celli was aware of this proceeding and had read Respondent's pretrial
9 statement. He had also spoken with Respondent's counsel herein. On the basis of his contacts with
10 Respondent and his clients, Celli believes that Respondent's honesty is unquestionable. He believes
11 Respondent is reliable and competent.

12 Tarum Sharma has known Respondent for 12 years. She works in the entertainment industry
13 as a special-effects make-up artist. He is one of her closest friends. He handled a personal injury
14 case for her. Sharma believes that Respondent has been a very good influence on her. She holds him
15 in very high esteem and absolutely trusts him. She would have no reservations about retaining him.
16 She believes he has impeccable moral character. She first heard about the problems in the Northern
17 California office recently and, within the last months, learned that Coh stole between \$50,000 and
18 \$75,000. She did not know that Coh and Luna had been arrested. She did not know whether
19 Respondent reported Coh to the police.

20 William Schwartz is a business manager and financial consultant. He has a networking
21 marketing company. He helps people get out of debt. He and Respondent commenced a business
22 relationship about three years ago in 1999 when Respondent inquired about his services. Respondent
23 now is a representative in Schwartz's business as well as practicing law. Respondent has always
24 honored his obligations to Schwartz. He believes Respondent is not a "bad guy." He trusts him and
25 would do so even with large sums of money. He has advanced funds to Respondent many times,
26 although not more than \$1000. Schwartz helped Respondent with his credit reports and to refinance
27 his home at the end of 1999 then, he wanted Schwartz to be able to help his clients. Respondent gets
28 a commission for every client that goes through the system.

1 Mary Anderson is a nurse who manages mental health units. She has known Respondent for
2 many years. They met in college. She introduced him to his wife. Their families have been close
3 and spend holidays together. She relies on him as a friend for emotional support. They see each
4 other every six weeks and telephone every few weeks. Respondent represented her cousin.
5 Anderson never heard any complaints about it although her cousin is very difficult. Anderson
6 believes Respondent is honest. She would trust him with her life. She has no reservations about
7 retaining him as counsel. Respondent only told her about this proceeding in the last few weeks. She
8 never heard about the theft until recently.

9 Respondent voluntarily utilized about \$38,300 of his personal funds to make restitution to
10 clients after learning of Coh's theft and prior to involvement by the State Bar, a significant attempt
11 at atonement. (Standard 1.2(e)(vii).) However, Respondent's efforts are diluted by the fact that
12 restitution is incomplete. Respondent owes Remedios Viajar approximately \$1,116 and Aurea
13 Filardo \$1,801. In addition, as a result of Respondent's insufficient efforts to ascertain which clients
14 lost money from Coh's theft, the full extent of the harm remains uncertain.

15 Discussion

16 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect
17 the public, to preserve public confidence in the profession, and to maintain the highest possible
18 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v.*
19 *State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

20 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
21 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
22 imposing discipline. If two or more acts of professional misconduct are found in a single
23 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions.
24 (Standard 1.6(a).) Discipline is progressive. (Standard 1.7(b).)

25 In the instant case, the recommended level of discipline ranges from reproof to disbarment.
26 (Standards 2.2(a) and (b), 2.3, 2.4(b) and 2.6(a).) The most severe sanction, disbarment, is
27 prescribed by standard 2.2(a). Standard 2.2(a) suggests disbarment for the wilful misappropriation
28 of entrusted funds unless the amount is insignificantly small or the most compelling mitigating

1 circumstances clearly predominate, in which case the recommended discipline shall be a minimum
2 of one year actual suspension. The standards, however, are guidelines from which the court may
3 deviate in fashioning the most appropriate discipline considering all the proven facts and
4 circumstances of a given matter. (*In re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State*
5 *Bar* (1990) 51 Cal.3d 215.) They are "not mandatory 'sentences' imposed in a blind or mechanical
6 manner." (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

7 The State Bar recommends disbarment citing inapposite authority relating to intentional
8 misappropriations rather than, as here, where the attorney is found culpable of the acts of an
9 unsupervised staff and his own gross negligence. Respondent advocates suspension and cites cases
10 more similar to the instant case, imposing discipline ranging from six months to two years and until
11 the attorney complies with standard 1.4(c)(ii). After considering the misconduct and balancing the
12 aggravating and mitigating circumstances, the court recommends a lengthy actual suspension of three
13 years and until Respondent complies with standard 1.4(c)(ii) and makes restitution, among other
14 things.

15 The evidence does not indicate that Respondent acted with the deliberate intent to deprive
16 clients and others of the funds due them. Rather, he was grossly and recklessly negligent in the
17 handling of his law practice and his client trust accounts.

18 In *Lipson v. State Bar* (1991) 53 Cal.3d 1010, the Supreme Court recognized that
19 misappropriation can be committed in different degrees of culpability deserving of different
20 discipline. For example, the Supreme Court has differentiated between mere negligent
21 misappropriations unaccompanied by acts of deceit or other aggravating factors and wilful
22 misappropriations where a client's money is taken by the attorney through acts of deception or with
23 an intent to deprive. (*Edwards v. State Bar, supra*, 52 Cal.3d at p. 38.) "Even where the most
24 compelling mitigating circumstances do not clearly predominate, extenuating circumstances relating
25 to the facts of the misappropriation may render disbarment inappropriate." (*Lipson, supra*, 53 Cal.3d
26 at p. 1022; See also, *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708;
27 *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.) Disbarment will not
28 be recommended where there is no evidence that a sanction short of disbarment is inadequate to

1 deter future misconduct and protect the public. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal.
2 State Bar Ct. Rptr. 456, 472.)

3 Respondent was not sufficiently involved in the operation of the Northern California practice
4 to ensure that client funds were protected and that cases and clients were properly attended to and
5 did not fall through the cracks. Respondent had a warning from the circumstances surrounding his
6 first disciplinary matter that something might be amiss in his Northern California practice. He did
7 not heed it. Even after Coh admitted the theft, Respondent made some, clearly insufficient, effort
8 to address the problem by telling Coh to stay away from settlement checks and advising insurance
9 carriers to send checks to Los Angeles. He made an effort to repay clients prior to the State Bar's
10 involvement but did not make an effort to rectify the fundamental trust accounting problems. He did
11 not become personally involved in making sure that the problems were straightened out. He did not
12 audit the trust account, contact all the affected clients and repay them. He did not keep a list of the
13 affected clients and whether they had been repaid. Since the pendency of this proceeding, at least
14 two clients remain unpaid. Respondent did not take realistic action to rectify the situation at the time
15 of the misconduct or establish a sound management plan to prevent its reoccurrence. (*In the Matter*
16 *of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119; *In the Matter of Jones* (Review
17 Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411.)

18 There are a number of cases involving attorneys who failed to control their law practice,
19 grossly neglected their client trust account and thereby allowed their staff to embezzle client funds.
20 In considering the recommendation for the level of discipline, the court found instructive *In the*
21 *Matter of Steele, supra*, 3 Cal. State Bar Ct. Rptr. 708; *In the Matter of Sampson, supra*, 3 Cal. State
22 Bar Ct. Rptr. 119; and *In the Matter of Jones, supra*, 2 Cal. State Bar Ct. Rptr. 411.

23 In *In the Matter of Steele, supra*, 3 Cal. State Bar Ct. Rptr. 708, the attorney was disbarred
24 for misconduct including failing to control his law practice, where he let a non-lawyer take over
25 much of his practice, sign client trust account checks, and handle all financial records without proper
26 supervision. Respondent Steele also engaged in personal acts of moral turpitude apart from collusion
27 with a non-attorney. (*Id.* at 724.) Respondent Steele was found culpable of deliberately concealing
28 material information from an insurer; deliberately misappropriating \$4,623.62; and deliberately

1 misrepresenting the amount of a settlement to a client. The Review Department found that these
2 deliberate acts of moral turpitude and dishonesty distinguished Steele's case from other cases
3 involving a reckless failure to supervise a law practice that did not result in disbarment. (*Ibid.*)

4 However, unlike *Steele*, Respondent has not been found culpable of deliberate or intentional
5 acts of moral turpitude. Rather, Respondent's culpability has occurred as a result of his reckless
6 disregard for his fiduciary duties and his gross negligence. Furthermore, although Respondent failed
7 to develop adequate safeguards to assure his clients' funds were protected and his obligations were
8 fulfilled, he attempted to maintain some control over his client trust account by limiting the
9 signatories to Fields and himself. Also, Respondent should be given more mitigation for his
10 restitution efforts than Respondent Steele. In light of these distinguishing factors, the present case
11 does not warrant a disbarment recommendation.

12 In *In the Matter of Sampson, supra*, 3 Cal. State Bar Ct. Rptr. 119, it was recommended that
13 Respondent receive a three-year stayed suspension, three years probation and an actual suspension
14 for 18 months and until specified restitution was made, among other things. Respondent Sampson's
15 primary misconduct was failing to supervise his personal injury cases and recklessly disregarding
16 his trust account obligations in several matters for nearly one year, which constituted moral
17 turpitude. In mitigation, the Review Department considered his unblemished discipline record for
18 13 years. Aggravating factors included multiple instances of misconduct and significant harm to a
19 medical lienholder. The record did not show that problems resulting from Sampson's disregard of
20 his trust account obligations had ended or that he had established a sound management plan.

21 The instant case merits more discipline than *Sampson* considering the nature of the
22 misconduct and more significant aggravating factors herein, including Respondent's lack of candor,
23 his prior record of discipline, and his continued misconduct.

24 In *In the Matter of Jones, supra*, 2 Cal. State Bar Ct. Rptr. 411, a two-year actual suspension
25 was imposed for entering into an agreement with a non-lawyer to set up a law corporation and split
26 fees. Respondent Jones delegated all aspects of the personal injury practice to the non-lawyer
27 without supervision during a two-year period in which the non-lawyer handled over \$2 million in
28 client funds without even establishing a trust account, collected attorney fees without an attorney

1 performing services and engaged in the practice of law in Jones' name, all unbeknownst to Jones.
2 However, upon discovery of the non-lawyer's activity, Jones reported the situation to the police and
3 cooperated fully in the prosecution of the non-lawyer, even though he was warned that the
4 disciplinary proceeding would ensure. Jones also was given significant mitigating credit for his
5 substantial, spontaneous candor and cooperation with the State Bar.

6 Of great concern to the court, is that Respondent has not profited sufficiently from prior
7 experience. Despite having gone through two disciplinary matters for similar misconduct,
8 Respondent still does not reconcile his trust account every month. At the time of trial, it had been
9 three or four months since he had done so. He was surprised to learn of a check drawn against
10 insufficient funds from that account. Further, he returned his client Liggett's call only after the State
11 Bar intervened on her behalf. He relied on a paralegal to communicate with his German-speaking
12 client and is unsure whether the paralegal addressed an issue relating to a medical provider prior to
13 Liggett's signing the release. Respondent was not present during the discussion with Liggett.
14 He has not sufficiently demonstrated a commitment to comply with the trust accounting and other
15 ethical rules. Furthermore, and perhaps most importantly, Respondent lacked candor before this
16 court. Accordingly, greater discipline is merited than in the *Jones* and *Sampson* cases.

17 If Respondent desires to practice law again, he will bear the burden of demonstrating by the
18 his rehabilitation and fitness to practice after serving three years of actual suspension and making
19 restitution and establishing a law office management plan and trust accounting controls, among other
20 things. These requirements in the context of a lengthy period of supervised probation will be
21 sufficient to protect the public and the legal profession.

22 DISCIPLINE RECOMMENDATION

23 IT IS HEREBY RECOMMENDED that Respondent **STEPHEN J. BUCHANAN** be
24 suspended from the practice of law for five years and until he provides proof satisfactory to the State
25 Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law
26 pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct; and
27 until he makes restitution to (1) Remedios Viajar in the amount of \$1116.14 plus 10% interest per
28 annum from June 4, 1999, and (2) Aurea Filardo in the amount of \$1801 plus 10% interest per

1 annum from September 21, 1999 (or the Client Security Fund, if appropriate) and furnishes
2 satisfactory proof thereof to the Probation Unit, State Bar Office of the Chief Trial Counsel; that
3 execution of that suspension be stayed, and that Respondent be placed on probation for five years,
4 with the following conditions:

5 1. Respondent shall be actually suspended for three years and until he provides proof
6 satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present
7 learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney
8 Sanctions for Professional Misconduct; and until he makes restitution to (1) Remedios Viajar
9 in the amount of \$1,116.14 plus 10% interest per annum from June 4, 1999, and (2) Aurea
10 Filardo in the amount of \$1,801 plus 10% interest per annum from September 21, 1999 (or
11 the Client Security Fund, if appropriate) and furnishes satisfactory proof thereof to the
12 Probation Unit, State Bar Office of the Chief Trial Counsel;

13 2. During the probation period Respondent shall comply with the State Bar Act and the Rules
14 of Professional Conduct;

15 3. Within ten (10) days of any change, Respondent shall report to the Membership Records
16 Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to
17 the Probation Unit, all changes of information, including current office address and telephone
18 number, or if no office is maintained, the address to be used for State Bar purposes, as
19 prescribed by section 6002.1 of the Business and Professions Code;

20 4. Respondent shall submit written quarterly reports to the Probation Unit on each January 10,
21 April 10, July 10, and October 10 of the period of probation. Under penalty of perjury,
22 Respondent shall state whether Respondent has complied with the State Bar Act, the Rules
23 of Professional Conduct, and all conditions of probation during the preceding calendar
24 quarter. If the first report will cover less than thirty (30) days, that report shall be submitted
25 on the next following quarter date, and cover the extended period.

26 In addition to all quarterly reports, a final report, containing the same information, is due no
27 earlier than twenty (20) days before the last day of the probation period and no later than the
28 last day of the probation period;

5. Subject to the assertion of applicable privileges, Respondent shall answer fully, promptly,
and truthfully, any inquiries of the Probation Unit of the Office of the Chief Trial Counsel,
which are directed to Respondent personally or in writing, relating to whether he is
complying or has complied with the conditions contained herein;

6. Within one (1) year of the effective date of the discipline herein, Respondent shall provide
to the Probation Unit satisfactory proof of attendance at a session of the Ethics School and
of the Client Trust Accounting School, given periodically by the State Bar at either 180
Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los
Angeles, California, 90015-2299, and passage of the test given at the end of that session.
Arrangements to attend Ethics School and Client Trust Accounting School must be made in
advance by calling (213) 765-1287, and paying the required fee. This requirement is separate
from any Minimum Continuing Legal Education Requirement (MCLE), and Respondent
shall not receive MCLE credit for attending Ethics School and Client Trust Accounting
School (Rule 3201, Rules of Procedure of the State Bar.);

7. No earlier than three years from the effective date of the discipline herein and no later than
90 days prior to the first scheduled hearing (trial) date on Respondent's petition to be

1 relieved from actual suspension pursuant to standard 1.4(c)(ii), Standards for Attorney
2 Sanctions for Professional Misconduct, Respondent shall develop a law office
3 management/organization plan which must be approved by the Probation Unit. This plan
4 must include procedures to send periodic reports to clients, the documentation of telephone
5 messages received and sent, file maintenance, the meeting of deadlines, the establishment
6 of procedures to withdraw as attorney, whether of record or not, when clients cannot be
7 contacted or located, and for the training and supervision of support personnel;

8 8. Reporting requirements.

9 A. If Respondent possesses client funds at any time during the period covered by a
10 required quarterly report, Respondent shall file with each required report a certificate
11 from a certified public accountant, certifying that: Respondent has maintained a bank
12 account in a bank authorized to do business in the State of California, at a branch
13 located within the State of California, and that such account is designated as a "Trust
14 Account" or "Client's Funds Account"; and Respondent has kept and maintained the
15 following:

- 16 i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 17 1. The name of such client,
 - 18 2. The date, amount, and source of all funds received on behalf of such
19 client,
 - 20 3. The date, amount, payee and purpose of each disbursement made on
21 behalf of such client, and
 - 22 4. The current balance for such client;
- 23 ii. A written journal for each client trust fund account that sets forth:
 - 24 1. The name of such account,
 - 25 2. The date, amount, and client affected by each debit and credit, and
 - 26 3. The current balance in such account.
- 27 iii. All bank statements and canceled checks for each client trust account; and
- 28 iv. Each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if
there are any differences between the monthly total balances reflected in (i),
(ii), and (iii) above, the reason for the differences, and that Respondent has
maintained a written journal of securities or other properties held for a client
that specifies:
 1. Each item of security and property held;
 2. The person on whose behalf the security or property is held;
 3. The date of receipt of the security or property;
 4. The date of distribution of the security or property; and
 5. The person to whom the security or property was distributed.

B. If Respondent does not possess any client funds, property or securities during the
entire period covered by a report, respondent must so state under penalty of perjury
in the report filed with the Probation Unit for that reporting period. In this
circumstance, Respondent need not file the accountant's certificate described above.

C. The requirements of this condition are in addition to those set forth in rule 4-100,
Rules of Professional Conduct.

24 The period of probation shall commence on the effective date of the order of the Supreme
25 Court imposing discipline in this matter.

26 At the expiration of the period of this probation, if Respondent has complied with all the
27 terms of probation, the order of the Supreme Court suspending Respondent from the practice of law
28 for five years and until he makes specified restitution and until he complies with standard 1.4(c)(ii)

1 shall be satisfied and that suspension shall be terminated.

2 It is not recommended that Respondent take and pass the Multistate Professional
3 Responsibility Examination (MPRE), as he was ordered to do so as part of his prior discipline,
4 Supreme Court Case No. S098529 (State Bar Court Case Nos. 97-O-10047; 98-O-03316 (Con.)),
5 effective September 30, 2001.

6 It is further recommended that Respondent be ordered to comply with rule 955, California
7 Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within thirty
8 (30) and forty (40) days, respectively, from the effective date of the Supreme Court order herein.
9 **Wilful failure to comply with the provisions of rule 955 may result in revocation of probation;**
10 **suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal**
11 **conviction.**

12 COSTS

13 The Court recommends that costs be awarded to the State Bar pursuant to Business and
14 Professions Code section 6086.10, and that those costs be payable in accordance with section 6140.7.

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19 Dated: October 10, 2002

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JOANN M. REMKE
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on October 10, 2002, I deposited a true copy of the following document(s):

DECISION

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

- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DAVID ALAN CLARE
2755 BRISTOL ST #280
COSTA MESA CA 92626-5985

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

JAYNE KIM , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 10, 2002.**



Bernadette C. O. Molina
Case Administrator
State Bar Court