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**THE STATE BAR COURT  
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of	)	Case Nos. 00-O-10659-JMR; 00-O-10660;
<b>MAXIM NICHOLAS BACH,</b>	)	01-O-04307 (Cons.)
Member No. 44804,	)	<b>DECISION AND ORDER OF</b>
<u>A Member of the State Bar.</u>	)	<b>INVOLUNTARY INACTIVE</b>
		<b>ENROLLMENT</b>

**I. INTRODUCTION**

In these three contested matters, Respondent **MAXIM NICHOLAS BACH** is charged with 14 counts of professional misconduct, including failure to maintain trust funds, misappropriation, committing acts of moral turpitude, charging an unconscionable fee, forgery, misrepresentation, failure to promptly return client funds, failure to render an accounting, failure to refund unearned fees and failure to report judicial sanctions.

The court finds, by clear and convincing evidence, that Respondent committed most of the serious charges of misconduct in three client matters and recommends disbarment.

**II. PERTINENT PROCEDURAL HISTORY**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on Respondent a Notice of Disciplinary Charges (NDC) in case Nos. 00-O-10659 and 00-O-10660 on December 7, 2001. The State Bar filed an Amended Notice of Disciplinary Charges in case No. 01-O-04307 on February 28, 2002, and properly served on Respondent on or about March 26, 2002. (Rules Proc. of State Bar, rule 60.) Respondent filed responses to the two NDCs.

The court ordered the cases consolidated on April 8, 2002.

1 A four-day hearing was held on October 15, 16, 30, and 31, 2002. Deputy Trial Counsel  
2 Sherrie B. McLetchie represented the State Bar. Respondent represented himself. The deposition  
3 testimony in lieu of live testimony of complaining witnesses Donna and Pete Ielati was used at trial.  
4 (Code Civ. Proc., §2025, subd. (u)(3).)

5 The court took these matters under submission on December 2, 2002, following the filing of  
6 closing briefs.

### 7 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8 The following findings of fact are based on the parties' stipulation of facts and the evidence  
9 and testimony introduced at this proceeding. The court finds part of Respondent's testimony not  
10 credible and self-serving.

11 In his closing brief, Respondent alleges that the court has made 16 prejudicial rulings and has  
12 denied him due process and/or a fair hearing. Therefore, he asserts that these proceedings should  
13 be dismissed. The court rejects his arguments. Respondent was not denied due process and was  
14 given a full and fair hearing.

#### 15 **A. Jurisdiction**

16 Respondent was admitted to the practice of law in California on January 15, 1970, and has  
17 been a member of the State Bar since that time.

#### 18 **B. Case No. 00-O-10659 (The Ielatis Matter [Counts 1-8])**

19 This is a fee dispute case in which Respondent unilaterally decided to pay himself \$50,000  
20 as attorney fees (100% of the settlement proceeds), in addition to receiving a retainer of \$5,000, and  
21 paid nothing to his clients.

22 Pete Ielati, age 71, and Donna Ielati, age 67, are husband and wife with a ninth/tenth grade  
23 education who owned and operated a business known as Billie Beed Fun Park.

24 On May 27, 1999, Pete and Donna hired Respondent to represent them in a real property  
25 damage dispute concerning Billie Beed Fun Park in *Donna Ielati and Pete Ielati v. Louisiana-Pacific*  
26 *Corporation*, U.S. District Court for the Eastern District of California, case No. Civ-S-97-0237-WBS  
27 DAD (the Ielatis case).

28 The Ielatis and Respondent executed a Contingency Fee Employment Contract in which the

1 Ielatis agreed to pay a non-refundable retainer of \$15,000, of which \$3,000 was due immediately,  
2 \$2,000 was due by September 8, 1999, and the remainder would be due if the gross recovery was  
3 \$50,000 or more. In addition, the parties further agreed that the Ielatis shall pay Respondent a  
4 contingent fee of 40% of any recovery amount. The Ielatis also agreed to give power of attorney to  
5 Respondent to execute documents.

6 Pursuant to the contract, the clients paid Respondent \$3,000 on May 27, 1999.

7 On June 2, 1999, Respondent filed a Substitution of Attorney form substituting himself in  
8 place of attorney Scott Galati as Donna's attorney of record. The substitution of attorney was served  
9 on all parties, including Pete as a plaintiff in propria persona. On June 3, 1999, Judge William B.  
10 Shubb granted attorney Galati's motion to withdraw and substituted Respondent as counsel of record  
11 for Donna. Although Respondent did not formally file a substitution of attorney on behalf of Pete  
12 and Pete was represented as in pro. per. on paper, Respondent represented both Donna and Pete in  
13 the Ielatis case.

14 On September 9, 1999, under the fee agreement, Donna paid Respondent an additional  
15 \$2,063.55, of which \$2,000 as part of the retainer and \$63.55 as costs. The Ielatis had thus far paid  
16 \$5,000 as retainer.

17 On October 26, 1999, the parties had a settlement conference with Magistrate Judge Dale A.  
18 Drozd. Respondent represented Donna and Pete in the settlement conference. They agreed to a  
19 settlement of \$105,000, in which an initial payment of \$50,000 would be paid to Donna, Pete, and  
20 Atilio Ielati (the Ielatis' son); a second payment of \$10,000 one year from the initial payment and  
21 subsequent payments of \$5,000 each year for nine consecutive years thereafter would be paid as long  
22 as the Ielatis owned and operated the Billie Beed Fun Park and as long as Louisiana-Pacific  
23 Corporation operated the plant. Although Atilio was not a party to the action, he was named in the  
24 settlement agreement because defendant thought that he might be receiving payments as well.

25 On October 27, 1999, the day following the settlement conference, Respondent wrote to  
26 Donna, stating "I will receive \$25,000.00 of the \$50,000.00 payment" as attorney fees (40% of the  
27 initial settlement amount of \$50,000, which is \$20,000, plus \$5,000 of the remaining \$10,000  
28 retainer). (State Bar exhibit 7.) Respondent stated he would discount the remaining \$5,000 of

1 the retainer.

2 In a letter dated November 2, 1999, to Respondent, Donna disputed the fee distribution. She  
3 contended that Respondent represented only her and not Pete. Thus, she claimed that Pete was  
4 entitled to \$25,000 and Respondent was entitled to 40% of her \$25,000, which would be \$10,000.  
5 She was silent as to the retainer balance. Therefore, Donna argued that the Ielatis were entitled to  
6 a total amount of \$40,000 from the initial payment of \$50,000.

7 On or about November 29, 1999, the Ielatis and Atilio signed the Settlement Agreement and  
8 Release. They also signed a General Release form which Respondent kept in the file.

9 A settlement check for \$50,000 dated December 10, 1999, made payable to "Donna Ielati,  
10 Pete Ielati, Atilio Ielati and Maxim Bach Trust Account" was sent to Respondent. On December 20,  
11 1999, Respondent signed the names of Pete, Donna and Atilio on the settlement check. Atilio did  
12 not have a fee contract with Respondent and never gave him power of attorney.

13 Respondent then deposited the \$50,000 settlement check into his Attorney Trust Account  
14 (CTA) at Bank of the West, account No. 116-002387.

15 On the same day, December 20, 1999, Respondent issued check No. 1250 from the CTA  
16 made payable to himself for \$30,847.35, with the notation "partial costs & fees in Ielati v. LP." On  
17 December 31, 1999, the CTA balance was \$19,159.45. (State Bar exhibit 4, p. 24.)

18 In December, two months after the October 1999 letter in which Respondent told Donna that  
19 his fees would be \$25,000, Respondent unilaterally decided to increase his fees to \$30,000 because  
20 Donna had disputed the fees. So he concluded that he would collect the entire \$15,000 retainer and  
21 no discount would be given.

22 In a letter dated December 27, 1999, to the Ielatis, Respondent enclosed a check for  
23 \$18,762.65, representing their share of the settlement proceeds, calculated as follows:

24	Initial Settlement Payment	\$50,000
25	Respondent's contingency fee (40% of \$50,000)	(\$20,000)
26	Outstanding retainer balance	(\$10,000)
27	Costs	<u>(\$ 1,237.35)</u>
28	Clients' Share of Initial Settlement	<u>\$18,762.65</u>

1 When Donna received the check, she disputed the amount and immediately wrote to  
2 Respondent:

3 "I do not agree with your interpretation of what I am to receive. I am informing you  
4 now that I totally dispute the amount payable to you. I am not going to cash the  
5 check ... that you sent to me....I am informing you not to take any money from that  
6 account until this matter is settled." (State Bar exhibit 13.)

6 In January 2000, the Ielatis requested fee arbitration with the Butte County Bar Association.  
7 In his March 2000 reply to client's request for arbitration, Respondent again recalculated his fees and  
8 increased the amount from \$30,000 to \$50,000. He stated that he had the right to the entire initial  
9 payment of \$50,000 received in December 1999 and to \$4,847.35 of the second payment of \$10,000  
10 expected in November 2000. Respondent claimed that the clients shall receive their share when the  
11 remaining settlement proceeds would be paid in the next nine years.

12 A hearing was held in May 2000 and a panel of three arbitrators made a determination in  
13 June 2000.<sup>1</sup> Soon thereafter, Respondent sued the Ielatis and Atilio regarding the fee dispute.

14 Meanwhile, on or about March 10, 2000, Donna attempted to cash the \$18,762.65 check  
15 dated December 27, 1999, but was told that there were insufficient funds in the CTA.

16 Between February 2 and March 10, 2000, Respondent made the following withdrawals,  
17 among others, payable to himself from the CTA:

18	<i>Date</i>	<i>Check No.</i>	<i>Withdrawals</i>
19	2/2/00	1253	\$2,500
	2/8/00	1254	\$2,500
20	2/15/00	1255	\$3,500
	3/1/00	1259	\$5,000
21	3/6/00	1260	<u>\$2,000</u>
22		<i>Total Withdrawals</i>	<u>\$15,500<sup>2</sup></u>

23  
24 <sup>1</sup>Business and Professions Code section 6204(e) provides that the award and  
25 determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res  
26 judicata in any action or proceeding.

27 <sup>2</sup>The Notice of Disciplinary Charges alleges that Respondent withdrew \$2,324.65 on  
28 February 22, 2000 and \$3,000 on February 24, 2000. The evidence shows that Respondent  
issued these two checks for another client matter and therefore, the amounts are excluded in  
calculating the amount of improper withdrawals. (State Bar exhibit 4, pp. 30-31.)

1 During the period between February 2 and March 31, 2000, the balance in the CTA  
2 repeatedly fell below \$18,762.65, as follows:

3	<i>Date</i>	<i>Balance</i>
4	2/2/00	\$16,305.51
	2/8/00	\$13,805.51
5	2/15/00	\$10,305.51
	2/29/00	\$10,428.45 <sup>3</sup>
6	3/1/00	\$ 5,420.86
	3/6/00	\$ 3,420.86
7	3/31/00	\$ 172.37 <sup>4</sup>

8 In May 2000, the Ielatis again tried to present the settlement check for payment but the  
9 balance in the CTA on May 10, 2000, was \$20.86. On May 15, 2000, when Respondent received  
10 a notice from Bank of the West regarding check No. 1251 not being honored due to insufficient  
11 funds, he placed a stop payment order on the check.

12 The Ielatis testified that they had to sell Billie Beed Fun Park to pay bills and did so on July  
13 10, 2000. However, they did not tell Respondent of the sale. Consequently, Louisiana-Pacific  
14 Corporation was released from its obligation to make any further payments under the settlement  
15 agreement since the Ielatis no longer owned the property.

16 On November 10, 2000, Respondent wrote to attorney Eric C. Kastner, Louisiana-Pacific  
17 Corporation's attorney, seeking the second installment settlement payment of \$10,000. He also  
18 enclosed a General Release form that he had kept in the file. Although the Ielatis executed the form  
19 in 1999 at the time of the original settlement agreement, Respondent dated it as November 10, 2000.

20 On December 5, 2000, attorney Kastner informed Respondent that because the Ielatis had  
21 sold the property before the payment was due, Louisiana-Pacific Corporation was no longer  
22 obligated to make any further settlement payments.

23 \_\_\_\_\_  
24 <sup>3</sup>The parties stipulated to \$5,428.45 as the balance as of February 29, 2000. However, the  
25 bank statement indicated that the ending balance was \$10,428.45. (State Bar exhibit 4, p. 16.)  
The error was harmless.

26 <sup>4</sup>The parties stipulated to \$10.86 as the balance as of March 30, 2000. However, the  
27 bank statement indicated that the ending balance was \$172.37 as of March 31 and the low  
28 balance during the month of March was \$170. Therefore, the balance could not have been  
\$10.86. (State Bar exhibit 4, p. 17.) The error was harmless.

1           The Ielatis and Atilio have not received any portion of the \$50,000 settlement payment. The  
2 court finds that Respondent may be entitled to \$15,000 as attorney fees, calculated as follows:

3           Contingent fee (40% of \$50,000)	\$20,000
4           Retainer paid in 1999	<u>(\$ 5,000)</u>
5           Balance of Respondent's share as fees	<u>\$15,000</u>

6 Therefore, the clients should be entitled to \$35,000 (\$50,000 - \$15,000 = \$35,000). But clearly,  
7 Respondent was not entitled to 100% of the initial settlement proceeds of \$50,000.

8           Respondent asserts the equitable defense of the unclean-hands doctrine, arguing that the  
9 Ielatis and the State Bar have unclean hands and that the charges against him in the Ielatis matter  
10 should therefore be dismissed.

11           Respondent claims that the Ielatis had altered the fee agreement, deleting this footnote:

12           “\*Client will also have to pay a non-refundable retainer of \$15,000, with \$3,000  
13 now, \$2,000 by Sept 8, 1999, and the remainder if any recovery, provided the gross  
14 recovery is at least \$50,000 or more. The 40% contingency will be paid regardless  
of any recovery amount.” (Respondent's exhibit A.)

15           The Ielatis contends that the footnote was never a part of the agreement and that they never  
16 agreed to a non-refundable retainer of \$15,000. Donna believes that the initial payment of \$5,000  
17 in 1999 was refundable.

18           In attorney discipline proceeding, all reasonable doubts must be weighed in favor of the  
19 attorney. (*Kapelus v. State Bar* (1987) 44 Cal.3d 179, 183.) In view of the conflicting allegation that  
20 the Ielatis had modified the fee agreement without Respondent's consent, there is no clear and  
21 convincing evidence that the footnote in the agreement was not part of the original fee agreement.  
22 Therefore, the court finds that the footnote was a part of the fee agreement between the Ielatis and  
23 Respondent and that they have agreed to its terms.

24           Respondent contends that, therefore, the doctrine of unclean hands should apply and the  
25 Ielatis are not entitled to any relief.

26           The doctrine of unclean hands is the “principle that a party cannot seek equitable relief ... if  
27 that party has violated an equitable principle, such as good faith.” (Black's Law Dict. (7<sup>th</sup> ed. 1999)

28

1 p. 244, col. 2.) The State Bar correctly states that the Ielatis are not parties but witnesses to this  
2 disciplinary proceeding and that the State Bar does not act as the Ielatis' agent in this proceeding.  
3 The court also finds that there is no evidence of unclean-hands on the part of the State Bar.

4 Accordingly, Respondent's defense of unclean hands is inapplicable here.

5 **Count 1: Rule 3-700(A)(2) of the Rules of Professional Conduct<sup>5</sup> (Improper Withdrawal From**  
6 **Employment)**

7 Rule 3-700(A)(2) provides that an attorney shall not withdraw from employment until he has  
8 taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client.

9 Respondent testified that he represented Pete in the Ielatis case, but as a legal strategy, he did  
10 not formally file a substitution of attorney on Pete's behalf and Pete was in pro. per. on paper only.

11 But the Ielatis argued that Respondent represented only Donna and not Pete, that Respondent  
12 did not perform any services on behalf of Pete and that Respondent had abandoned Pete.

13 In light of the fee agreement executed by both Donna and Pete, the October 1999 settlement  
14 conference and the lack of clear and convincing evidence to the contrary, the court finds that  
15 Respondent represented both Donna and Pete in the Ielatis case. (See *Kapelus v. State Bar, supra*,  
16 44 Cal.3d 179, 183.) Respondent performed services on behalf of both Pete and Donna and did not  
17 abandon Pete. Therefore, Respondent did not improperly withdraw from employment in violation  
18 of rule 3-700(A)(2).

19 **Count 2: Rule 4-100(A)(2)(Failure to Maintain Client's Funds)**

20 Rule 4-100(A)(2) provides that all funds received for the benefit of clients shall be deposited  
21 in a client trust account and that no funds belonging to the attorney shall be deposited therein or  
22 otherwise commingled therewith. It further provides that when the right of the attorney to receive  
23 a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until  
24 the dispute is finally resolved.

25 Respondent claims that this rule applies only if the client disputes a *portion* of the fees.

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26  
27 <sup>5</sup>References to rule are to the current Rules of Professional Conduct, unless otherwise  
28 noted.

1 Respondent reasons that once the Ielatis disputed the entire fee, he had no duty to maintain the funds  
2 in the CTA, he was immediately entitled to 40% of the entire settlement of \$105,000 before any  
3 payment from the defendant in the subsequent nine years and the clients would collect future  
4 payments. According to Respondent, he is entitled to \$54,847.35 for fees and costs, in addition to  
5 the \$5,063.55 retainer and costs which the Ielatis had already paid.<sup>6</sup> He has thus far collected a total  
6 of \$55,063.55 – 100% of the \$50,000 settlement plus the \$5,063.55 paid as retainer and costs.

7 An attorney may not unilaterally set his fee and withdrew funds held in trust for his client in  
8 order to satisfy it without knowledge or consent of client. (*Most v. State Bar* (1967) 67 Cal.2d 589;  
9 *McKnight v. State Bar* (1991) 53 Cal.3d 1025.) Since the Ielatis contested the fees charged, the  
10 disputed funds must be placed in a trust account until the conflict is resolved.

11 Here, the Ielatis claim to be entitled to \$40,000 of the initial settlement payment. Instead of  
12 holding the disputed funds in his CTA when Donna voiced her disagreement, Respondent  
13 unilaterally and repeatedly increased the amount of his fees on three occasions during a six-month  
14 period. He increased it from \$20,000 to \$25,000 in October 1999, to \$30,000 in December 1999,  
15 and to \$50,000 in March 2000. Consequently, he withdrew \$30,847.35 from his CTA on December  
16 20, 1999, to pay himself as fees and costs. Between February 2 and March 10, 2000, he withdrew  
17 an additional \$15,500 from his CTA for himself.

18 Respondent's blatant failure and refusal to hold in trust the disputed fees of at least \$40,000  
19 clearly and convincingly violated rule 4-100(A)(2).

20 **Count 3: Business and Professions Code Section 6106<sup>7</sup> (Misappropriation)**

21 Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude,  
22 dishonesty or corruption.

23 The mere fact that the balance in an attorney's trust account has fallen below the total of  
24 amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation.

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25  
26 <sup>6</sup>Respondent's logic and fee calculations are often nonsensical.

27 <sup>7</sup>All references to section are to the Business and Professions Code, unless otherwise  
28 indicated.

1 (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of  
2 entrusted funds leaves no room for inquiry into the attorney's intent. (See *In the Matter of Bleecker*  
3 (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

4 Respondent argues that he was justified in keeping the \$50,000 settlement payment as  
5 attorney fees. As stipulated to by Respondent and the State Bar, Respondent further "disputes the  
6 right of the Ielatis to sell the property after they had signed the settlement agreement because he  
7 claims an attorney's lien and proprietary interest pursuant to the Contingency Fee Employment  
8 Agreement and settlement agreement and under the law."

9 Respondent is basically asserting an interest in the Ielatis' property in order to secure the  
10 amount of his future fees. Arguably, then Respondent would have had entered into a business  
11 transaction with his clients under rule 3-300 and he would have had to meet certain prophylactic  
12 requirements to avoid interests adverse to the Ielatis.

13 Rule 3-300 provides that an attorney shall not enter into a business transaction with a client  
14 or knowingly acquire an interest adverse to a client unless the transaction or acquisition is fair and  
15 reasonable to the client, is fully disclosed to the client, the client is advised in writing that the client  
16 may seek the advice of an independent lawyer of the client's choice and is given a reasonable  
17 opportunity to do so, and the client thereafter consents in writing to the transaction or acquisition.

18 If the fee arrangement is also a business transaction between the Ielatis and Respondent, as  
19 Respondent seems to contend, it must meet the standards set forth in both rules 3-300 and 4-200.  
20 The rules are not mutually exclusive. (See *In the Matter of Silvertown* (Review Dept. 2001) 4 Cal.  
21 State Bar Ct. Rptr. 252.) If such was the case, then Respondent has also failed to comply with the  
22 duties imposed in rule 3-300 because the transaction was unreasonable and unfair and the Ielatis  
23 were never told in writing to seek the advice of another attorney.

24 Absent further evidence, the court rejects Respondent's argument and does not find that the  
25 contingent fee agreement constitutes a business transaction. Respondent may find the sale of the  
26 property disagreeable, but he does not have a proprietary interest in the property and may not  
27 unilaterally decide to set his fees to \$55,000 (\$50,000 settlement payment + \$5,000 retainer paid)  
28 to satisfy his dispute.

1 Respondent may have been entitled to \$15,000, but not \$55,000 as fees. To allow  
2 Respondent to collect an additional \$15,000 as a retainer fee would be unconscionable. (See  
3 discussion below regarding rule 4-200 on unconscionable fee.) He had depleted most of the \$50,000  
4 settlement funds within three months of their deposit. The balance at the end of March 2000 was  
5 \$172.37.

6 Because Respondent's CTA balance fell below the amount of at least \$35,000 of entrusted  
7 funds, Respondent misappropriated the money and committed an act of moral turpitude in wilful  
8 violation of section 6106.

9 **Counts 4 and 5: Rule 4-200(A) (Unconscionable Fee)**

10 Rule 4-200(A) prohibits an attorney from entering into an illegal or unconscionable fee  
11 agreement.

12 Respondent entered into a contingent fee agreement where the Ielatis had to pay a non-  
13 refundable retainer of \$15,000, with an initial payment of \$5,000, and the remainder if any recovery,  
14 provided the gross recovery is at least \$50,000 or more. The 40% contingency would be paid  
15 regardless of any recovery amount. Therefore, if the settlement was \$50,000, Respondent would be  
16 entitled to a total fee of \$35,000, as follows:

17 Retainer	\$15,000
18 Contingent fee (40% of \$50,000)	<u>\$20,000</u>
19 Fee under the agreement	<u>\$35,000</u>

20 This amount of \$35,000 from the initial settlement is 70% of \$50,000. Clearly, this was an  
21 unconscionable fee agreement that the Ielatis and Respondent had entered into.

22 But Respondent was not satisfied with 70%.

23 Respondent argues that he was entitled to collect 40% of the entire \$105,000 settlement,  
24 which would be \$42,000, plus the non-refundable retainer of \$15,000, totaling \$57,000. Therefore,  
25 he asserts that he was entitled to the entire \$50,000 initial settlement payment and then some.

26 In other word, Respondent believes he had the right to collect 100% of the initial settlement  
27 plus the \$5,000 retainer paid in 1999. So he did.

28 "[I]n general, the negotiation of a fee agreement is an arm's-length transaction." (*Ramirez*

1 v. *Sturdevant* (1994) 21 Cal.App.4th 904, 913.) However, the right to practice law “is not a license  
2 to mulct the unfortunate.” (*Recht v. State Bar* (1933) 218 Cal. 352, 355.) “The test is whether the  
3 fee is ‘so exorbitant and wholly disproportionate to the services performed as to shock the  
4 conscience.’” (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.)

5 In this matter, Respondent’s argument of structured settlement entitling him to collect the  
6 entire initial settlement funds before the clients receive any portion of the settlement proceeds  
7 reflects his complete lack of comprehension of his fiduciary duties to clients.

8 Collecting 100% of the \$50,000 is clearly exorbitant and disproportionate to the services  
9 performed as to shock the conscience. Yet, Respondent sees nothing wrong or unethical about such  
10 conduct. Instead, he has further entangled his unfortunate clients to additional legal expenses and  
11 litigation by suing them for his right to keep those settlement funds of \$50,000 as his attorney fees.  
12 Respondent is thus clearly and convincingly culpable of charging an unconscionable fee in violation  
13 of rule 4-200(A) in count 4 as to Pete and in count 5 as to Donna.

14 **Count 6: Section 6106 (Forgery)**

15 Respondent testified that he signed Atilio’s name on the settlement check. He is not  
16 concerned because Atilio was not a party to the litigation or part of the settlement. As long as he had  
17 the power of attorney from the Ielatis, he believes that he had the authority to endorse the check. He  
18 further testified that he could have cashed the \$50,000 settlement check without Atilio’s signature  
19 because he had a “good relationship with the bank.”

20 Neither Respondent’s relationship with the bank nor his power of attorney from the Ielatis  
21 authorizes him to sign on behalf of Atilio. In fact, Atilio testified that he never gave Respondent  
22 authorization to endorse the check or sign his name.

23 Therefore, by forging Atilio’s signature on the settlement check without his knowledge and  
24 consent, Respondent committed an act of moral turpitude and dishonesty in wilful violation of  
25 section 6106.

26 **Count 7: Section 6106 (Dishonesty)**

27 Unbeknownst to Respondent, the Ielatis had sold the real property in July 2000. In  
28 November 2000, Respondent sought to obtain the second installment payment of \$10,000 from

1 defendant. Without verifying whether the Ielatis were still the owners, Respondent submitted a  
2 General Release to attorney Kastner signed by the Ielatis on November 29, 1999, but Respondent  
3 dated it November 10, 2000. Respondent's gross negligence in misrepresenting to defendant that  
4 the Ielatis were entitled to the \$10,000 payment constituted moral turpitude in wilful violation of  
5 section 6106.

6 **Count 8: Rule 5-200(B) (Misleading A Judge)**

7 Rule 5-200(B) prohibits an attorney from misleading the judge by an artifice or false  
8 statement of fact or law in presenting a matter to the court during trial. Respondent did not mislead  
9 Magistrate Judge Drozd that he represented Pete at the settlement conference because he did  
10 represent Pete. Therefore, Respondent did not violate rule 5-200(B).

11 **C. Case No. 00-O-10660 (The Terry Matter [Counts 9 - 12])**

12 On November 23, 1998, after consulting with Respondent, Jean S. Terry employed  
13 Respondent to represent her in her marital dissolution. They executed a fee agreement that provided  
14 for "a MINIMUM GUARANTEED FEE in the amount of \$2,000.00 (with any legal services  
15 performed in excess of 20 hours to be billed at \$200 per hour on a monthly basis to the Client)," plus  
16 \$500 deposit for costs.<sup>8</sup> (State Bar exhibit 26.) The fee agreement also provided that the minimum  
17 guaranteed fee paid was non-refundable.

18 On the same day, Terry paid Respondent \$50 for the consultation and \$2,500 for fees and  
19 costs. Respondent did not deposit the \$2,500 check in his client trust account (CTA) but deposited  
20 it in his office account.

21 In a letter dated March 25, 1999, Respondent's office notified Terry that she had a balance  
22 of \$2,500 due immediately for "an additional fee deposit."

23 On March 29, 1999, Respondent met with Terry at his office and requested payment of  
24 \$2,500 as advance attorney fees and costs because the trial was approaching. Terry paid him \$1,500.  
25 On April 6, 1999, she paid him the remaining balance of \$1,000. She understood the payment was

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26  
27 <sup>8</sup>Respondent testified that the "20 hours" was an error and that it should be "10 hours."  
28 Absent any substantial evidence to contradict the terms of the fee agreement, other than his own  
testimony, the original fee agreement shall remain undisturbed.

1 an advance fee in the event that her matter went to court.

2 Two weeks later, Terry wrote to Respondent, terminating his services effective April 21,  
3 1999 and asking for a refund of any unused money. She wrote: "The cost has gotten totally out of  
4 control and I cannot afford your services anymore." (State Bar exhibit 29, p. 6.)

5 In a letter dated April 21, 1999, Respondent requested a meeting to discuss her concerns, but  
6 Terry did not contact Respondent. She testified that she did not call him because she was afraid  
7 Respondent would try to talk her out of terminating him.

8 On April 30, 1999, Respondent again requested that Terry meet with him to discuss her  
9 concerns or come in to sign a substitution of attorneys. Terry did not arrange for an appointment to  
10 sign a substitution of attorneys.

11 On May 3, 1999, Terry again wrote to Respondent, stating that Respondent had ignored his  
12 employment termination and instructing him to immediately stop acting on her behalf. She again  
13 requested an accounting of Respondent's services through April 21, 1999, and a prompt refund of  
14 any and all unused funds. But she was never provided with any accounting or a refund of any  
15 unearned fees.

16 Ignoring the fact that he had been terminated, Respondent continued working on the Terry  
17 matter. He testified that he was still her attorney of record and needed to protect her interests. But  
18 Terry hired a new attorney, Martin S. McHugh, within only about two weeks of Respondent's  
19 termination and attorney McHugh sent a letter to Respondent on or about May 5, 1999.

20 Based on his case record (State Bar exhibit 35), after his employment ended from April 21,  
21 through May 11, 1999, the date attorney McHugh picked up the client's file, Respondent performed  
22 3.75 hours of services that did not result in benefit to the client. He charged Terry for their  
23 correspondences concerning his termination of employment (i.e., his reply letters of April 21 and 30,  
24 1999), for drafting interrogatories that had no deadline and for the administrative task of transferring  
25 client's file to the substituting attorney. Respondent recorded a total of 17 hours of services (13.25  
26 hours from November 23, 1998 through April 16, 1999, plus 3.75 hours). Respondent argues that  
27 he had expended more than 17 hours in the matter but that they were the only ones he remembered  
28 to list.

1 A year later, by letter to attorney McHugh dated May 3, 2000, Respondent refunded \$132.14  
2 to Terry for costs (\$120.13) plus interest. Respondent claims that he had overlooked the amount.

3 **Count 9: Rule 4-100(A) (Failure to Maintain Client's Funds)**

4 Respondent contends that because Terry consented to depositing \$500 for costs into his office  
5 account, he had no duty to deposit the \$2,500 check earmarked for fees and costs into his CTA. An  
6 attorney is prohibited from deviating from the rule requiring client funds to be deposited in a trust  
7 account even when the attorney has the client's consent to place trust funds in an account other than  
8 a trust account. (See *In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 185, 191.)

9 Therefore, Respondent's failure to deposit the \$2,500 check, held for the benefit of a client,  
10 into his CTA was a wilful violation of rule 4-100(A).

11 **Count 10: Rule 4-100(B)(4) (Failure to Deliver Client's Funds Promptly)**

12 Rule 4-100(B)(4) requires an attorney to promptly pay or deliver any funds or properties in  
13 the possession of the attorney which the client is entitled to receive.

14 Respondent claims that he had overlooked the \$120.13 cost credit to Terry. Where an  
15 attorney failed to refund entrusted funds to a client promptly when reasonable attention to the  
16 attorney's duties would have made it apparent that the client had overpaid the attorney for fees, the  
17 attorney violated the duty to pay clients their funds promptly upon demand. (*In the Matter of Ward*  
18 (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47.)

19 Thus, Respondent's unjustified delay of over one year in paying client funds of \$120.13 to  
20 Terry after her demand for refund of any unused funds was in clear and convincing violation of rule  
21 4-100(B)(4).

22 **Count 11: Rule 4-100(B)(3) (Failure to Render Accounts)**

23 Rule 4-100(B)(3) provides that an attorney shall maintain records of all funds of a client in  
24 her possession and render appropriate accounts to the client.

25 After repeated requests from Terry for an accounting, Respondent failed to comply with her  
26 demand. Although he produced a case record ledger at trial, detailing his 17 hours of legal services  
27 and the amount of costs incurred, he never sent Terry a copy of the ledger.

28 Respondent was obligated to provide an appropriate accounting to Terry and his failure to

1 do so was a clear and wilful violation of rule 4-100(B)(3).

2 **Count 12: Rule 3-700(D)(2) (Failure to Return Unearned Fees)**

3 Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly  
4 any part of a fee paid in advance that has not been earned.

5 Respondent argues that the \$2,500 fee paid in March and April 1999 was "for additional fee  
6 deposit" and non-refundable and that therefore, there were no unearned fees to be returned to Terry.

7 However, the fee agreement provided only the November 1998 payment of \$2,000 to be non-  
8 refundable. The second payment of \$2,500 was an advance fee paid only about two to three weeks  
9 before Terry terminated Respondent's employment in April 1999. Respondent's assertion that it was  
10 non-refundable is without merit. (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar  
11 Ct. Rptr. 752 [where an attorney did not devote certain blocks of time to certain clients' claims or  
12 turn away other business to proceed with their matters, the attorney was not excused from accounting  
13 for an advanced fee on the ground that it was a retainer earned on receipt].)

14 Terry repeatedly demanded prompt refund of any and all unearned fees from Respondent.  
15 Neither Respondent's retention of the advance fee nor his charges after termination were justified.  
16 His services on April 21, 1999, and thereafter, were of no substantial benefit to Terry. Therefore,  
17 the entire fee of \$2,500 was unearned.

18 Respondent's failure to return the unearned advance fee of \$2,500 was a wilful violation of  
19 rule 3-700(D)(2).

20 **D. Case No. 01-O-04307 (The Wyatt Matter [Counts 1 and 2])**

21 Respondent represented Janet Wyatt in *In re the Marriage of Janet Naas and Darryl Wyatt*,  
22 case No. 88888, Butte County Superior Court, alleging that the former husband's disability benefits  
23 are community property. The trial court found that the disability payments are the former husband's  
24 separate property until he reaches retirement age and denied attorney fees.

25 On December 30, 1999, Respondent filed a notice of appeal (California Court of Appeal,  
26 Third Appellate District, case No. C034579). Respondent renewed his arguments that the disability  
27 benefits are community property and that the trial court abused its discretion in denying attorney fees  
28 and costs.

1 On April 27, 2000, opposing counsel, Jay-Allen Eisen, urged Respondent to dismiss the  
2 appeal, stating:

3 "The law is well-settled that these payments are [Mr. Wyatt's] separate property....  
4 No reasonable attorney would undertake this appeal or believe that it had the slightest  
5 chance of success. You are needlessly burdening Mr. [Wyatt] with the expense of  
6 defending it and the court of appeal with the time to consider it. If you will not  
7 dismiss this appeal by May 16, 2000, we will seek sanctions for a frivolous appeal  
8 under Code of Civil Procedure § 907." (State Bar exhibit 38, p. 214.)

7 Attorney Eisen further advised Respondent:

8 "There is no basis to argue that the trial judge abused his discretion in refusing to  
9 award Mrs. [Wyatt] attorney fees to pursue a patently meritless claim." (State Bar  
10 exhibit 38, p. 214.)

10 Despite opposing counsel's urging to dismiss the groundless appeal and not to burden the  
11 opposing party and the court and pointing out the inadequacy of the appellate record, Respondent  
12 pursued the appeal. He stated that attorney Eisen's letter was "ill-founded" and an "attempt to poorly  
13 intimidate." (State Bar exhibit 38, p. 216.)

14 On March 12, 2001, the Court of Appeal issued an opinion and concluded:

15 The "appeal is frivolous and that [Mrs. Wyatt's] counsel [, Respondent, ] has violated  
16 rules of appellate procedure by attaching an addendum to [Mrs. Wyatt's] reply brief  
17 and by making factual assertions and argument regarding the addendum, which is not  
18 part of the record on appeal." (State Bar exhibit 39, p. 4.)

18 The appellate court further chastised Respondent:

19 "[T]he appeal is frivolous because any reasonable attorney would agree that it could  
20 not be successful on the record provided in this appeal, i.e., any reasonable attorney  
21 would agree that the appeal is completely without merit because it was doomed to  
22 fail." (State Bar exhibit 39, p. 15.)

22 The appellate court ordered Respondent to pay sanctions of \$7,198.45 to the opposing party  
23 and sanctions of \$2,500 to the Court of Appeal.

24 Respondent's petition for a writ of review of the sanctions was denied by the California  
25 Supreme Court on May 23, 2001. The remittitur was filed May 25, 2001.

26 By letter dated June 4, 2001, Respondent notified the State Bar that he had been sanctioned  
27 in *Wyatt v. Wyatt* in the amount of \$9,698.45.

28 ///

1 **Count 1: Rule 3-110(A) (Failure to Perform)**

2 Rule 3-110(A) provides that a member shall not intentionally, recklessly or repeatedly fail  
3 to perform legal services with competence.

4 The appellate court found that Respondent had violated rules of appellate procedure by  
5 attaching an addendum to reply brief and by making factual assertions and argument regarding the  
6 addendum, which was not part of the record on appeal. But such misconduct is not a reckless failure  
7 to perform services with competence. It is bad lawyering but not a disciplinable offense.

8 However, Respondent does have a professional obligation not to pursue an appeal that was  
9 so totally lacking in merit. He had a duty to maintain only just actions; instead, he chose to ignore  
10 opposing counsel's warning that the appeal was frivolous and a waste of resources. (See Bus. &  
11 Prof. Code, § 6068(c); Rules Prof. Conduct, rule 3-200; *In the Matter of Lais* (Review Dept. 2000)  
12 4 Cal. State Bar Ct. Rptr. 112, 122.) Since Respondent was not charged with violating section  
13 6068(c) or rule 3-200, evidence of uncharged misconduct may be used in a contested proceeding for  
14 purposes of establishing evidence of aggravating circumstances. (*In the Matter of Boyne* (Review  
15 Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.) Therefore, his frivolous appeal would be considered as  
16 evidence in aggravation. However, his misconduct was not a reckless failure to competently perform  
17 services in wilful violation of rule 3-110(A).

18 **Count 2: Section 6068(o)(3)(Failure to Report Court Sanctions)**

19 Section 6068(o)(3) requires an attorney to report to the State Bar, in writing, within 30 days  
20 of the time the attorney has knowledge of the imposition of any judicial sanctions against the  
21 attorney, except for sanctions for failure to make discovery or monetary sanctions of less than  
22 \$1,000.

23 Respondent delayed until more than two months after learning of the sanctions before  
24 reporting the \$9,698.45 sanctions to the State Bar. His duty to report runs from the time he knows  
25 the sanctions were ordered, regardless of pendency of any appeal. (*In the Matter of Respondent Y*  
26 (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 866.) Therefore, by not timely reporting the  
27 \$9,698.45 sanctions to the State Bar, Respondent wilfully violated section 6068(o)(3).

28 ///

1 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

2 **A. Mitigation**

3 Respondent bears the burden of proving mitigating circumstances by clear and convincing  
4 evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std.  
5 1.2(e).)<sup>9</sup> There is no compelling mitigating evidence.

6 Respondent believes that his conduct was surrounded by good faith. (Std. 1.2(e)(ii).)  
7 Absent any clear and convincing evidence of good faith, his belief or conduct is not a mitigating  
8 factor.

9 Although Respondent entered into a stipulations of facts with the State Bar, he made them  
10 during trial. (Std. 1.2(e)(v).) Belated stipulations to facts which mainly concern easily provable  
11 facts merit limited weight in mitigation. (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State  
12 Bar Ct. Rptr. 547.) Respondent's cooperation with the State Bar during the proceedings is of  
13 minimal weight in mitigation.

14 **B. Aggravation**

15 There are many aggravating factors. (Std. 1.2(b).)

16 Respondent has three prior records of discipline, including a history of dishonesty and  
17 unethical misconduct. (Std. 1.2(b)(i).)

- 18 1. In State Bar Court case No. 84-O-285, effective July 29, 1986, Respondent was  
19 public reprovred for direct or indirect communication with adverse party represented  
20 by counsel.
- 21 2. In *Bach v. State Bar* (1987) 43 Cal.3d 848, Respondent was suspended for one year,  
22 stayed, and placed on probation for three years with 60 days' actual suspension for  
23 deliberately misleading a judge by a false statement of fact, failing to employ such  
24 means only as were consistent with truth, and committing acts of moral turpitude and  
25 dishonesty.

26  
27 

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<sup>9</sup>All further references to standards ("std.") are to the Standards for Attorney Sanctions  
28 for Professional Misconduct.)

1           3.     In California Supreme Court case No. S025800, effective July 8, 1992, Respondent  
2           stipulated to a stayed suspension of two years, three years' probation and 60 days'  
3           actual suspension, including a condition to pay restitution/sanctions of \$21,348.65  
4           plus interests to two judges whom he had sued in 1986. The trial court found  
5           Respondent's complaint frivolous, motivated solely to harass the defendants. The  
6           appellate court affirmed the trial court's finding and also found that the appeal was  
7           frivolous and prosecuted to harass the defendants. The appellate court further  
8           sanctioned Respondent. Consequently, the Supreme Court found Respondent  
9           culpable of, among others, failing to maintain just actions, engaging in an action from  
10          a corrupt motive of passion and failing to report the judicial sanctions of over \$1,000  
11          to the State Bar.

12           Respondent committed multiple acts of wrongdoing. (Std. 1.2(b)(ii).) In the Ielatis matter,  
13          he failed to maintain client funds in a client trust account, unilaterally paid himself \$50,000 as  
14          attorneys fees and nothing to his clients, misappropriated \$35,000, charged unconscionable fees,  
15          committed forgery, and misrepresented to opposing counsel through gross negligence. In the Terry  
16          matter, Respondent failed to deposit advance fee in his CTA, failed to promptly pay client funds  
17          upon demand, failed to render an accounting, and failed to refund unearned fees. In the Wyatt  
18          matter, Respondent filed a frivolous appeal and failed to timely report judicial sanctions to the State  
19          Bar.

20           Respondent's misconduct was clearly surrounded by bad faith, dishonesty and overreaching  
21          as evidenced by his misappropriation and filing a frivolous appeal. Also, his misconduct involved  
22          trust funds; Respondent had failed to render an accounting to Terry. (Std. 1.2(b)(iii).)

23           Respondent's misconduct harmed significantly his clients, the public and the administration  
24          of justice. (Std. 1.2(b)(iv).) His misappropriation of \$35,000 deprived the Ielatis of the very funds  
25          that they had employed him to recover from defendant. Terry never received the unearned portion  
26          of the advance fee. And in the Wyatt matter, Respondent caused the opposing party and the court  
27          to expend resources on his frivolous appeal. "While an attorney is expected to be a forceful advocate  
28          for a client's legitimate causes [citations] ... the role played by attorneys in the honest administration

1 of justice is more critical than ever ... Attorneys, by adherence to their high fiduciary duties and the  
2 truth, can sharply reduce or eliminate clashes and ease the way to dispute settlement.” (*In the Matter*  
3 *of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473.) Instead, Respondent’s frivolous  
4 appeal burdened the court, opposing party and counsel, causing substantial harm to the  
5 administration of justice and the public. Respondent committed an uncharged violation of section  
6 6068(c).

7 Respondent demonstrated indifference toward rectification of or atonement for the  
8 consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to pay the Ielatis and has sued them  
9 over the fee dispute; the lawsuit is still pending. Despite the appellate court’s finding of a frivolous  
10 appeal and sanctions, Respondent continues to argue before this court that he was denied due  
11 process, that he was trying to make new law and that the sanctions was improper. His lack of  
12 remorsefulness is of great concern to this court.

13 Respondent displayed a lack of cooperation to the victims of his misconduct. (Std.  
14 1.2(b)(vi).) He insists that he is entitled to the settlement funds of the Ielatis and to the unearned fees  
15 from Terry. Rather than cooperating with the Ielatis, Respondent has taken them to court.

## 16 **V. DISCUSSION**

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

21 The standards for Respondent’s misconduct provide a broad range of sanctions ranging from  
22 suspension to disbarment, depending upon the gravity of the offenses and the harm to the client.  
23 (Stds. 1.6, 1.7(b), 2.2(a), 2.3, 2.6 and 2.7.) The s, however, are only guidelines and do not mandate  
24 the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct.  
25 Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by  
26 application of rigid standards.” (*Id.* at p. 251.)

27 Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline,  
28 the degree of discipline in the current proceeding shall be disbarment unless the most compelling

1 mitigating circumstances clearly predominate. Respondent has three prior records of discipline.

2 Standard 2.2(a) provides that culpability of wilful misappropriation of entrusted funds shall  
3 result in disbarment, unless the amount is insignificantly small or the most compelling mitigating  
4 circumstances clearly predominate. Here, Respondent's misappropriation of at least \$35,000 of  
5 settlement funds is substantial and there is no compelling mitigation.

6 Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward  
7 a court or a client shall result in actual suspension or disbarment. As discussed above, Respondent's  
8 misappropriation of \$35,000 was an act of moral turpitude and his incredulous justification is  
9 without merit. His forgery of a non-client's signature on a settlement check was clearly dishonest.

10 Respondent argues that the charges against him should be dismissed. And in the alternative,  
11 he suggests an actual suspension of three months.

12 The State Bar urges disbarment.

13 Respondent should be disbarred for his egregious misconduct in the three client matters, in  
14 view of the aggravating circumstances, particularly his three prior records of discipline.

15 In the Ielatis matter, Respondent's misconduct involved misappropriating the very funds that  
16 he had recovered on behalf of an elderly couple with less than a high school education. Although  
17 he had initially agreed to pay Donna \$18,762.65, but because the clients disagreed with his fee  
18 distribution, he unilaterally determined that the entire initial settlement funds of \$50,000 belonged  
19 to him as fees. This was in addition to the advance fee of \$5,000 which the clients had already paid.  
20 In the Terry matter, when the client terminated his employment, he decided that the advance fee of  
21 \$2,500 was non-refundable. In the Wyatt matter, he refused to heed to opposing counsel's warning  
22 that the appeal was frivolous and attempted to justify that he was trying to make new law. At this  
23 trial, Respondent clearly has shown no insight into his wrongdoing.

24 Respondent had breached his fiduciary duties to the Ielatis and abused his trust as their  
25 attorney. It is settled that an attorney-client relationship is of the very highest fiduciary character and  
26 always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar*  
27 (1987) 43 Cal.3d 802, 813.) The Supreme Court noted that "[t]he essence of a fiduciary or  
28 confidential relationship is that the parties do not deal on equal terms, because the person in whom

1 trust and confidence is reposed and who accepts that trust and confidence is in a superior position  
2 to exert unique influence over the dependent party.” (*Id.*) “An attorney’s violation of the duty  
3 arising in a fiduciary or confidential relationship warrants discipline even in the absence of an  
4 attorney-client relationship.” (*Id.*)

5 The misappropriation of client funds is a grievous breach of an attorney’s ethical  
6 responsibilities, violates basic notions of honesty and endangers public confidence in the legal  
7 profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline  
8 – disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21.) In *Kaplan v. State Bar* (1991) 52 Cal.3d  
9 1067, the Supreme Court disbarred an attorney who intentionally misappropriated \$29,000 from his  
10 law firm. In *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, the attorney  
11 was disbarred for misappropriating \$40,000 from a client’s personal injury settlement funds and  
12 misled the client over a year as to the status of the money. In the instant case, Respondent  
13 misappropriated \$35,000 in the Ielatis matter and failed to refund \$2,500 in the Terry matter. No  
14 restitution has been made.

15 In recommending discipline, the “paramount concern is protection of the public, the courts  
16 and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) A significant  
17 factor in the court’s recommendation is Respondent’s complete lack of insight, recognition or  
18 remorse for any of his wrongdoing. The court is seriously concerned about the possibility of similar  
19 misconduct reoccurring. Respondent has offered no indication that this will not happen again.

20 The aggravating circumstances far outweigh any mitigation. In view of his three prior  
21 records of discipline, Respondent has repeatedly committed acts of moral turpitude and dishonesty  
22 throughout his troublesome legal career. He had contacted opposing party who was represented by  
23 counsel, misled a judge by a false statement of fact and filed frivolous lawsuits to harass opposing  
24 parties. Here, Respondent has taken client funds of an aggregate amount of more than \$37,500 from  
25 the Ielatis and Terry. Moreover, his refusal to return funds to his clients, his obtuse justification of  
26 his right to entitlement to those funds, the significant harm to his clients and his continuous failure  
27 to comprehend his fiduciary duties owed to his clients warrant the highest level of public protection.  
28 Instead of contrition, Respondent went to great length during his testimony to excuse his misconduct.

1 Therefore, in consideration of the egregious misconduct, the serious aggravating circumstances and  
2 the lack of compelling mitigating factors, the court recommends disbarment to protect the public and  
3 the integrity of the legal profession.

4 **VI. RECOMMENDED DISCIPLINE**

5 This court recommends that Respondent **MAXIM NICHOLAS BACH** be disbarred from  
6 the practice of law in the State of California and that his name be stricken from the rolls of attorneys  
7 in this State.

8 It is also recommended that the Supreme Court order Respondent to comply with rule 955,  
9 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the  
10 effective date of its order imposing discipline in this matter.

11 **VII. COSTS**

12 The court recommends that costs be awarded to the State Bar pursuant to section 6086.10 and  
13 payable in accordance with section 6140.7.

14 **VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

15 It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant  
16 to section 6007(c)(4) and rule 220(c) of the Rules of Procedure of the State Bar. The inactive  
17 enrollment shall become effective three days after the date this order is filed.

18  
19  
20  
21  
22 Dated: March 3 2003

  
\_\_\_\_\_  
**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 March 3, 2003, I deposited a true copy of the following document(s):

### DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

**MAXIM NICHOLAS BACH  
2202 5<sup>TH</sup> AVENUE  
P O BOX 5579  
OROVILLE CA 95966 5579**

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

**SHERRIE MCLETTCHIE, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **March 3, 2003**.



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**Bernadette C. O. Molina**  
Case Administrator  
State Bar Court