THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **ANTHONY DAVID MEDEIROS,** **Member No. 138079,** A Member of the State Bar.	**Case No. 00-O-12248-PEM** **(02-O-14864; 02-O-14967; 02-O-15311; 02-O-15878; 02-O-16049; 03-O-01627)** **DECISION**

I. Introduction

In this default matter, Respondent **ANTHONY DAVID MEDEIROS** is charged with professional misconduct in seven client matters. The Court finds, by clear and convincing evidence, that Respondent mishandled and misappropriated client funds, committed acts of moral turpitude, failed to perform services competently, failed to communicate, failed to maintain client funds, failed to promptly pay client funds, failed to properly withdraw from employment, failed to avoid the representation of adverse interests, failed to obey court orders, and failed to cooperate with the State Bar.

In view of Respondent's misconduct and the evidence in aggravation and mitigation, the Court recommends, among other things, that Respondent be suspended from the practice of law for four years, that execution of suspension be stayed, and that Respondent be actually suspended from the practice of law for three years and until he makes restitution and until he proves rehabilitation and until the State Bar Court grants a motion to terminate Respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

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 No. 00-O-12248 on July 30, 2003. (Rules Proc. of State Bar, rule 60.) The NDC was not returned as undeliverable. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On State Bar's motion, Respondent's default was entered and he was enrolled as an inactive member on September 21, 2003, under Business and Professions Code section 6007(e).[1] An order of entry of default was sent to Respondent's official membership records address but was returned as unclaimed.

Respondent did not participate in the disciplinary proceedings. The Court took this matter under submission on October 6, 2003, following the filing of the State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDCs are deemed admitted upon entry of Respondent's default unless otherwise ordered by the Court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 7, 1988, and has since been a member of the State Bar of California.

B. Count One – The Szeles Matter (Case No. 00-0-12248)

On April 6, 1999, Rhonda Sue Szeles employed Respondent to represent her in a personal injury action arising out of an auto accident that occurred on February 17, 1998. Respondent's fee was to be one-third of the gross recovery.

On February 7, 2000, Respondent settled Szeles' case for $15,000. On February 18, 2000, Respondent deposited the Farmers Insurance settlement check for $15,000 into an operations account at Kings River State Bank (Kings River account), account No. 1200-00227, a non-trust account.

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[1]All references to section are to the Business and Professions Code, unless otherwise indicated.

But Respondent did not disburse any funds to Szeles or on her behalf from this Kings River account. On February 29, 2000, the balance of the account was $8,356.48. By March 31, 2000, the balance fell to $46.56.

On April 17, 2000, Szeles signed a disbursement authorization as follows:

(1)	Respondent's fee (25%)	$3,750.00	
(2)	Costs	$329.28	
(3)	Medical bills	$1,685.96	
(4)	Client's share	$9,234.76	
	Total settlement		*$15,000*

Although Respondent maintained a client trust account at Kings River State Bank, account No. 0120-00774 (CTA), at no time did he deposit any of the settlement funds into the CTA.

Nevertheless, after the disbursement agreement was executed in April, Respondent issued CTA check No. 1016 payable to Szeles for $9,234.76. But the check was returned because of insufficient funds. In the beginning of May, the balance in the CTA was $22.84.

Thereafter, Respondent deposited several client settlement checks into the CTA as follows:

Date	*Amount*	*Clients*
5/18/00	$ 1,500	Detrese Young
5/19/00	$25,000	Connie and Daniel Guillen
9/12/00	$17,600	Michael Maris

On May 26, 2000, Respondent issued CTA check No. 1019 payable to "cash" in the amount of $10,342.93 with the notation "Rhonda Sue Szeles." Respondent then purchased a cashier's check with the funds and issued it to Szeles.[2]

Respondent used other clients' (Young and Guillen) settlement proceeds, in part, to pay Szeles her share of the settlement. On September 8, 2000, the balance in the CTA was $90.91.

Respondent then paid three medical providers from his CTA, as follows:

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[2]There is no evidence as to why Respondent paid Szeles $10,342.93, instead of $9,234.76, which was the agreed portion of her share of the settlement.

Date	*Payee*	*Amount*	
9/28/00	Ronald Ybarra	$683.82	
10/2/00	Michael Rosco, M.D.	$452.15	
10/18/00	N and S Neurology Center	$550.00	
	Total		*$1,685.97*[3]

On July 18 and August 7, 2000, the State Bar sent Respondent letters at his official membership records address in Hanford, California. On October 9, 2002, the State Bar sent a third letter to Respondent at his official membership records address. The letters requested Respondent to provide a written response to the allegations regarding the Szeles matter. The letters were not returned by the post office as undeliverable. But he did not respond to the letters or otherwise communicate with the investigator.

Count One (A): Rule 4-100(A) of the Rules of Professional Conduct[4] (Failure to Maintain Client Funds in Trust Account)

Rule 4-100(A) provides that all funds received for the benefit of clients shall be deposited in a client trust account. By depositing $15,000 settlement funds into an operations account instead of a client trust account, Respondent wilfully failed to deposit funds received for the benefit of Szeles in a trust account, in wilful violation of rule 4-100(A).

Count One (B): Rule 4-100(A) (Failure to Maintain Client Funds in Trust Account)

Respondent had a fiduciary duty to hold in trust the settlement funds of $15,000. After he deposited the settlement check in the Kings River account in February 2000, the operations account balance fell to $8,356.48 on February 29, 2000, and to $46.56 by March 31, 2000. It is unlikely that he had transferred the client funds to his CTA because before his disbursement to the client, the balance there was only $22.84 in the beginning of May 2000.

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[3]Although the Notice of Disciplinary Charges did not allege whether these were Szeles' medical providers, the Court concludes that they were since the total amount of $1,685.97 paid was almost the same as the amount of her medical bills, $1,685.96.

[4]References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

Therefore, by allowing the balance of the Kings River account to drop below $10,920.72, the amount that should have been maintained for Szeles ($1,685.96 [medical bills] + $9,234.76 [client's portion]), Respondent wilfully failed to maintain client funds in wilful violation of rule 4-100(A).

Count One (C): Section 6106 (Moral Turpitude)

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

The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

In March 2000, the remaining amount to be disbursed on Szeles' behalf was $10,920.72. Because the Kings River account balance fell to $46.56, far below the amount of entrusted funds of $10,920.72, Respondent misappropriated $10,874.16 ($10,920.72 – $46.56) for his own use and benefit, an act involving moral turpitude in wilful violation of section 6106.

Count One (D): Section 6106 (Moral Turpitude)

By withdrawing funds from the CTA to pay Szeles in the amount of $10,342.93 in May 2000 and her medical providers in the amount of $1,685.97 in September and October 2000, when there were no Szeles' funds in the CTA, Respondent wilfully mishandled the trust account and misappropriated other clients' funds in the CTA, an act involving moral turpitude in wilful violation of section 6106.

Count One (E): Rule 4-100(B)(4) (Failure to Deliver Client Funds Promptly)

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

By not paying the medical providers until September and October, more than five months after Szeles had approved the disbursement in April, Respondent wilfully failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive. Thus, Respondent clearly and convincingly violated rule 4-100(B)(4).

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Count One (F): Section 6068(i) (Failure to Cooperate With the State Bar)

Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By failing to respond to the State Bar's July and August 2000 and October 2002 letters or participate in the investigation of the Szeles matter, Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

C. Count Two – The McKelvey Matter (Case No. 02-O-14864)

On January 2, 2000, Michael McKelvey hired Respondent to represent him in a personal injury matter arising from a March 1999 auto accident. The fee agreement provided that Respondent would receive one-third of any gross recovery as fees.

Before January 2001, Allied, McKelvey's insurance company, paid $2,000 for McKelvey's chiropractor's treatment. Allied claimed a lien against any settlement or judgment proceeds. Later, Respondent negotiated the lien from $2,000 to $933.

On January 24, 2001, Respondent filed a complaint on McKelvey's behalf, *Michael McKelvey v. Richard Landis,* Kings County Superior Court, case No. 00-C-0589. Following trial, a jury awarded McKelvey $15,000.

On April 6, 2001, Farmers Insurance Group paid $15,000 to McKelvey and Respondent. Respondent was entitled to $5,000 as fees.

On April 13, 2001, McKelvey endorsed the settlement check and Respondent deposited it into the CTA. On the same day, Respondent paid himself $5,000 with CTA check No. 1080. On May 17, 2001, Farmers paid Respondent $1,722.43 for costs.

Between April 13 and July 2001, the balance of the CTA remained at $10,115.

On July 16, 2001, Respondent issued CTA check No. 1088 to McKelvey for $7,860.62.[5] Although McKelvey was entitled to $9,067 ($10,000.00 – $933 [Allied]), Respondent did not disburse any additional money to McKelvey nor make any payment to Allied.

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[5]The fact that Respondent paid his client such a specific amount, $7,860.62, instead of $9,067 is puzzling. However, absent any other evidence that the payment was in full satisfaction of the settlement, the Court could only conclude that Respondent still owed his client the remaining $1,206.38 ($9,067 – $7,860.62).

Respondent was obligated to maintain at least $2,139.38 in the CTA on behalf of McKelvey ($1,206.38 + $933.00 [Allied]). But by September 28, 2001, the CTA balance fell to $550.

In July 2001, Respondent deposited three checks into the CTA totaling $28,926.12. All three checks were drawn on the "Medeiros Law Firm Operations Account," West America Bank account No. 0271-956278 (West America account), as follows:

Date of Deposit	*Check No.*	*Check Amount*	*Memo*
7/2/01	1043	$ 3,690.15	Nagatani-Dutra, #98-0272
7/16/01	1053	$ 8,793.62	McKelvey-Landis, #99-0599
7/31/01	1079	$16,442.35	Illegible

In July 2002 McKelvey received a letter from Allied informing him that it would take action to recover the $2,000 paid on his behalf. Thereafter, Allied sued McKelvey for $2,000. McKelvey agreed to make monthly payments of $200 and did so until the obligation was satisfied.

Between July and September 2002, McKelvey left several voice mails and in-person messages for Respondent to contact him about the payment to Allied. Respondent did not respond to any of his messages. On September 17, 2002, McKelvey sent a letter to Respondent, certified receipt requested, to determine the status of payment to Allied. Respondent again did not respond to the letter.

On October 30, 2002 and February 21, 2003, the State Bar sent Respondent letters by first class mail to Respondent's official membership records address, requesting a written response in the McKelvey matter.

The October 30, 2002 letter was also sent to two alternative addresses: (1) 1060 Fulton Mall, Suite 1005, Fresno, CA 93721 and (2) 598 West Grangeville Blvd., #103, Hanford, CA 93230-2866. The letter addressed to the Grangeville Blvd. address was returned with a label bearing the address: "Medeiros Law Firm, 1060 Fulton Mall, Ste. 406, Fresno, CA 93721-2519." The other letter was not returned as undeliverable.

The February 21, 2003 letter was sent to two alternative addresses: (1) 1060 Fulton Mall, Suite 406, Fresno, CA 93721 and (2) 285 East Encore Drive, Hanford, CA 93230-1204. The letter sent to East Encore Drive was returned as undeliverable. The other letter was not returned as

undeliverable or for any other reason.

On April 11, 2003, State Bar investigator Michael Hummer went to Fresno and hand-delivered copies of the October 2002 and February 2003 letters regarding the McKelvey matter to Respondent at 1060 Fulton Mall, Suite 406, Fresno, CA 93721. Respondent reviewed the letters and had an opportunity to respond at that meeting. But he did not do so. Thereafter, Respondent did not respond to the letters in writing.

Count Two (A): Rule 4-100(B)(4) (Failure to Pay Client Funds Promptly)

In April 2001, Respondent deposited the $15,000 settlement check in his CTA. Although his client was entitled to promptly receive $9,067 as his portion of the settlement proceeds, Respondent did not disburse $7,860.62 until July 2001, a delay of three months. And the remaining balance of $1,206.38 was never paid to McKelvey. Moreover, Respondent failed to honor Allied's medical lien of $933.

Thus, Respondent clearly and convincingly violated rule 4-100(B)(4) by delaying three months to pay a portion of the settlement proceeds, by failing to pay the balance of the settlement proceeds and by failing to pay the medical bill.

Count Two (B): Rule 4-100(A) (Failure to Maintain Client Funds in Trust Account)

On September 28, 2001, by allowing the balance of the CTA to drop below $2,139.38, the amount of entrusted funds Respondent was holding in trust on behalf of his client, Respondent wilfully failed to maintain client funds in a trust account.

Count Two (C): Section 6106 (Moral Turpitude)

It is well-settled that the mere fact that the CTA balance has fallen below the total of amounts deposited in and purportedly held in trust supports a conclusion of misappropriation.

Because Respondent had not yet completed disbursements of the settlement proceeds to his client and the insurance company and the balance in Respondent's CTA fell below the amount of remaining entrusted funds of $2,139.38 by September 2001, Respondent misappropriated at least $1,589.38 ($2,139.38 – $550) for his own use and benefit and committed an act of moral turpitude in wilful violation of section 6106.

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Count Two (D): Rule 4-100(A) (Failure to Maintain Client Funds in Trust Account)

The State Bar alleges that Respondent improperly commingled personal funds with those of his clients in the trust account by depositing funds from an operating account into his CTA.

Although the three checks deposited into his CTA were drawn on the West American account, the memo noted that these funds were possibly related to client funds (i.e. McKelvey-Landis). It is possible that these were client funds and not personal funds that Respondent transferred into his CTA. Therefore, absent clear and convincing evidence that Respondent commingled personal funds with those of his clients in the CTA, Respondent is not culpable of violating rule 4-100(A).

Count Two (E): Section 6068(m) (Failure to Communicate)

Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. By not responding to McKelvey's phone calls and letter between July and September 2002, Respondent failed to respond promptly to reasonable status inquiries of a client in wilful violation of section 6068(m).

Count Two (F): Section 6068(i) (Failure to Cooperate With the State Bar)

By failing to respond to the State Bar's letters or participate in the investigation of the McKelvey matter, Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

D. Count Three – The Davis Matter (Case No. 02-O-14967)

On June 2, 2000, Nikki L. Davis employed Respondent to represent her in a personal injury case arising out of an auto accident. Respondent and Davis orally agreed that Respondent's fee would be 25% of any settlement prior to trial. There was no written agreement.

On May 6, 2002, the case settled for $10,001, as alleged in the NDC. On May 21, 2002, the opposing party's insurance carrier, State Farm, issued a check for $10,001 payable to Davis and Respondent. On the same day, after Davis endorsed it, Respondent deposited the check into the West America account. At the time, the West America account balance was $305.29.

Respondent was entitled to $2,500 as fees from the settlement. Respondent had proposed

settling the medical bills for $3,317.67 (from an original amount of $6,984.75). Davis would be entitled to at least $4,182.33 if the proposed payment was accepted. If not, his share of the settlement proceeds would have been $516.25 ($7,501 – $6,984.75).

Between May 21 and May 31, 2002, Respondent withdrew a total of $4,865.04 from the West America account, leaving a balance of $5,407.50. During that time, Respondent made no disbursements to Davis or on her behalf.

On June 7, 2002, Respondent paid Davis $2,171.33 with check No. 1332 drawn on the West America account with the memo "estimated disbursement = 1/2 of net after all liens and demands paid."

On June 17, 2002, Respondent drafted a "Proposed Settlement Amounts for Medical Bills" which proposed $3,333 as total payment to the medical providers. This appeared to be Respondent's second proposed medical payment. If accepted, Davis' total share of the settlement proceeds would have been $4,168 ($7,501 – $3,333) and the remainder of her settlement funds would have been $1,997 ($4,168 – $2,171). Nevertheless, the remaining balance held in trust on behalf of Davis should have been $5,330 ($7,501 – $2,171 [paid to Davis]).

However, Respondent did not disburse any more funds to Davis or to anyone on her behalf. On June 19, 2002 the West America account was overdrawn by $232.65.

Between June 7 and September 2002, Davis called Respondent on several occasions to determine when she would receive the remainder of her settlement funds and to request her file. Each time Davis called, she left messages on Respondent's answering machine, requesting a return call. Respondent did not return her calls.

Sometime before August or September 2002 Respondent moved his office from Hanford to Fresno, California, but did not inform Davis. At one point when Davis called Respondent at his Hanford office, the phone number was disconnected. Davis found Respondent's new phone number on her own.

In September 2002 Davis spoke to Respondent and asked about the balance of her settlement funds. Respondent told her to "get her money from him the best way she knew how."

As found in the McKelvey matter, the State Bar properly sent letters to Respondent on

October 30, 2002 and February 21, 2003 at his official membership records address, requesting Respondent to provide a written response to the allegations regarding the Davis matter.

The October 30, 2002 letter was also sent to two alternative addresses: (1) 1060 Fulton Mall Suite 1005, Fresno, CA 93721 and (2) 598 West Grangeville Blvd., #103, Hanford, CA 93230-2866. The letter sent to the Grangeville Blvd. address was returned but the other letters were not returned.

The February 21, 2003 letter was sent to two other alternative addresses: (2) 1060 Fulton Mall, Suite 406, Fresno, CA 93721 and (2) 285 East Encore Drive, Hanford, CA 93230-1204. The letter sent to East Encore Drive was returned as undeliverable. The letter sent to 1060 Fulton Mall, Suite 406, was not returned as undeliverable or for any other reason.

On April 11, 2003, the State Bar investigator Hummer hand-delivered copies of the letters regarding the Davis matter to Respondent. Although Respondent reviewed the letters and had an opportunity to respond to them at that meeting, he did not respond to the letters at that time or at any other time thereafter.

Count Three (A): Rule 4-100(A) (Failure to Maintain Client Funds in Trust Account)

By depositing Davis' settlement proceeds into the West America account, a non-trust account, Respondent wilfully failed to deposit client funds received for the client's benefit into a trust account in wilful violation of rule 4-100(A).

Count Three (B): Rule 4-100(A) (Failure to Maintain Client Funds in Trust Account)

By allowing the West America account to be overdrawn by $232.65 in June 2002 without disbursing remaining funds of $5,330 to Davis and her medical providers, Respondent wilfully failed to maintain client funds in wilful violation of rule 4-100(A).

Count Three (C): Section 6106 (Moral Turpitude)

Because Respondent had failed to disburse the remaining balance of $5,330 to Davis and the medical providers, Respondent misappropriated the funds for his own use and benefit. Thus, Respondent committed an act of moral turpitude in wilful violation of section 6106.

Count Three (D): Section 6068(m) (Failure to Communicate)

Respondent clearly and convincingly violated section 6068(m) by not responding to Davis' inquiries regarding the remainder of her funds and file and by not informing Davis that he had

moved his office from Hanford to Fresno.

Count Three (E): Section 6068(i) (Failure to Cooperate With the State Bar)

By failing to respond to the State Bar's letters or participate in the investigation of the Davis matter, Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

E. Count Four – The Heugly Matter (Case No. 02-O-15311)

In December 1998, Kathryn Heugly employed Respondent to represent her in a personal injury case arising out of an auto accident that occurred in June 1998. Respondent's fee was to be 25% before filing a complaint, 33⅓ % after filing a complaint but before any dispute resolution procedure, and 40% after assignment to mediation or other alternative dispute resolution procedure.

On June 1, 1999, Respondent filed a complaint on Heugly's behalf, *Kathryn Heugly v. K.A.R.T., aka Kings Area County Transit,* Kings County Superior Court, case No. 99-C-1090.

Heugly had medical bills that were paid by BC Life and Health (BC Life) in the amount of $3,253.27 and by Mercury Insurance Company (Mercury) in the amount of $1,898.06. Both BC Life and Mercury notified Heugly and Respondent of their intent to seek reimbursement.

In March 2001 the case settled for $21,000, which Lancer Insurance Company paid. After Heugly endorsed the settlement draft, Respondent deposited it into his CTA on March 20, 2001.

Respondent agreed to reduce his fee to $5,000. He was obligated to maintain at least $16,000 in the CTA on Heugly's behalf. But at the end of March, the CTA balance was $5,989.93.

On July 31, 2001, Respondent paid Heugly in the amount of $9,999.27[6] as her portion of the settlement proceeds. At that time Respondent informed Heugly that he would pay her the balance after the medical liens were negotiated and paid. After payment to Heugly, Respondent was obligated to maintain $6,000.73 in trust on Heugly's behalf ($16,000 – $9,999.27).

Despite informing Heugly that he would pay the medical providers, Respondent did not do so. On September 17, 2001, Mercury sued Heugly for the money it paid on her behalf. After Respondent finally paid Mercury on December 10, 2001, the lawsuit against Heugly was then

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[6]As in the McKelvey matter, since Respondent has defaulted in this matter, there is no evidence to explain why Respondent's disbursement to Heugly was so specific ($9,999.27) or whether that was payment in full satisfaction of Heugly's share of the settlement.

dismissed. After payment to Mercury, Respondent was obligated to maintain about $4,102.67 ($6,000.73 – $1,898.06) in trust on Heugly's behalf.

As discussed in the McKelvey matter, the CTA balance fell to $550 on September 28, 2001. Respondent did not disburse any additional money to Heugly or any funds to BC Life.

As found in the other matters above, the State Bar sent several letters to Respondent to investigate about the client's complaint. On December 17, 2002 and February 21, 2003, the State Bar sent Respondent letters at his official membership records address, requesting a written response to the allegations regarding the Heugly matter.

The December 17, 2002 letter also was sent to an alternative address: 1060 Fulton Mall Suite 1005, Fresno, CA 93721. The December 17, 2002 letters were returned by the Postal Service with labels stating, "Medeiros Law Firm moved, left no address, unable to forward, return to sender."

The February 21, 2003 letter also was sent to two additional alternative addresses: (1) 1060 Fulton Mall, Suite 406, Fresno, CA 93721 and (2) 285 East Encore Drive, Hanford, California 93230-1204. The letter sent to East Encore Drive was returned with a label stating, "Not at this address, attempted, unknown, not deliverable as addressed." The letter sent to 1060 Fulton Mall, Suite 406, was not returned as undeliverable or for any other reason.

On April 11, 2003, State Bar investigator Hummer went to Fresno and hand-delivered copies of the letters regarding the Heugly matter to Respondent at 1060 Fulton Mall, Suite 406, Fresno, CA 93721. Although Respondent read the letters and had a chance to respond to them at that meeting, he did not do so or provide any written response thereafter.

Count Four (A): Rule 4-100(A) (Failure to Maintain Client Funds in Trust Account)

By allowing the balance of his client trust account to drop to $550 in September 2001, Respondent failed to maintain at least $5,450.73 of Heugly's funds ($6,000.73 – $550) in a trust account in wilful violation of rule 4-100(A).

Count Four (B): Section 6106 (Moral Turpitude)

Since the CTA balance fell to $550 in September 2001 when Respondent should have maintained at least $6,000.73 of Heugly's funds in the account, Respondent therefore

misappropriated at least $5,450.73 for his own use and benefit, involving an act of moral turpitude in wilful violation of section 6106.

Count Four (C): Rule 4-100(B)(4) (Failure to Pay Client Funds Promptly)

By not paying Mercury for nine months and by not disbursing $3,253.27 to BC Life, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive, in wilful violation of rule 4-100(B)(4).

Count Four (D): Section 6068(i) (Failure to Cooperate With the State Bar)

By failing to respond to the State Bar's letters or participate in the investigation of the Heugly matter, Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

Count Four (E): Section 6106 (Moral Turpitude)

The State Bar alleges that Respondent has engaged in a course of conduct involving moral turpitude by repeatedly misappropriating client funds, totaling at least $10,470.72.

However, the alleged facts in the NDC to be incorporated are in error as there are no counts eight, nine or eleven and no alleged misappropriation in counts five and seven. (NDC, 17:21-22.)

Since Respondent has already been found culpable of misappropriation in violation of section 6106 in counts one through four, little, if any, purpose is served by duplicative allegations of misconduct. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060.) Therefore, this count four (E) is dismissed with prejudice.

F. Count Five – The Brinson Matter (Case No. 02-O-15878)

In July 2000, Andria Brinson employed Respondent to represent her in a personal injury action arising out of a car accident on a contingency fee basis.

On June 21, 2001, Respondent filed a summons and complaint on Brinson's behalf, *Brinson v. Potter,* Kings County Superior Court, case No. 01-C-1561.

On February 11, 2002, defendant, through counsel Penelope Glover, served requests for admission, interrogatories and demand for inspection of documents. Respondent did not inform Brinson of the requests or respond to the requests.

On April 5, 2002, attorney Glover filed a motion to compel answers to discovery and request

for monetary sanctions. Respondent did not inform Brinson of the motion or file an opposition to the motion.

On May 1, 2002, the court granted the motion, ordered Respondent to respond to the discovery requests by May 13, 2002 and ordered sanctions jointly and severally against Respondent and Brinson in the amount of $1,840. Respondent did not provide the discovery, inform Brinson of the sanctions, or pay the sanctions.

On May 7, 2002, Brinson appeared for her deposition. Respondent left the deposition before it was completed due to an emergency, but he never rescheduled her deposition.

On May 16, 2002, attorney Glover filed a motion for terminating sanctions and monetary sanctions due to Respondent's failure to comply with the court order to provide discovery responses and to pay sanctions. Respondent neither filed any response to the motion nor inform Brinson of the motion.

On May 23, 2002, Respondent sent a settlement offer of $15,000 but the opposing party rejected the offer.

On June 18, 2002, the court denied the motion for terminating sanctions but again ordered monetary sanctions jointly and severally against Respondent and Brinson in the amount of $1,955. The order stated the sanctions were payable within 20 days from the date of service of notice of entry of the order, June 19, 2002. Again, Respondent did not inform Brinson or pay the sanctions.

On June 20, 2002, attorney Glover sent an offer to compromise pursuant to Code of Civil Procedure section 998, in the amount of $8,001. Respondent did not inform Brinson of the offer.

On September 3, 2002, attorney Glover filed a motion for terminating, issue, evidentiary, and monetary sanctions. Respondent did not file any response to the motion.

On October 2, 2002, the court issued an order granting the motion and dismissing Brinson's action with prejudice. The court also ordered sanctions jointly and severally against Respondent and Brinson in the amount of $3,910. The order stated the sanctions were payable within ten days from the date of service of notice of entry of the order, October 2, 2002. Respondent did not inform Brinson that her case was dismissed or pay the sanctions.

In September 2002, Brinson called Respondent several times to determine the status of her

case, leaving voice messages for Respondent to return her calls. Respondent did not return her calls.

On October 5, 2002, Brinson went to Respondent's office in Hanford and learned that Respondent had moved his office to Fresno.

On October 10, 2002, Brinson called Respondent to determine the status of her case. She spoke with Joel, Respondent's paralegal, who informed her that he did not know the status of her case, but that he would leave a message for Respondent to call her. Respondent did not return her call.

On February 20 and March 21, 2003, State Bar investigator Hummer sent Respondent letters by first class mail to Respondent's known addresses. The letters requested Respondent to provide a written response to the allegations regarding the Brinson matter.

The February 20, 2003 letter was also sent to 1060 Fulton Mall Suite 406, Fresno, CA 93721 and 285 East Encore Drive, Hanford, CA 93230-1204. The letters were not returned as undeliverable or for any other reason.

The March 21, 2003 letter was sent solely to the Suite 406 Fulton Mall address. The letter was not returned as undeliverable or for any other reason.

On April 11, 2003, State Bar investigator Hummer went to Fresno and hand-delivered copies of the letters regarding the Brinson matter to Respondent at 1060 Fulton Mall, Suite 406, Fresno, CA 93721. Although Respondent read the letters and had a chance to respond to them at that meeting, he did not do so or provide any written response thereafter.

Count Five (A): Rule 3-110(A) (Failure to Perform Competently)

Respondent is charged with a wilful violation of rule 3-110(A), which provides that an attorney shall not intentionally, recklessly or repeatedly fail to perform legal services in a competent manner.

By not responding to the discovery requests, not completing the deposition and not responding to motions which resulted in the case dismissal, Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count Five (B): Rule 3-700(A)(2) (Improper Withdrawal from Employment)

By not performing any legal work after May 23, 2002, which resulted in the dismissal of

Brinson's action, Respondent failed to take reasonable steps to avoid foreseeable prejudice to Brinson, including giving notice to the client and allowing a reasonable time for employment of other counsel, in wilful violation of rule 3-700(A)(2). The requirements of the rule apply "when an attorney ceases to provide services, even absent formation of an intent to withdraw as counsel for the client." (*Baker v. State Bar* (1989) 49 Cal.3d 804 816-817.)

Count Five (C): Section 6068(m) (Failure to Communicate)

Respondent clearly and convincingly violated section 6068(m) by not responding to Brinson's calls regarding the status of her case and by not informing Brinson of the settlement offer, the motions, the court orders, the dismissal of the case, or his office move.

Count Five (D): Section 6103 (Failure to Obey A Court Order)

Section 6103 provides that "[a] wilful disobedience or violation of an order of the court requiring [Respondent] to do or forbear an act connected with or in the course of his profession ... constitute causes for disbarment or suspension."

By not complying with three court orders – May 1, 2002 discovery order and sanctions of $1,840, June 18, 2002 sanctions order of $1,955, and October 2, 2002 sanctions order of $3,910, Respondent wilfully violated section 6103.

Count Five (E): Section 6068(i) (Failure to Cooperate With the State Bar)

By failing to respond to the State Bar's letters or participate in the investigation of the Brinson matter, Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

G. Count Six – The Magpayos Matter (Case No. 02-O-16049)

On June 29, 2001, Benjamin and Myra Magpayo (the Magpayos) employed Respondent to represent them in a personal injury action arising out of an automobile accident that occurred on February 27, 2001. Respondent's fee was to be one-third of the gross recovery.

On February 26, 2002, Respondent filed a complaint on the Magpayos' behalf, *Benjamin and Myra Magpayo v. Marline Conklin,* Kings County Superior Court, case No. 02- C-0449.

After filing the complaint, Respondent took no other actions to pursue the case, including failing to file a proof of service or trying to negotiate a settlement. He ceased performing legal

services for the Magpayos.

In May or June 2002, Benjamin called Respondent's office several times, leaving messages for Respondent to return his calls. Respondent did not return his calls.

In September 2002, Benjamin spoke with Respondent's secretary, Chrystal, at Respondent's office. She assured him that she would call him back with a status update. Neither Respondent nor anyone on his behalf called him back.

Before November 12, 2002, Benjamin called Respondent's office to determine the status of the case. The phone number was disconnected.

On November 12, 2002, Benjamin sent Respondent a letter by certified mail, requesting a status update. Benjamin received the signed domestic return receipt. Respondent did not respond to the letter.

On March 11, 2003, Myra sent Respondent letters with an attached substitution of attorney form requesting that Respondent sign and return the substitution of attorney substituting himself out of the Magpayos' case. These letters were sent to the Fulton Mall and Hanford Drive addresses. Respondent did not respond to the letters.

On January 24, 2003, the State Bar sent Respondent a letter to Respondent's membership records address and a copy to1060 Fulton Mall, #406, Fresno, CA 93271. The letters requested a written response to the allegations regarding the Magpayos matter. They were returned marked "Return to sender, David Medeiros Law Firm, moved, left no address, unable to forward."

On February 21, 2003, the State Bar sent a second letter to Respondent at 1060 Fulton Mall, #406, Fresno, CA 93271. This letter was not returned to the State Bar as undeliverable or for any other reason. A copy was also sent to 285 East Encore Drive, Hanford, CA 93230-1204. This letter was returned and marked, "Not at this address, attempted, unknown, not deliverable as addressed."

On April 11, 2003, State Bar investigator Hummer went to Fresno and hand-delivered copies of the letters regarding the Magpayos matter to Respondent at 1060 Fulton Mall, Suite 406, Fresno, CA 93721. Although Respondent read the letters and had a chance to respond to them at that meeting, he did not do so or provide any written response thereafter.

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Count Six (A): Rule 3-110(A) (Failure to Perform Competently)

By failing to file a proof of service, negotiate a settlement, or take any further steps to pursue the Magpayos' case after filing the complaint in February 2002, Respondent recklessly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count Six (B): Rule 3-700(A)(2) (Improper Withdrawal from Employment)

In March 2003, the Magpayos requested that Respondent sign and return a substitution of attorney form, but he did not do so. Upon termination of employment, Respondent, by ceasing to perform legal services after filing a complaint, wilfully failed to take reasonable steps to avoid reasonably foreseeable prejudice to his clients in violation of rule 3-700(A)(2).

Count Six (C): Section 6068(m) (Failure to Communicate)

By not responding to Magpayos' messages and letters requesting a status update and by failing to inform the Magpayos that he had moved his office and changed phone numbers, Respondent clearly and convincingly violated section 6068(m).

Count Six (D): Section 6068(i) (Failure to Cooperate With the State Bar)

By failing to respond to the State Bar's letters or participate in the investigation of the Magpayos matter, Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

H. Count Seven – The Reyes Matter (Case No. 03-O-01627)

On March 7, 2001, Albert Reyes employed Respondent to represent him in a personal injury matter arising from a July 2001 auto accident on a contingency fee basis. Respondent also agreed to represent Corina Rios, a passenger in the car at the time of the accident. Although Reyes and Rios had potentially conflicting interests in the litigation, Respondent did not obtain their written consent when he accepted representation of both.

On July 20, 2001, Respondent filed a complaint on his clients' behalf, *Albert Reyes and Corina Rios et al. v. Ruben Serna and Firestone Tire Company, et al.*, San Joaquin County Superior Court, case No. CV014594.

On November 13, 2001, defendant propounded interrogatories and a request for production of documents and served a notice of deposition of Reyes and Rios for January 22, 2002. Reyes and

Rios provided responses to the interrogatories. But Respondent did not provide the responses or documents to defendant.

On February 12, 2002, depositions were continued to March 14, 2002 and the due date in which to provide answers to the written discovery was continued. Respondent requested the continuance due to being in trial.

On March 12, 2002, Respondent requested another continuance of the deposition. Janis Hulse, counsel for defendant, denied the request and informed Respondent that if the plaintiffs did not appear for the deposition, she would file a motion to compel. Attorney Hulse also reminded Respondent that responses to the written discovery were due. Respondent replied that the discovery was out to his clients.

Respondent did not produce Reyes or Rios for the March 14, 2002 deposition.

On March 22, 2002, attorney Hulse filed motions to compel deposition of each plaintiff, responses to form interrogatories and responses to requests to produce and sanctions against each plaintiff and/or Respondent.

Respondent did not inform Reyes of the motions, file an opposition to the motions or inform him of the hearing date of April 23, 2002.

On April 23, 2002, the court tentatively granted the motions and ordered plaintiffs to appear for a deposition and respond to discovery. The court also ordered plaintiffs and/or Respondent to pay $450 in sanctions within 30 days. Respondent did not inform Reyes of the order or pay the sanction.

Thereafter, Respondent did not appear at several court hearings. On June 11, 2002, the court sent notice of a status conference set for October 9, 2002, which Respondent did not appear at. The court set the case management conference for January 23, 2003. Respondent did not appear at the conference.

On January 24, 2003, the court issued an order to show cause (OSC) re possible dismissal for failure to file proof of service as to Firestone Tire Company to Respondent. The OSC was set for a hearing on February 13, 2003. Respondent was required to file a response five days before the hearing but he did not do so. Respondent did not file a proof of service or inform Reyes of the

notice.

On February 13, 2003, the matter was continued to April 9, 2003.

In February 2003, Reyes called Respondent to determine the status of the case, but found that the phone number was disconnected. On February 7, 2003, Reyes sent a letter by certified mail to Respondent at P.O. Box 989, Hanford, CA 93232-0989. The letter was returned as undeliverable. Respondent did not inform Reyes that his office had moved.

On April 21, 2003, the court issued an OSC re dismissal. The hearing was set for May 7, 2003, and Respondent was required to file a response five days before the hearing. Respondent again did not file a response or inform Reyes of the hearing.

On May 7, 2003, Respondent did not appear at the hearing. The court then issued a further order to show cause to Reyes to appear on May 29, 2003. Respondent had not filed a substitution of attorney nor had he formally withdrawn from the case.

On May 29, 2003, Reyes appeared at the hearing and the court continued it to August 28, 2003 to allow Reyes additional time to obtain new counsel.

On May 9 and May 30, 2003, State Bar investigator Hummer sent letters by first class mail to Respondent's membership address requesting that Respondent provide a written response to the allegations regarding the Reyes matter.

A copy of the May 9 letter was also sent to 1060 Fulton Mall, Suite 406, Fresno, CA 93721-0727. On May 23, 2003, the State Bar received a notice from the Postal Service, advising that the May 9 letter had been forwarded to Cactus Media Group, 1060 Fulton Mall, Suite 415, Fresno, CA 93721. A few days later, the State Bar received another notice that indicated the mail sent to Respondent at 1060 Fulton Mall, Suite 406, Fresno CA 93721 had been forwarded to P.O. Box 727, Fresno, CA 93712.

On May 28, 2003, Hummer received notice indicating P.O. Box 727, Fresno, CA 93712 was the current mailing address for Respondent. Respondent did not respond to the letter and the letter was not returned as undeliverable.

On May 30, 2003, a second letter was sent to Respondent to P.O. Box 727, Fresno, CA 93712. The letter requested Respondent to provide a written response to the allegations regarding

the Reyes matter by June 13, 2003. Respondent did not respond to the letter and the letter was not returned to the State Bar by the postal authorities as undeliverable.

Count Seven (A): Rule 3-110(A) (Failure to Perform Competently)

By not appearing at the scheduled court hearings on October 9, 2002, January 23, and May 7, 2003, by not responding to discovery, by failing to file a proof of service as to Firestone Tire Company, and by not responding to the motions, Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count Seven (B): Rule 3-700(A)(2) (Improper Withdrawal from Employment)

Respondent ceased performing legal work after March 2002, when he requested a continuance for the deposition, thereby effectively withdrawing from representation. The court had issued two OSCs re dismissal and finally had to continue the hearing to August 2003 to allow Reyes additional time to obtain new counsel. Therefore, Respondent failed to take reasonable steps to avoid foreseeable prejudice to Reyes, including giving notice to the client and allowing a reasonable time for employment of other counsel, in wilful violation of rule 3-700(A)(2).

Count Seven (C): Section 6068(m) (Failure to Communicate)

By not informing Reyes of the motions, the court orders, the hearing dates of the OSCs, or his office move, Respondent wilfully failed to keep his client informed of significant developments in a matter in which he had agreed to provide legal services.

By not responding to Reyes' telephone calls regarding the status of his case, Respondent failed to respond promptly to reasonable status inquiries of a client.

Therefore, Respondent clearly and convincingly violated section 6068(m).

Count Seven (D): Section 6103 (Failure to Obey A Court Order)

By not paying the $450 sanction or filing a response pursuant to the January 24, and April 21, 2003 OSCs, Respondent disobeyed court orders, wilfully violating section 6103.

Count Seven (E): Rule 3-310(C)(1) (Avoiding the Representation of Adverse Interests)

Rule 3-310(C)(1) provides that an attorney shall not, without the informed written consent of each client, accept representation of more than one client in a matter in which the interests of the clients potentially conflict.

Rios, as a passenger in the car driven by Reyes at the time of the accident, had potential claims not only against the driver of the opposing vehicle, but also against Reyes. Without her informed written consent, Respondent accepted representation of both clients in a personal injury matter in which the interests of the clients potentially conflict in wilful violation of rule 3-310(C)(1).

Count Seven (E): Section 6068(i) (Failure to Cooperate With the State Bar)

By failing to respond to the State Bar's letters or participate in the investigation of the Reyes matter, Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[7]

However, Respondent's lack of a disciplinary record since he had been admitted to practice 12 years prior to the misconduct is a mitigating factor. (Std. 1.2(e)(i).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing, including failing to perform services, failing to communicate, improperly withdrawing from employment, failing to maintain client funds, misappropriating client funds, failing to promptly pay client funds, failing to avoid the representation of adverse interests, and committing acts of moral turpitude. (Std. 1.2(b)(ii).) However, Respondent's three client abandonments in 2001 to 2003 and misappropriation in four client matters in 2000 to 2002 do not rise to the level of a pattern of misconduct. The Supreme Court has limited this characterization to "only the most serious instances of repeated misconduct over a prolonged period of time." (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1217.) Here, while misappropriation is serious, the misconduct was found in four client matters over two years. Four instances is not considered repeated misconduct. And two years is not an extended period of time, particularly since Respondent had no prior record in the previous 12 years of practice.

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[7]All further references to standards are to this source.

Respondent's mishandling of client funds caused his clients substantial harm. (Std. 1.2(b)(iv).) McKelvey and Heugly were sued by insurance companies for Respondent's failure to pay the liens. McKelvey, Davis and Heugly and medical providers are still owed a total of more than $11,000. Brinson and Reyes were ordered to pay sanctions due to Respondent's failure to comply with court orders. Respondent's misconduct also caused harm to the administration of justice. As a result of his failure to comply with court orders, the court had to incur additional expenses and resources to conduct hearings.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to return funds to McKelvey, Davis or Heugly or pay the court sanctions. Rather than rectifying his misconduct, Respondent told Davis to "get her money from him the best way she knew how."

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

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

The standards for Respondent's misconduct provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds.1.6, 2.2, 2.3, 2.4(b), and 2.6.) The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.)

The State Bar urges disbarment, citing several supporting cases, including *Fitzpatrick v. State Bar* (1977) 20 Cal.3d 73, *Baca v. State Bar* (1990) 52 Cal.3d 294, *Bowles v. State Bar* (1989) 48 Cal.3d 100, and *Cannon v. State Bar* (1990) 51 Cal.3d 1103.

In *Fitzpatrick v. State Bar* (1977) 20 Cal.3d 73, an attorney was disbarred for commingling

and misappropriating trust funds in three client matters, abandoning one client, and knowingly making misrepresentations to clients concerning their lawsuits. The Supreme Court found that the attorney was unrepentant and continued to maintain that he was entitled to funds he had been found to have misappropriated from another client.

In *Baca v. State Bar* (1990) 52 Cal.3d 294, the attorney misappropriated funds, failed to maintain adequate communications with his clients, and failed to timely file a suit on behalf of a client. He showed a failure to respect the law and the courts in not repaying the attorney fees until contempt proceedings had been instituted and by failing to cooperate with the State Bar. Therefore, the attorney was disbarred.

In *Bowles v. State Bar* (1989) 48 Cal.3d 100, the attorney abandoned five clients, issued a bad check, falsely promised that he would "make good" the check, and failed to forward an arbitration award to a client. The Supreme Court found that such misconduct was the functional equivalent of issuing "numerous" bad checks, which supported a conclusion of deceit. In addition, the record was completely devoid of mitigating factors and demonstrated the attorney's complete disinterest in the practice of law. His misconduct began six years after he was admitted to the practice of law. Therefore, his habitual disregard of clients' interests combined with failure to communicate with clients constituted acts of moral turpitude justifying disbarment.

Finally, in *Cannon v. State Bar* (1990) 51 Cal.3d 1103, the Supreme Court disbarred an attorney who had repeatedly refused to return unearned fees even after clients obtained arbitration awards and judgments against him and consistently failed to maintain communications with five clients. He had been in practice only six years before the first act of misconduct.

In view of these disbarment cases, arguably, Respondent may be disbarred for his misdeeds. The Court, however, does not find that Respondent's level of misconduct to be on par with the misconduct of the attorneys in *Fitzpatrick*, *Baca*, *Bowles*, and *Cannon* and that disbarment would be too severe under the facts here. In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

While Respondent had disregarded his professional responsibilities and breached his

fiduciary duties to his clients, the gravamen of his misappropriation was his failure to handle the client funds properly. His acts of moral turpitude did not involve contempt, deceit, misrepresentations or issuing numerous bad checks to clients, as in the Supreme Court cases discussed above.

In all four instances of misappropriation, Respondent had paid clients a substantial portion of their settlement proceeds. But due to his lack of accounting and participation in this hearing, the reasons for his failure to pay the remainder of the settlement funds are unknown. For example, he paid Szeles $10,342.93 instead of $9,234.76; he paid McKelvey $7,860.62 instead of $9,067; he paid Davis $2,171.33 instead of $5,330 to Davis and the medical lienholder; and finally, he paid Heugly $9,999.27 with about $4,102.67 remaining to be disbursed to Heugly and her medical lienholder.

Therefore, Respondent's misappropriation did not appear to be the result of intentional dishonesty or corruption, but rather, the result of his gross negligence without acts of deception. The Supreme Court and the State Bar Court recognize that not all serious cases of trust fund misappropriation warrant disbarment. (See *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652.) Accordingly, discipline short of disbarment would be appropriate in this case.

In *Pineda v. State Bar* (1989) 49 Cal.3d 753, the Supreme Court actually suspended the attorney for two years and placed him on probation for five years with a five-year stayed suspension because he had accepted fees from clients, failed to perform the services for which he was retained, refused to communicate with his clients, then abandoned them and kept the fees in seven client matters over a course of about eight years. His misconduct began four years after he was admitted to the practice of law. Misappropriation of client funds by itself is a gross violation of an attorney's professional oath and generally merits an actual suspension of at least one year. (*Id.* at p. 759.) He was not disbarred in view of the mitigating factors, including his cooperation with the State Bar, his demonstrated remorse and his concurrent family problems.

Here, Respondent's offenses are not as serious as that of the attorney in *Pineda* in that Respondent had abandoned three clients in two years and owed a portion of settlement funds to three clients. But, other than his lack of a prior record in 12 years after he was admitted to the practice

of law, Respondent's mitigation is less than the mitigation found in *Pineda*.

Another comparable case is found in *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074 in which the attorney was disciplined with a two years' actual suspension for abandoning four clients in five years and failing to return unearned fees. He had 10 years of practice with no prior disciplinary record at the time of first misconduct.

Moreover, failing to appear and participate in this hearing shows that Respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Such failure to participate in this proceeding leaves the court without information about the underlying cause of Respondent's offense or of any mitigating circumstances surrounding his misconduct.

Therefore, in view of Respondent's misconduct in seven client matters, the case law and the aggravating factors, disbarment is not warranted at this time but a long period of actual suspension is justified. The Court believes that a three-year actual suspension and until Respondent makes restitution and proof of rehabilitation will suffice to protect the public and to preserve public confidence in the profession.

"Restitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at p. 1093.)

VI. RECOMMENDED DISCIPLINE

This Court recommends that Respondent **ANTHONY DAVID MEDEIROS** be suspended from the practice of law for four years, that said suspension be stayed, and that Respondent be actually suspended from the practice of law for three years and until he makes restitution[8] to:

(1) Michael McKelvey or the Client Security Fund, if appropriate, in the amount of

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[8]Respondent may seek to modify the amount of restitution by clear and convincing evidence. (Rules Proc. of State Bar, rule 552.)

$2,139, plus 10% interest per annum from July 16, 2001;

(2) Nikki L. Davis or the Client Security Fund, if appropriate, in the amount of $5,330, plus 10% interest per annum from June 17, 2002; and

(3) Kathryn Heugly or the Client Security Fund, if appropriate, in the amount of $4,102, plus 10% interest per annum from December 10, 2001;

and provide proof thereof to the Probation Unit; and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct; and until he files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

It is also recommended that Respondent be ordered to comply with any probation conditions hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

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

It is further recommended that Respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Probation Unit during the period of his actual suspension. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage.

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[9]Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VII. COSTS

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

Dated: January 23, 2004

Pat McElroy

PAT McELROY
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 January 23, 2004, 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:

A. DAVID MEDEIROS
P O BOX 727
FRESNO CA 93712 0727

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

ALAN KONIG, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **January 23, 2004**.

Bernadette C. O. Molina
Case Administrator
State Bar Court