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STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCOTHE STATE BAR COURT
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of
MARK L. WEBER,
Member No. 207644,
A Member of the State Bar.

Case No. 02-O-10454-JMR

**DECISION INCLUDING DISBARMENT
RECOMMENDATION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT****I. INTRODUCTION**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) was represented by Tammy M. Albertsen-Murray. Respondent Mark L. Weber represented himself. Initially, Respondent was represented by counsel whose motion to be relieved was granted on April 21, 2003.

After considering the matter, the court recommends that Respondent be disbarred.

II. SIGNIFICANT PROCEDURAL HISTORY

Although properly noticed, Respondent failed to participate in the proceedings since May 5, 2003.

Respondent was advised of the July 8, 2003 trial date by a status conference order filed and properly served on him on May 27, 2003.¹ This order also advised him about a pretrial conference to be held on June 30, 2003, and that a pretrial statement would be due on June 25, 2003. On June 18, 2003, the State Bar properly served Respondent with a notice in lieu of

¹Respondent did not appear at the May 27, 2003, status conference although he had been notified of this appearance at the May 5, 2003, status conference in which he participated and then was properly served with a status conference order confirming it.



1 subpoena to appear at trial on July 8. The State Bar's pretrial statement, properly served on
2 Respondent on June 25, 2003, also noted the July 8 trial date and stated that Respondent's
3 disbarment would be sought. In a minute order filed and properly served on Respondent on June
4 30, 2003, he was advised that his default would be entered if he did not appear at trial on July 8,
5 2003, at 9:00 a.m., and that the trial would proceed without him and all of the facts stated in the
6 Notice of Disciplinary Charges would be deemed admitted. Respondent was not present at the
7 June 30, 2003, pretrial conference.

8 Respondent did not appear on the day of trial, July 8, 2003. The court telephoned him.
9 After stating that his default could be entered, Respondent hung up the telephone. A notice of
10 entry of default was filed on that same date and properly served on Respondent by certified mail,
11 return receipt requested, at his membership records address. This notice also advised him of the
12 court's order enrolling him as an inactive member of the State Bar pursuant to Business and
13 Professions Code section 6007(e) effective three days after service of the order.

14 The matter was submitted for decision on August 4, 2003, after the State Bar filed a
15 closing brief. The State Bar's exhibits 1 - 11 and exhibit 1 attached to the closing brief are
16 admitted into evidence.

17 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

18 The court's findings are based on the allegations contained in the Notice of Disciplinary
19 Charges as they are deemed admitted and no further proof is required to establish the truth of
20 those allegations. (Bus. & Prof. Code, § 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).) The
21 findings are also based on any evidence admitted.

22 **A. Jurisdiction**

23 Respondent was admitted to the practice of law in California on June 13, 2000, and has
24 been a member of the State Bar at all times since.

25 **B. Findings of Fact**

26 Commencing in the summer of 2000, Respondent worked as an associate attorney at the
27 law offices of Christopher L. Dolan.

28 Dolan was the only signatory on his office's general business account. In March 2001, as

1 was his monthly custom and practice, Dolan reviewed the checks that had cleared the account
2 during the previous month. He discovered the following six checks that he had not written or
3 authorized anyone else to write:

<u>Check No.</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>
10652	1/26/01	\$ 350	Mark L. Weber
10653	1/18/01	\$ 300	Mark Weber
10738	2/5/01	\$ 435	Mark Weber
10778	2/8/01	\$ 500	Mark Weber
10782	2/12/01	\$ 275	Mark Weber
10783	2/14/01	\$ 180	Mark Weber

11
12 Each of these checks was negotiated by "Mark L. Weber."

13 On each of the checks, Respondent indicated the name of a then-current Dolan client,
14 knowing that, if his deceit was not discovered, the amount of the checks would be attributed to
15 the clients' accountings and withheld from them as costs.

16 In early March 2001, Dolan confronted Respondent about these checks. Initially,
17 Respondent denied having stolen and written the checks but then admitted it. Respondent denied
18 Dolan's specific inquiry about whether his misconduct was in any way related to substance abuse
19 or addiction.

20 On March 13, 2001, Respondent signed a statement admitting the above-described
21 misconduct and agreeing to certain conditions, such as restitution and not handling any of the
22 firm's money or checks. Dolan decided to give Respondent another chance to redeem himself.

23 Dolan took steps to prevent Respondent from stealing other checks and to protect the
24 integrity of the firm's clients and financial dealings. He directed that all checks were to be
25 locked in the office safe and that no checks were to be left unattended.

26 Despite Dolan's efforts to protect the firm's checks, Respondent converted to his own use
27 office check number 10826 in the amount of \$203, made out to Alameda Superior Court. This
28 check was to be used as a filing fee for one of Dolan's client's cases. Respondent crossed out the

1 name of the payee and inserted his own name and changed the date of the check from February
2 26, 2001, to April 26, 2001. The check was attributed to a client's file. It was negotiated by
3 "Mark L. Weber."

4 In July 2001, as was his monthly custom and practice, Dolan reviewed the checks that
5 had cleared the account during the previous month. He discovered the altered check and the
6 following three checks that he had not written or authorized anyone else to write:

<u>Check No.</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>
111262	4/25/01	\$ 270	Mark Weber
11585	6/21/01	\$ 873	Mark Weber
11617	6/26/01	\$ 543	Mark Weber

11
12 Check no. 111262 was attributed as a cost to one of Dolan's clients. All of these checks were
13 negotiated by "Mark L. Weber."

14 Following his review of the July 2001 bank statement and his discovery of the checks
15 stolen, altered and forged by Respondent, Dolan again confronted him. Respondent admitted
16 having stolen and forged the checks, noting that these were checks that were in his possession at
17 the time of the March confrontation with Dolan. He begged Dolan to give him one more chance
18 to redeem himself. Respondent denied Dolan's inquiry about whether his misconduct was in any
19 way related to substance abuse or addiction or other problems. Dolan offered to support his
20 rehabilitation. Respondent only noted that his girlfriend had a drug problem and that she was
21 leaving California, thus allowing him to get his life back on track.

22 Dolan agreed to give Respondent another chance. On August 31, 2001, Respondent
23 again acknowledged in writing that he stole, altered and forged the checks and agreed to other
24 conditions for continuing in Dolan's employment, including having funds reduced from his
25 paycheck in order to make restitution.

26 On October 2, 2001, Nerissa Sarmiento, Dolan's bookkeeper, received a telephone call
27 from Shirley Bozdeck, Respondent's landlord. Bozdeck told Sarmiento that she had received
28 from Respondent check number 11414 from Dolan's office, dated September 22, 2001, for

1 \$5800, made payable to Bozdeck for "back rent." According to Bozdeck, Respondent said that
2 Dolan had written this check for him. However, her bank refused to honor the check, noting that
3 it seemed to have been altered in at least four places.

4 Sarmiento's research of the Dolan account's records indicated that check number 11414
5 had originally been made payable to a client's lienholder, Humana Hospital, for \$2800. Bozdeck
6 returned the check to Dolan's office. The original of the check had been altered using correction
7 fluid and then Bozdeck's information had been typed in.

8 Dolan again confronted Respondent, who initially denied stealing and altering the check
9 but then admitted it. He also admitted to retaining the check for many months and to knowing
10 that the check was written to a client's lienholder. Respondent again denied having a chemical or
11 other addiction problem. Respondent explained that he had bills to pay and that, despite his
12 salary in excess of \$100,000 annually, he felt that his contributions deserved additional pay.
13 Dolan informed Respondent that his employment was effectively terminated and that Dolan
14 would be contacting the police. He allowed Respondent to remain employed pending finding a
15 replacement and transferring the files to that person. Dolan cautioned the firm's employees to
16 protect the firm's checks in order to prevent further thefts during the transition period.

17 Respondent obtained more of Dolan's firm checks, specifically 11997, 11999 and 12000.
18 These checks were contained in a trial binder to be used for trial-related expenses in the matter
19 entitled *Reardon v. US Trust*. Respondent had no interest in and had done no work on the
20 preparation of this case, which wound up settling before trial. The trial materials, including the
21 three blank expenses checks, were separated in Dolan's office for storage.

22 Shane Woodward, Dolan's office manager, brought the checks to Dolan's attention after
23 conducting the monthly bank statement review in December 2001. He discovered that check
24 number 11997 was dated November 10, 2001, made out to Mark Weber for \$400. Check
25 numbers 11999 and 12000 were dated November 23, 2001, made out to Mark Weber for \$500
26 and \$520, respectively. All checks were negotiated by "Mark Weber." Each check bore a forged
27 version of Dolan's signature. Dolan did not authorize the issuance of any of these checks to
28 Respondent or for any purpose other than matters related to the *Reardon* trial.

1 On the same date these forged checks were discovered, December 13, 2001, Dolan
2 confronted Respondent again in the presence of Woodward and Sarmiento. Respondent admitted
3 to stealing, forging and converting the checks for his own use. He apologized for the theft, again
4 explaining that he had bills to pay and that he needed the money. He was formally terminated
5 from Dolan's employment and the police were called. Respondent was arrested at the Dolan law
6 firm's office. In Respondent's presence, Dolan gave the police a document setting forth the other
7 incidents in which Respondent had stolen from the office. Dolan also reported Respondent's
8 actions to the State Bar.

9 On December 27, 2001, Respondent again negotiated a Dolan office check. This check
10 was drawn on Dolan's client trust account made payable to and negotiated by Mark Weber for
11 \$275.

12 Criminal charges are pending against Respondent based on the aforementioned conduct.
13 (*People v. Weber*, San Francisco Superior Court case no. 2057679, filed July 12, 2002.) He is
14 charged with felony counts of violating Penal Code sections 475(a) and (c) (possessing, receiving
15 or uttering forged paper), 487(a) (grand theft) and 508 (embezzlement).

16 **C. Conclusions of Law**

17 By stealing checks from Dolan, forging his signature and altering already-signed checks
18 to make them payable to himself or others for his benefit and by converting the proceeds of the
19 stolen checks, Respondent wilfully violated section 6068(a) of the Business and Professions
20 Code, by not supporting the United States and California Constitution and laws, specifically,
21 Penal Code sections 470, 475, 487 and 508.

22 By repeatedly engaging in this conduct, Respondent wilfully engaged in acts of moral
23 turpitude, dishonesty and corruption in violations of Business and Professions Code section
24 6106.

25 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

26 **A. Mitigating Circumstances**

27 There are no mitigating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty.
28 Sanctions for Prof. Misconduct, standard 1.2(e) ("standards").)

1 **B. Aggravating Circumstances**

2 Respondent's acts constitute a pattern of misconduct. (Standard 1.2(b)(ii).) In a 10-
3 month period (January - November 2001), he stole, forged and/or altered 14 checks, totaling
4 approximately \$11,126.

5 Respondent's misconduct was surrounded by bad faith, dishonesty or other violations of
6 the ethical rules. (Standard 1.2(b)(iii).) He again negotiated a Dolan office check, this time from
7 the trust account, even after Dolan terminated his employment and had him arrested. He also
8 lied to his landlord about the antecedents of the purported rent check.

9 Respondent demonstrated indifference toward the rectification or atonement for the
10 consequences of his misconduct. (Standard 1.2(b)(v).) Although he knew that clients or
11 lienholders would be detrimentally impacted by his dishonest acts, he proceeded in his course of
12 conduct.

13 Respondent's failure to participate in proceedings prior to the entry of default
14 demonstrates his contemptuous attitude toward disciplinary proceedings and his failure to
15 comprehend the duty of an officer of the court to participate therein, a serious aggravating factor.
16 (Standard 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr.
17 104, 109.)

18 **V. LEVEL OF DISCIPLINE**

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

23 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
24 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
25 imposing discipline. If two or more acts of professional misconduct are found in a single
26 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable
27 sanctions. (Standard 1.6(a).) The standards, however, are guidelines from which the court may
28 deviate in fashioning the most appropriate discipline considering all the proven facts and

1 circumstances of a given matter. (*In re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v.*
2 *State Bar* (1990) 51 Cal.3d 215.) They are "not mandatory 'sentences' imposed in a blind or
3 mechanical manner." (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

4 In the instant case, the recommended level of discipline ranges from suspension to
5 disbarment. (Standards 2.3 and 2.6(a).) The most severe sanction is found at standard 2.3, which
6 recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud,
7 intentional dishonesty or of concealment of a material fact from a court, client or other person,
8 depending on the extent to which the victim of the misconduct is harmed or misled and
9 depending upon the magnitude of the act of misconduct and the degree to which it relates to the
10 attorney's acts within the practice of law.

11 The State Bar recommends disbarment. After considering the misconduct and balancing
12 the serious aggravating and the absence of mitigating circumstances, the court agrees with the
13 recommendation.

14 Respondent has engaged in serious misconduct during his brief tenure as a lawyer. Not
15 only did he steal from his employer but he disregarded the interests of clients and lienholders.
16 Although he has no prior instance of discipline, the court does not find Respondent is a good
17 candidate for probation. His employer gave him several opportunities to rehabilitate himself and
18 he did not do so. His repeated misconduct shows his inability or unwillingness to conform to the
19 requirements of the law and raises concerns about the need to protect the public from his
20 dishonesty. He offered no explanation that might render disbarment inappropriate.

21 Respondent's disbarment is necessary to protect the public, the courts and the legal
22 community, to maintain high professional standards and to preserve public confidence in the
23 legal profession. It would undermine the integrity of the disciplinary system and damage public
24 confidence in the legal profession if Respondent were not disbarred for such serious misconduct.
25 If Respondent desires to return to the practice of law, he will be required to demonstrate his
26 rehabilitation by the most clear and convincing evidence, a heavy burden.

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It is also recommended that the Supreme Court order Respondent to comply with rule 955, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

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

It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant to Business and Professions Code section 6007(c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.


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 November 3, 2003, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

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

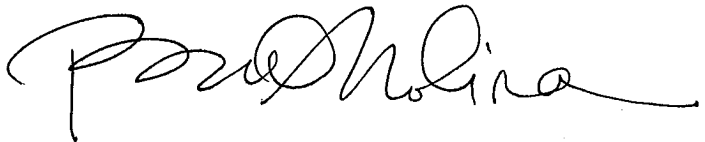
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**MARK L. WEBER
3025 W ARTESIA BLVD #15
TORRANCE CA 90504**

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

TAMMY ALBERTSEN-MURRAY, Enforcement, San Francisco

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



Bernadette C. O. Molina
Case Administrator
State Bar Court