THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **DAVID STEFAN RAGENT,** **Member No. 85267,** A Member of the State Bar.	**Case Nos. 02-O-12094; 03-O-01786; 03-O-03436; 03-O-03532-PEM** **DECISION & ORDER OF INACTIVE ENROLLMENT**

I. INTRODUCTION

In this original disciplinary proceeding, respondent David Stefan Ragent[1] is charged with a total of thirteen counts of professional misconduct in four client matters. The court finds respondent culpable on all 13 counts and, in light of all the relevant factors, concludes that disbarment is the appropriate discipline.

In this proceeding, Manuel Jimenez appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent did not appear in person or by counsel.

II. SIGNIFICANT PROCEDURAL HISTORY

On September 10, 2004, the State Bar mailed respondent a letter, at his latest address shown on the official membership records of the State Bar (official address), notifying him of its intent to initiate a disciplinary proceeding against him and offering to meet with him within 20 days thereafter. However, that letter was marked "Return to Sender" and then returned undelivered to the State Bar by the United States Postal Service (Postal Service).

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[1]Respondent was admitted to the practice of law in California on April 16, 1979, and has been a member of the State Bar since that time. He does not have a prior record of discipline.

On October 7, 2004, the State Bar filed the notice of disciplinary charges ("NDC") in this proceeding and, in accordance with Business and Professions Code section 6002.1, subdivision (c),[2] properly served a copy of it on respondent by certified mail, return receipt requested, at his official address. However, that copy of the NDC was marked "Refused" and then returned undelivered to the State Bar by the Postal Service on October 13, 2004.[3] Even though it was returned undelivered, service of the NDC on respondent was deemed complete when it was mailed. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [State Bar disciplinary notices mailed to attorney's official address "are deemed served at the time of mailing regardless of whether they are actually received by the attorney"].)

Then, on October 22, 2004, as a courtesy to respondent, the State Bar mailed a copy of the NDC to respondent at each of the following two alternative addresses that the State Bar has for respondent in its files: 3785 Via Nona Marie, Suite 314, Carmel, California 93923; and 407 Casa Verde Way, Apt. 1, Monterey, California 93940. Even thought the copy of the NDC that was mailed to respondent at the address on Via Nona Marie was marked "Insufficient Address" and returned undelivered to the State Bar by the Postal Service on October 26, 2004, the copy mailed to respondent at the address on Casa Verde Way was *not* returned by the Postal Service.

Moreover, on October 25, 2004, a State Bar deputy trial counsel called the telephone number shown for respondent on the official membership records of the State Bar. The deputy trial counsel reached a recorded message[4] and left a detailed message identifying himself and informing respondent that the NDC had been filed against him. On the same day, the trial counsel also called an alternative telephone number it had for respondent, but he was told by a

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[2]All further statutory references are to this code unless otherwise indicated.

[3]With respect to this copy of the NDC being returned to the State Bar as "Refused," the court notes the long standing legal principle that one cannot willfully avoid receiving notice and then claim that he or she had none. (*Simmons Creek Coal Co. v.Doran* (1892) 142 U.S. 417, 437 [one " 'has no right to shut his eyes or his ears to the inlet of information, and then say he is . . . without notice' "].)

[4]Regrettably, the record does not indicate whether anything in the recorded message identified the telephone number as respondent's telephone number.

woman who answered the phone that there was no one there by respondent's name. Further still, on the same day, the trial counsel called directory assistance for Monterey, Carmel, and Pacific Grove, California, but was told that there were no telephone numbers listed for respondent.

Respondent did not file a response to the NDC. Thus, on November 2, 2004, the State Bar filed a motion for entry of default and, in accordance with rules 200(b) and 60 of the Rules of Procedure of the State Bar, properly served a copy of it on respondent by certified mail, return receipt requested, at his official address. Yet, for some reason, the State Bar did not send a courtesy copy of this motion to respondent at the alternative address it had for him on Casa Verde Way in Monterey even though the courtesy copy of the NDC that the State Bar mailed to him at that address was the only copy of the NDC that was *not* returned undelivered. Nor did the State Bar inform this court whether the copy of the motion for entry of default that it mailed to respondent's official address was refused or otherwise returned undelivered by the Postal Service. Accordingly, this court is unable to make any findings on that issue for the Supreme Court.[5]

Respondent did not respond to the motion for entry of default, which properly recited all of the information required under rule 200(a) of the Rules of Procedure of the State Bar, including a statement of the consequences of the entry of respondent's default and of the fact that, if culpability were found, the State Bar intended to recommend that, at a minimum, he be placed on 90 days' actual suspension. Because all the statutory and rule prerequisites were met, this court filed an order on November 19, 2004, entering respondent's default and, as mandated in section 6007, subdivision (e)(1), placing him on involuntary inactive enrollment. The Clerk of the State Bar Court properly served a copy of that order on respondent by certified mail, return

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[5]There is can be no question that the Supreme Court is concerned that the State Bar go beyond its " 'minimum' " statutory duty, under section 6002.1, subdivision (c), and make a reasonable effort to locate respondent attorneys and provide them with actual knowledge of the existence of State Bar Court disciplinary proceedings against them. (*Bowles v. State Bar, supra*, 48 Cal.3d 108, fn. 7; *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1183-1185, 1186 [Supreme Court set forth *in detail* how State Bar exceeded its minimum statutory duty and made every reasonable step to notify the attorney of all disciplinary activity].)

receipt requested, at his official address. But that copy of the order was marked "moved left no address, unable to forward, return to sender" and returned undelivered to the clerk by the Postal Service. Nonetheless, service was complete at the time of mailing. (Cf. § 6002.1, subd. (c); *Bowles v. State Bar, supra*, 48 Cal.3d at pp. 107-108.)

On December 17, 2004, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. And the court took the matter under submission for decision without hearing that same day.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC, which are deemed admitted by the entry of respondent's default (§ 6088; Rules Proc. of State Bar, rule 200(d)(1)(A)) and on the facts in court's official case file. The court finds that respondent has both statutory and actual notice of this proceeding.

A. Counts 1 and 2: Unauthorized Practice of Law and Moral Turpitude

In count 1, the State Bar charges that respondent violated his duty, under section 6068, subdivision (a), to obey the laws of this state by practicing law while he was on inactive status and on actual suspension in violation of sections 6125 and 6126, subdivision (b). In count 2, the State Bar charges that respondent's unauthorized practice of law in violation of sections 6125 and 6126, subdivision (b) was so egregious that it involved moral turpitude in violation of section 6106. As set forth below, the court holds that respondent is culpable of violating section 6125; section 6126, subdivision (b);[6] and section 6106.[7]

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[6]Even though the section 6125 and section 6126, subdivision (b) violations are duplicative, the review department for some reason held that "together" they make the unlawful practice of law a crime and create a standard which, when coupled with a section 6068, subdivision (a) charge, can form the basis of professional discipline. (*In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 236.) Accordingly, the court finds that respondent violated both notwithstanding their being duplicative.

[7]An attorney's unauthorized practice of law does not always rise to the level of an act involving moral turpitude. (*In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at p. 239). Therefore, when an attorney's unauthorized practice of law is so egregious that it rises to an act involving moral turpitude, it is not -- and cannot be -- duplicative to hold the attorney culpable of

On September 3, 2002, respondent was involuntarily enrolled as an inactive member of the State Bar because he did not comply with the State Bar's Mandatory Continuing Legal Education Program (MCLE program). The next day, September 4, 2002, respondent was placed on actual suspension under the Supreme Court's August 16, 2002, order in its case number S108829 because he did not pay his annual State Bar membership fees. Respondent remained on involuntary inactive enrollment and on actual suspension for about the next 13 months. Respondent did not regain his right to practice law again until September 9, 2003, after he complied with the MCLE program and he paid his membership fees.

At all times relevant hereto, respondent knew that he had been involuntary enrolled inactive and actually suspended from the practice of law. Respondent engaged in the following acts while he was enrolled inactive and suspended. Between September 19, 2002, and October 23, 2002, respondent used his attorney trust account while he was acting as the escrow holder in the sale of a Chinese restaurant. During that time period, as escrow holder, Respondent issued four checks totaling more than $31,630. Those checks were drawn on respondent's trust account. Printed on each of the checks was the name of the account: "David S. Ragent, Esq. Trust Account."

Moreover, sometime between September 24, 2002, and September 27, 2002, respondent signed a document pertaining to the transfer of the liquor license for the Chinese restaurant and had the document delivered to California Department of Alcoholic Beverage Control. In the document, respondent was identified as an attorney at law.

About one year later, on August 5, 2003, respondent filed an answer for one of the defendants in an unlawful detainer action, which as pending in the Monterrey County Superior Court. In that answer, respondent stated that he was the attorney for the defendant for whom he filed the answer. Then, on August 14, 2003, respondent sent a letter to two individuals on behalf of one of Respondent's clients. In that letter, respondent identified himself as an attorney at law.

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violating: (1) section 6125, section 6126, subdivision (b), or both; and (2) section 6106.

The record clearly establishes that respondent willfully violated the provision of section 6126, subdivision (b) that makes it a crime for an attorney who has been involuntarily enrolled inactive or actually suspended to advertise or hold himself or herself out as entitled to practice law when he issued the four trust accounts checks totaling $31,630, signed and sent a document in which he was identified as an attorney to the Department of Alcoholic Beverage Control, filed an answer in which he was identified as the attorney for one of the defendants, and sent a letter in which he was identified as an attorney to two individuals for a client. (See also *Arm v. State Bar* (1990) 50 Cal.3d 763, 775 [suspended attorney is disqualified "not only from practicing law but also from holding himself or herself out as entitled to practice during the suspension period"].)

In this state, " 'to practice as an attorney at law' means to do the work as a business which is commonly and usually done by lawyers in this country." (*People v. Merchants Protective Corp.* (1922) 189 Cal. 531, 535, quoting *People v. Alfani* (1919) 227 N.Y. 334, 339, 125 N.E. 671; *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 542-543.) Thus, the record clearly establishes that respondent further engaged in the unauthorized practice of law in willful violation section 6125 and section 6126, subdivision (b) when he filed an answer for one of the defendants in an unlawful detainer action and sent letters to two individuals on behalf of a client.[8]

As noted above, the unauthorized practice of law does not always involve moral turpitude. (see, e.g., *In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at p. 239.) But in the present proceeding, the court concludes that the record clearly establishes that respondent's multiple violations of section 6125 and section 6126, subdivision (b) involved moral turpitude in willful violation of section 6106. Respondent deliberately engaged the unauthorized practice of law for personal financial gain on multiple occasions over a time period spanning almost 13 months.

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[8]The record does not clearly and convincingly establish whether the document respondent signed and sent to the Department of Alcholic Beverage Control was a legal document or that it was otherwise a document that must be signed only by a principal party or his or her attorney.

B. Counts 3 and 4: Trust Account Violations and Misappropriations – Chinese Restaurant Escrow

Between August 9, 2002, and August 16, 2002, while acting as the escrow holder for the sale of the Chinese restaurant, respondent received a total of $34,851 in sales proceeds. At the close of escrow, respondent told the seller (1) that he was withholding $2,000 from the sales proceeds until respondent obtained certain releases from the State Board of Equalization and the Employment Development Department and (2) that he would release the $2,000 to the seller once he received those releases. Respondent, however, did not withhold $2,000; he withheld $2,148.94. This amount was in addition to the $1,200 that respondent withheld from the proceeds to cover his agreed upon fee of $1,200.

On August 15, 2002, respondent paid himself $1,800 from his trust account using a trust account check on which he noted that the payment pertained to the Chinese restaurant escrow. And, on August 19, 2002, respondent paid himself an additional $1,000 from his trust account again using a trust account check on which he noted that the payment pertained to the Chinese restaurant escrow. Because respondent's agreed upon fee was only $1,200 fee, it is clear that he "over paid" himself by $1,600 ($1,800 check plus $1,000 check less respondent's $1,200 fee).

On October 23, 2002, respondent paid the Board of Equalization $145 on behalf of the seller, leaving a balance of $2,003.94 that respondent held in trust for the seller. Respondent never made any additional payments on behalf of the seller.

By October 31, 2002, the balance in respondent's trust account fell to only $213.09, and by December 31, 2002, its balance fell to $103.09. What is more, after the close of escrow, respondent not only moved his law office without notifying the seller, but he also failed to otherwise communicate with the seller, and he never paid the seller the $2,003.94 to which the seller was entitled.

An attorney violates rule 4-100(A) of the Rules of Professional Conduct of the State Bar of California[9] "when he or she fails to deposit and manage funds in the manner delineated by the

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[9]Unless otherwise indicated, all references to rules are to these Rules of Professional Conduct.

rule, even if this failure does not harm the client. [Citation.]" *(Murray v. State Bar* (1985) 40 Cal.3d 575, 584.) Even though a violation of rule 4-100(A) can involve conversion of funds held in trust (trust funds), not all such conversions involve dishonesty or moral turpitude. (*In the Matter of Hagan* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 167-168, citing *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 324-328 & *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092, 1095, 1096-98.)

When a conversion of trust funds involves dishonesty or moral turpitude, it is appropriate to denominated the conversion as a "misappropriation." In fact, because the term "misappropriation" has such a serious opprobrium attached to it, its use should be limited to denominating only conversions that involve dishonesty or moral turpitude. (*In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 26.) Of course, when an deliberately converts trust funds for his or her own use or benefit, the conversion involves not just moral turpitude, but dishonesty regardless of whether the attorney only intended to temporarily deprive his or her beneficiary of the funds. Moreover, even if no deliberate wrongdoing or dishonesty is involved, an attorney's conversion of trust funds through gross carelessness and negligence involves moral turpitude. (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020-1021; *Jackson v. State Bar* (1979) 23 Cal.3d 509, 513.)

An inference of a willful misappropriation is established whenever the State Bar proves that the actual balance of the bank account into which the trust funds were deposited drops below the amount credited to the beneficiary of those funds. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; *Palomo v. State Bar* (1984) 36 Cal.3d 785, 795; *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 123.) The burden then shifts to the attorney to show that the misappropriation was not deliberate or the result of gross carelessness and negligence. *(In the Matter of Respondent F, supra*, 2 Cal. State Bar Ct. Rptr. at p.26.)

The record clearly establishes that respondent willfully violated rule 4-100(A) as charged in count 4 when, in August 2002, he improperly withdrew $1,600 more than he should have from his trust account. Moreover, because respondent knew that he was entitled to receive *only* his $1,200 fee from his trust account with respect to the Chinese restaurant escrow, it is clear that he

deliberately converted that $1,600 to his own use and benefit. Therefore, respondent's conversion of this $1,600 involved dishonesty and is appropriately denominated a misappropriation. In other words, respondent's failure to maintain the $1,600 in his trust account not only violated his duty, under rule 1-400(A), to hold all trust funds in his trust account, but it also violated his duty, under section 6106, not to engage in acts involving dishonesty. In short, respondent willfully violated section 6106 as charged in count 3.

Even after he misappropriated the $1,600 from the seller, respondent still held $403.94 ($2,003.94 less $1,600) in trust for the seller. However, as of December 31, 2002, the balance in his trust account was only $103.09. Accordingly, on that date, the balance in respondent's trust account fell below the $403.94 he held in trust for the seller by $300.85. Thus, the record clearly establishes that respondent again willfully violated rule 4-100(A) because he did not maintain that $300.85 in his trust account. Furthermore, the fact that the actual balance in respondent's trust account dropped below the amount credited to the seller by $300.85, creates an inference of a willful misappropriation, which involves moral turpitude. This inference was not rebutted because there is no evidence which proves that this $300.85 drop was the result of only negligence and not gross negligence or a deliberate taking. (*In the Matter of Respondent F, supra*, 2 Cal. State Bar Ct. Rptr. at p.26.) Accordingly, respondent willfully violated section 6106 when he misappropriated this $300.85 from the seller. In total, respondent willfully misappropriated $1,900.85 from the seller.[10]

C. Counts 5, 6, 7, 8, 9, and 10: Trust Account Violations, Misappropriations, Failure to Pay Out Client Funds, Failure to Account, Failure to Communicate, and Failure to Release Client File – Heiser Matter

In May 1997, Edee Heiser retained respondent to represent her with respect to personal injuries she suffered when she was hit by an automobile while walking in a crosswalk. Respondent and Heiser orally agreed that respondent would be paid at the rate of $175 per hour.

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[10]The State Bar erroneously asserts that respondent misappropriated $2,003.94. The State Bar fails to take into account the fact that respondent's trust account balance never dropped to zero, it dropped only to $103.09.

In July 2000, Heiser's claims were settled, and respondent received a $99,500 settlement check made payable to him and Heiser. Respondent promptly deposited the $99,500 check into his trust account. And, a few weeks later, he paid Heiser $65,500 of the settlement proceeds and told her that he would keep the remaining balance of $34,000 ($99,500 less $65,500) in his trust account pending the computation of liens and fees and obtaining lien releases. Respondent did not provide Heiser with an accounting as to the liens or his fees. Nor did he pay any of the lienholders. Thus, in late May 2001, about nine months after Heiser's claims were settled and respondent deposited the $99,500 settlement check into his trust account, Heiser met with respondent. Respondent told her not to take any action with respect to the liens until July 20, 2001, as they would be extinguished. Yet, respondent still did not pay any of the lienholders.

Then, in December 2001, which was about one and one-half years after Heiser's claims were settled, Heiser met with respondent again. This time respondent wanted Heiser to sign a contingent fee agreement under which he would receive a fee of 33 percent of any lien reductions he was able to negotiate. Heiser objected to the fee, and respondent wrote on her copy of the form: "Hourly fees of $175.00 per hour may be used in lieu of contingency fee amount in sum of $5,400.00." At that meeting, respondent promised Heiser that he would both resolve the liens and meet with Heiser again the next day. But respondent did not resolve the liens, and he cancelled his meeting with Heiser.

From December 2001 until February 4, 2002, Heiser left numerous messages for respondent, asking him to return her telephone call. On December 28, 2001, and then again on January 5, 2002, Heiser mailed a letter to respondent presumably asking respondent to contact her. Respondent received both of those letters. And, in response to them, respondent left a Heiser a telephone message in February 2002 in which he promised to call her again. But he never did.

In July and August 2002, respondent spoke with Jed Friedland who, as an attorney for Heiser, requested that respondent provide Heiser with an accounting, a status report concerning the outstanding liens, and a clarification of respondent's claim for attorney fees. Respondent

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never responded to Attorney Friedland's requests.[11]

On November 17, 2003, about three years and four months after Heiser's claims were settled, Heiser mailed respondent a letter terminating his employment and requesting that he provide her with an accounting, that he pay her the funds he owned to her, and that he return her file to her. Respondent received that letter the next day, but never provided Heiser with an accounting, paid her the funds he owed her, nor returned her file. Nor did respondent ever satisfy any of Heiser's medical liens. In fact, Heiser ultimately paid all of the lienholders with her own funds. Accordingly, it is clear that respondent still owes Heiser $28,600 (the $99,500 settlement amount less the $65,500 respondent paid to Heiser in August 2002 less the $5,400 in attorney's fees respondent claimed).

The balance in respondent's trust account dropped to $24,731.46 on August 11, 2000; then to $19,731.46 on August 31, 2000; then to $15,731.46 on September 29, 2000; then to $10,340.07 on October 10, 2000; then to $8,832.13 on November 9, 2000; then to $3,815.32 on December 29, 2000; and then to $270.54 on January 10, 2001. The fact that on January 10, 2001, the balance in respondent's trust account dropped below the $28,600 credited to Heiser by $28,329.46,[12] creates an inference of a willful misappropriation, which involves moral turpitude. This inference was not rebutted because there is no evidence which proves that this $28,329.46 drop was the result of only negligence and not gross negligence or a deliberate taking. (*In the Matter of Respondent F, supra*, 2 Cal. State Bar Ct. Rptr. at p.26.) Accordingly, the record

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[11]The NDC alleges that, on August 7, 2002, Attorney Friedland mailed a letter confirming his requests with respondent, that Friedland mailed that letter to respondent's official address, and that the Postal Service did not return the letter undelivered to Friedland. These allegations are insufficient to establish any relevant fact because there is no allegation or any other proof, that respondent's official address was a valid address for respondent when Friedland sent him that letter. The statutes regarding service on attorneys at their official addresses pertain only to official notices sent by the State Bar. Private parties, such as Attorney Friedland, may not rely on an attorney's official address for purposes of providing notice, etc. without establishing that the official address is a current and valid address for the attorney.

[12]The State Bar erroneously asserts that this figure is $28,600. The State Bar fails to take into account the fact that respondent's trust account balance never dropped to zero, it dropped only to $270.54.

clearly establishes not only that respondent failed to maintain $28,329.46 in trust funds in his trust account in willful violation of rule 4-100(A) as charged in count 6, but also that respondent is culpable of misappropriating (i.e., converting with moral turpitude) $28,329.46 from Heiser in willful violation of section 6106 as charged in count 5.

In addition, the record clearly establishes that respondent willfully violated rule 4-100(B)(4) as charged in count 7 when he failed to promptly pay to Heiser the funds to which she was entitled. Likewise, the record clearly establishes that respondent willfully violated rule 4-100(B)(3) as charged in count 8 when he failed to provide Heiser with an accounting in accordance with the requests for one in her November 17, 2003 letter to respondent and in Attorney Friedland's conversations with respondent in July and August 2002 and that he willfully violated section 6068, subdivision (m) as charged in count 9 when he failed to respond to the reasonable requests for information Heiser made in her numerous telephone messages and two letters from December 21, 2001, through February 2002. Finally, the record clearly establishes that respondent willfully violated rule 3-700(D)(1) as charged in count 10 when he failed to return Heiser's file to her all in accordance with her requests for those funds and her file in her November 17, 2003 letter to respondent.

D. Count 11: Failure to Maintain Official Address

From February 10, 1987, through September 15, 2003, respondent maintained as his official address: 704 Forest Ave., Pacific Grove, CA 93950. However, by at least January 2003, respondent moved out of and stopped receiving mail at that address. As noted below, respondent informed a State Bar investigator of his new address in an August 2003 telephone conversation, but did not officially notify the State Bar's Membership Records Department of his new address until September 15, 2003. Accordingly, it is clear that respondent failed to notify the State Bar's Membership Records Department of his new address within 30 days after his move and to maintain a current official address with the State Bar all as required by section 6002.1. Therefore, it is clear that respondent is culpable, as charged in count 11, of willfully violating section 6068, subdivision (j), which mandates that attorneys comply with section 6002.1.

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E. Counts 12 and 13: Failure to Cooperate With and Misrepresentations to State Bar

Respondent's only communication with the State Bar concerning its investigations of the misconduct charged in this proceeding was on August 26, 2003, when a State Bar investigator spoke to respondent on the telephone and told him that the bar was conducting disciplinary investigations involving him. The investigator told respondent that he wanted to send respondent letters of inquiry and that respondent needed to update his official address. Respondent then gave the investigator respondent's current address. Even though respondent did not formally notify the State Bar's Membership Records Department of this new address until September 15, 2003, the investigator mailed all the letters referred to under these two counts (i.e., counts 12 and 13) to respondent at his new address. Also, in this August 26, 2003, telephone conversation, respondent stated that he had just learned that morning that he was not entitled to practice law (i.e., the he was involuntarily enrolled inactive and was actually suspended). However, respondent knew long before August 26, 2003, that he was not entitled to practice. Respondent lied to the investigator in an attempt to mislead the investigator into believing that respondent mistakenly engaged in unauthorized practice of law.

Finally, on August 26, 2003, the investigator mailed respondent a letter of inquiry notifying respondent of the bar's investigation of the Chinese restaurant matter and requesting that respondent provide the bar with specific documentation and a written response. Even though respondent actually received that letter on August 28, 2003, he never responded to it.

Then, on September 4, 2003, the State Bar investigator mailed respondent a letter of inquiry concerning the bar's investigations involving respondent's conduct in the Chinese restaurant matter and the Heiser matter. That letter also requested, from respondent, specific documentation and a written response. Even though respondent received that letter on September 8, 2003, he never responded to it.

On December 11, 2003, and on January 13, 2004, the investigator mailed respondent letters of inquiry notifying respondent of the bar's investigations of the matters in August 2003 in which respondent, while enrolled inactive and suspended: (1) filed an answer for a defendant in

an unlawful detainer action in the Monterrey County Superior Court; and (2) sent a letter to two individuals on behalf of a client while respondent. That letter requested that respondent provide a response those investigations. The two letters were properly mailed to respondent at his new address and were not returned undelivered to the State Bar by the Postal Service. In the absence of any evidence to the contrary, the court finds that respondent received those two letters. (Evid. Code, §§ 604, 630, 641 [correctly addressed and properly mailed letter is presumed to have been received in the ordinary course of mail].) Respondent never responded to the two letters.

On July 28, 2004, the investigator mailed a letter of inquiry to respondent again requesting that respondent provide responses concerning the bar's investigations of the Chinese restaurant matter and the two August 2003 matters described in the paragraph above. The letter was properly mailed to respondent and was not returned undelivered to the State Bar by the Postal Service. In the absence of any evidence to the contrary, the court finds that respondent received that letter. (Evid. Code, §§ 604, 630, 641.) Respondent never responded to that letter.

The record clearly establishes that, as charged in count 12, respondent wilfully violated his duty under, section 6068, subdivision (i), to cooperate and participate in disciplinary investigations pending against him when respondent failed to respondent to any of the five letters sent to him the State Bar investigator. In addition, the record clearly establishes that respondent willfully violated section 6106 as charged in count 13 by dishonestly telling the investigator on August 26, 2003, that he had just learned that he was not entitled to practice law.

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

The State Bar must prove all aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)[13]

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

1. Multiple Acts of Misconduct

The respondent has been found culpable in the current proceedings of multiple acts of misconduct, including failure to respond to client inquiries, failure to render accounts of client funds, and misappropriation of client funds. This fact is a very serious aggravating circumstance (std. 1.2(b)(ii)) particularly in light of the fact that a number of the acts involved moral turpitude or dishonesty.

2. Respondent's Failure to File a Response to the NDC

Respondent's failure to file a response to the NDC, which allowed his default to be entered in this proceeding, is serious aggravation particularly in light of the fact that he refused delivery of the copy of the NDC that the State Bar served on October 7, 2004, by certified mail. (*Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.) First, his failure to file a response establishes that he fails to appreciate the seriousness of the charges against him. (*Ibid.*) And, second, "it establishes that he does not comprehend the duty as an officer of the court to participate in disciplinary proceedings. [Citation.]" (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109, citing *Conroy v. State Bar* (1992) 53 Cal.3d 495, 507-508; but see *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, 1080 [failure to participate in hearing after entry of default is not an aggravating circumstance].)

3. Client Harm

Respondent's misconduct caused significant harm to his clients. Respondent never made restitution of the $1,900.85 that he misappropriated from the seller of the Chinese restaurant. Nor has respondent ever paid the seller the remaining $103.09 that respondent still held in his trust account on December 31, 2002, for the seller. Nor has respondent ever made restitution of the $28,329.46 that he misappropriated from Heiser. Nor has respondent ever paid Heiser the remaining $270.54 that he still held for her in trust account on January 10, 2001. This harm is also a serious aggravating circumstance. (Std. 1.2(b)(iv).)

The court rejects the State Bar's request to find aggravation based on harm to the public and the administration of justice because it failed to specify that harm. Moreover, the State Bar did not prove any harm to the administration of justice other than that which always results from

the unauthorized practice of law, which is not be considered as additional aggravation.

4. Other Requests for Aggravation Findings

The court rejects the State Bar's remaining requests for findings of aggravation because they are facts relied upon to establish respondent's culpability of misconduct.

B. Mitigating Circumstances

1. No Prior Record of Discipline

The State Bar has not proffered any evidence indicating that respondent has a prior record of discipline, which would be an aggravating circumstances under standard 1.2(b)(i). As noted above in footnote 1, respondent was admitted to practice on April 16, 1979. In addition, respondent did not commit the first act of misconduct found in this proceeding until the Fall of 2000 when he failed to properly handle the $99,500 in settlement proceeds he received in the Heiser matter. Thus, contrary to the State Bar's representation to the court that there are no mitigating circumstances, the record establishes that respondent practiced law discipline-free practice for 21 years, which is a very substantial mitigating circumstance (std. 1.2(e)(i)). This is true even though the misconduct found in this proceeding is very serious. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13, and cases there cited [absence of a prior record discipline over many years of practice is strong mitigation even when present misconduct is deemed serious notwithstanding the plain language to the contrary in standard 1.2(e)(i)].)

2. No Other Mitigating Circumstances

Because of respondent's failure to participate in this proceeding, there is no evidence of any additional mitigating circumstances.

C. 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. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

When determining the appropriate level of discipline, the court first looks to the standards

for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Even though the standards are to be applied in a talismanic fashion (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828), the State Bar Court should not "depart from them in the absence of a compelling reason to do so. [Citation.]" (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Looking to the standards first, standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent's misconduct is found in standard 2.2(a), which provides:

> Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.

In short, again recognizing that the standards are not to be applied in a talismanic fashion, the court does not find any reason, much less a compelling reason, in the record to depart from the disbarment sanction in standard 2.2(a) (cf. *Aronin v. State Bar, supra* , 52 Cal.3d at p. 291). First, the combined amount of the funds respondent misappropriated is not insignificantly small; it was more than $30,000. Second, while there is significant mitigation for respondent's 21years of discipline free practice, that alone is mitigation is of the most compelling nature much less mitigation that clearly predominates in this proceeding. In fact, the seriousness of respondent's misconduct and the aggravating circumstances in this proceeding clearly predominate.

The court recognizes that not every misappropriation that is technically willful is equally culpable (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367) and that the Supreme Court has differentiated between mere negligent misappropriations unaccompanied by acts of deceit or other aggravating factors and willful misappropriations where a client's money is taken by the

attorney through acts of deception or with an intent to deprive (*Edwards v. State Bar, supra*, 52 Cal.3d at p. 38). Nevertheless, it remains clear that except in exceptional cases, even a single willful misappropriation requires the "imposition of the harshest discipline" -- disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21, 29-30; Std. 2.2(a); see also *Kelly v. State Bar* (1988) 45 Cal.3d 649, 657 [even a single "first-time" act of misappropriation warrants disbarment when it is coupled with other egregious misconduct, but no mitigation].)

In *Grim* the Supreme Court disbarred an attorney for wilfully misappropriating $5,546.00 from a client in a probate matter. And, in *Chang v. State Bar* (1989) 49 Cal.3d 114, 128-29, the court disbarred an attorney for a single isolated misappropriation of $7,000.00 from a client even though the attorney did not have a prior record of discipline.

In short, none of the misappropriations in the present case was the result of carelessness, mistake, or even gross negligence. They were all intentional acts in which respondent took trust funds for his own use, benefit, and purposes. Each such act involved either moral turpitude or dishonesty. Moreover, respondent's failure to make restitution to his clients and his failure to respond to the State Bar's letters of inquiry regarding the misappropriations and to appear in this proceeding are clear and convincing circumstantial evidence that respondent intended to permanently deprive his clients of the misappropriated funds. Thus, the court finds that respondent's misappropriations are of the most culpable nature.

Furthermore, respondent's misappropriations are not the only acts of misconduct found against respondent in this proceeding. Particularly disturbing is respondent's dishonesty in August 2003 in lying to the State Bar investigator regarding when respondent learned that he was not entitled to practice law. In conclusion, the court finds that a disbarment recommendation is necessary to protect the public, the courts, and the profession.

V. DISCIPLINE RECOMMENDATION

This court recommends that respondent David Stefan Ragent be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

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VI. RULE 955 AND COSTS

The court further recommends respondent Ragent be ordered to comply with the provisions of rule 955 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, the court recommends that the costs incurred by the State Bar in this matter be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be payable in accordance with Business and Professions Code section 6140.7.

VII. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent David Stefan Ragent is involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail. (Accord, Rules Proc. of State Bar, rule 220(c).)

VIII. DIRECTIVE TO CLERK REGARDING SERVICE

In addition to servicing a copy of this decision, order, and directive on respondent at his official address, the Clerk of the State Bar Court is directed to serve a second copy of it on respondent at 407 Casa Verde Way, Apt. 1, Monterey, California 93940.

Dated: March 16, 2005

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 March 16, 2005, I deposited a true copy of the following document(s):

DECISION & ORDER OF INACTIVE ENROLLMENT, filed March 16, 2005

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

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

DAVID S. RAGENT
8 THOMAS OWENS WAY
MONTEREY CA 93940

DAVID S. RAGENT
407 CASA VERDE WAY #1
MONTERY CA 93940

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

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **March 16, 2005**.

George Hue
Case Administrator
State Bar Court