FILED MAY 2, 2006

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **MEREDITH M. CHANG**, **Member No. 148986**, A Member of the State Bar.	)	**Case Nos. 04-N-12217-RAP; 04-O-12286; 05-O-00163 (Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In these consolidated contested matters, respondent **MEREDITH M. CHANG** is charged with five counts of misconduct in three matters. The court finds, by clear and convincing evidence, that respondent is culpable of all of the charges involving (1) violation of a court order, (2) unauthorized practice of law, (3) an act of moral turpitude, (4) commingling personal funds in a client trust account, and (5) failure to cooperate in a State Bar investigation.

In view of respondent's misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

A. First Amended Notice of Disciplinary Charges (Case Nos. 04-N-12217 and 05-O-00163)

On July 6, 2004, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case No. 04-N-12217. Respondent filed a response to the NDC on August 5, 2004. The State Bar filed an amended NDC on February 22, 2005, which included case No. 05-O-00163. Respondent did not file a response to the amended NDC.

B. Second Notice of Disciplinary Charges (Case No. 04-O-12286)

On March 8, 2005, the State Bar filed a second NDC in case No. 04-O-12286. Respondent

filed a response on April 12, 2005.

By State Bar's motion, Judge Pat McElroy recused herself from this proceeding. On September 20, 2005, this consolidated matter was reassigned to Judge Richard A. Platel. On October 6, 2005, the first amended NDC and the second NDC were consolidated for hearing.

As a result of respondent's failure to file a pretrial statement, the court ordered that respondent be precluded from presenting any witnesses or evidence at trial. (Rules Proc. of State Bar, rule 211(f).) Respondent was allowed to testify at trial, however.

Trial was held on February 16, 2006. The State Bar was represented in this proceeding by Deputy Trial Counsel Robert Henderson. Respondent appeared at trial in propria persona. The court took this proceeding under submission at the conclusion of trial.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the evidence and testimony introduced at this proceeding and on the parties' stipulation as to facts, which was admitted into evidence. The court finds respondent's testimony not credible at times.

Respondent was admitted to the practice of law in California on December 5, 1990, and has since been a member of the State Bar of California.

A. Violation of California Rules of Court, Rule 955 (Case No. 04-N-12217)

On March 12, 2004, in California Supreme Court case No. S121456 (State Bar Court case No. 02-O-12588 et al.; suspension order), the California Supreme Court suspended respondent from the practice of law for two years, stayed the execution of the suspension, and placed him on probation for two years subject to the conditions of probation, including an actual suspension of 150 days and until he pays a fine of $500. Among other things, the Supreme Court ordered respondent to comply with rule 955,[1] by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the suspension order, April 11, 2004.

Rule 955, subdivision (c), mandates that respondent "file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered

[1]All references to rule 955 are to California Rules of Court, rule 955.

pursuant to this rule."

On March 12, 2004, the Clerk of the California Supreme Court properly served upon respondent a copy of the suspension order.

The suspension order required that respondent comply with rule 955, subdivision (a), no later than on or about May 11, 2004, by notifying all clients and any co-counsel of his suspension, delivering to all clients any papers or other property to which the clients are entitled, refunding any unearned attorney fees, notifying opposing counsel and adverse parties of his suspension, and filing a copy of said notice with the court, agency, or tribunal before which the litigation is pending.

The suspension order required that respondent comply with rule 955, subdivision (c), no later than on or about May 21, 2004, by filing with the Clerk of the State Bar Court an affidavit showing that he fully complied with those provisions of the suspension order regarding rule 955.

On March 18, 2004, a probation deputy of the Office of Probation of the State Bar wrote a letter to respondent reminding him of the obligation to comply with rule 955 and enclosing an accurate copy of the suspension order as well as a form approved by the State Bar Court Executive Committee for reporting compliance with rule 955. On that same date, the probation deputy mailed the letter and enclosures by placing the documents in a sealed envelope addressed to respondent at his address maintained on the official membership records of the State Bar and depositing it, first-class postage prepaid, in a facility regularly maintained by the United States Postal Service. The United States Postal Service did not return the mailing as undeliverable or for any other reason.

Respondent did not file with the Clerk of the State Bar Court a declaration stating compliance with rule 955 by May 21, 2004. To date, he has not filed such an affidavit.

Respondent attempted to file a rule 955 compliance declaration on July 12, 2004, but the Clerk of the State Bar Court rejected the filing because respondent had not completed the form. Respondent had not notified all opposing counsel and adverse parties not represented by counsel, by certified or registered mail, return receipt requested, of his disqualification to act as an attorney due to his suspension and had not filed a copy of the notice to opposing counsel/adverse parties with the court before which litigation was pending. Instead, he sent another attorney, Roosevelt O'Neal, to court to notify clients, opposing counsel, and the courts of his suspension.

B. Unauthorized Practice of Law (Case No. 05-O-00163)

Beginning April 11, 2004, respondent was actually suspended from the practice law for 150 days and until he pays the fine of $500 (No. S121456). To date, respondent remains on suspension. Respondent has complied with portions of his April 2004 suspension order. Respondent has taken and passed the State Bar's Client Trust Accounting School and the State Bar's Ethics School, and has taken and passed the Multistate Professional Responsibility Examination (MPRE). He has paid $250 of the $500 fine. Respondent has also kept current on his mandatory continuing legal education (MCLE). He remains on suspension as he has been financially unable to pay the balance of the $500 fine or his 2005 Bar dues.

While respondent was actually suspended from the practice of law, respondent engaged in the practice of law by making the following court appearances:

1. On April 12, 2004, in *People v. Romero, et al.*, Placer County Superior Court, case No. 62-025157, respondent represented co-defendant Alex Estrada and appeared in court;
2. On April 12, 2004, in *People v. Brian Guinn*, Sacramento County Superior Court, case No. 04T01449, respondent represented Mr. Guinn and appeared in court (arraignment); and
3. On April 13, 2004, in *People v. Lynn Pletcher*, Sacramento County Superior Court, case No. 04T00409, respondent represented Mr. Pletcher and appeared in court.

Count 1: Violation of Court Order (Bus. & Prof. Code, § 6103)

Business and Professions Code section 6103[2] requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

Respondent argues that he did more than what he was supposed to do in complying with rule 955. By sending another attorney to court to notify clients, opposing counsel, and the courts of

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

his suspension since most of his clients were in criminal court and he was not sure if they could receive mail, respondent believed that he met the goals of rule 955 notifications, even though not in the manner prescribed by rule 955.

At the time respondent attempted to file his overdue rule 955 declaration with the State Bar Court and up to and including trial in this matter, respondent has failed to understand the importance of following a Supreme Court order, substituting his own judgment as to the best way to notify clients, opposing counsel and the courts of his suspension. Respondent repeatedly makes decisions that he believes are in his own best interests, ignoring court orders that direct him to perform certain acts in the interest of public protection.

Whether respondent is aware of the requirements of rule 955 or of his obligation to comply with those requirements is immaterial. "Wilfulness" in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, respondent's arguments are rejected and the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 955, as ordered by the Supreme Court.[3]

Accordingly, respondent's failure to comply with rule 955 constitutes a violation of section 6103.

Count 2: Unauthorized Practice of law (Bus. & Prof. Code, §§ 6068, Subd. (a), 6125, and 6126)

Section 6068, subdivision(a), provides that an attorney has a duty to support the laws of the United States and of this state. Section 6125 prohibits the practice of law by anyone other than an active attorney and section 6126 prohibits holding oneself out as entitled to practice law by anyone other than an active attorney.

Respondent testified that he did not intentionally practice law while on actual suspension.

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[3]Specifically, rule 955(d) provides that a suspended attorney's wilful failure to comply with rule 955 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

Respondent was busy on a long trial and was not checking his office mail, even though he was aware that the Supreme Court would soon issue its suspension order. Instead of checking his office mail, respondent testified that he checked the State Bar website to inquire into his status and that there must have been a delay in updating his inactive status on the website. Not only does the court find respondent's testimony not credible in this instance, but also his explanation for his unauthorized practice of law does not excuse his violation.

Respondent was aware that the Supreme Court would soon issue a suspension order. Yet, he ignored his responsibility to check his office mail and then blamed the State Bar's website for not updating the membership records information.

Therefore, by clear and convincing evidence, respondent wilfully violated sections 6068, subdivision (a), 6125 and 6126. While he was on suspension for his prior misconduct, respondent knew or should have known that he was not entitled to practice law effective between April 11, 2004. Still, he held himself out as entitled to practice law and practiced law by appearing before the superior courts in Placer County and Sacramento County on April 12 and 13, 2004, in three criminal matters.

C. Client Trust Account (Case No. 04-O-12286)

At all times mentioned, respondent maintained a client trust account, No. 1010975892, at Wells Fargo Bank (the trust account).

In respondent's prior record of discipline, between March 2002 through February 2003 he was found to have (1) issued checks from the trust account for personal and nonclient related expenses; (2) conducted 165 transactions involving cash and automatic teller machine (ATM) withdrawals, check card purchases and point of sale (POS) purchases for his own use and purpose; and (3) made ATM and cash withdrawals and check card purchases when he knew or reasonably should have known that there were insufficient funds in the account to satisfy the charges against the account.

Yet, even though he had stipulated to the prior misconduct in June 2003 and was fully aware that such improper handling of the trust account violated his professional and ethical duties, respondent continued this misconduct between August 2003 and April 2004, involving a total of

more than $30,600, as follows:

- Between August 2003 and April 2004, respondent issued five checks (totaling $5,400) and made three ATM withdrawals (totaling $80) that were either returned or paid against nonsufficient funds (NSF). For example, on August 14, 2003, a check was presented for payment in the amount of $5,000 when the balance in the trust account totaled $121.21. Again, on March 19, 2004, an ATM withdrawal was made from the trust account in the amount of $40 when the trust account was $64.74 overdrawn. As a result, the checks and withdrawals were either returned by the bank or were paid against insufficient funds or were paid against uncollected deposits;
- Between June 23, 2003, and April 5, 2004, respondent made 147 ATM withdrawals totaling $11,001 to satisfy his personal, nonclient obligations. These withdrawals were made using nonclient funds that respondent had either left in his trust account after they were earned or using nonclient funds that respondent had improperly deposited into his trust account;
- Respondent made 21 cash withdrawals totaling $17,712, from June 27, 2003, to July 26, 2004, at his bank branch or by cashing counter checks or by cashing personal checks made out to cash on numerous occasions to satisfy his personal, nonclient obligations;
- Respondent made 13 POS purchases, totaling $333.97, from August 1, 2003, to March 10, 2004, for personal purposes; and
- Respondent issued six checks for personal purposes totaling $1,614.03, from November 17, 2003, to March 23, 2004.

On June 24, July 22, and December 23, 2003, and September 17, 2004, a State Bar investigator wrote to respondent regarding the NSF checks matter and requested that respondent respond in writing. Although respondent received the four letters, he did not respond to them or communicate with the State Bar. Instead, respondent ignored State Bar's inquiries and continued to make these NSF transactions until April 2004.

Count 1: Moral Turpitude – NonSufficient Funds Checks (Bus. & Prof. Code, § 6106)

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

Respondent readily admits to having problems with the way he used his client trust account, but claims that he did not know the rules pertaining to his responsibility in supervising his client trust account. The court does not find his assertion credible. The scale to which respondent misused his client trust account – writing nonsufficient funded checks; commingling his personal funds in the trust account; debit withdrawals; and POS withdrawals – taken together, shows the folly of respondent's claim that he did not know the rules. Between June 2003 and September 2004, the State Bar sent him several letters, asking him for explanations for his misuse of his trust account. Once again, respondent ignored the warnings and continued to do what he considered was in his best interest.

"The California Supreme Court has always reserved harsh language for an attorney's practice of issuing bad checks.... 'It is settled that the "continued practice of issuing [numerous] checks which [the attorney knows will] not be honored violates 'the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice."' [Citations.]' (*Bowles v. State Bar* (1989) 48 Cal. 3d 100, 109 [bracketed language in original].) In every instance of which we are aware, where an attorney was found to have written multiple bad checks, the Court has found such continued conduct to be an act of moral turpitude. [Citations.]" (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 53-54.)

Accordingly, respondent wilfully violated section 6106 by engaging in acts of moral turpitude by issuing five checks and making three ATM withdrawals, totaling $5,480, from the trust account that were either returned or paid against insufficient funds.

Count 2: Commingling Personal Funds in Client Trust Account (Rule 4-100(A))[4]

Rule 4-100(A) provides that all funds received for the benefit of clients shall be deposited in a client trust account and that no funds belonging to the attorney shall be deposited therein or otherwise commingled therewith. The rule "absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit." (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.)

There is clear and convincing evidence that respondent commingled his personal funds in the trust account for his own use in that he made 147 ATM withdrawals totaling $11,001; 21 cash withdrawals totaling $17,712; and 13 POS debits totaling $333.97; and he issued six checks from his client trust account in the amount of $1,614.03. The amount involved totaled more than $30,600.

Using the trust account for his personal expenses constituted commingling within the meaning of rule 4-100(A) even where there were no client funds in the trust account. (*Arm v. State Bar* (1990) 50 Cal.3d 763, 776-777.) Therefore, respondent is culpable of commingling funds in his trust account in wilful violation of rule 4-100(A).

Count 3: Failure to Cooperate in State Bar Investigation. (Bus. & Prof. Code, § 6068(i))

Section 6068, subdivision (i), provides that it is an attorney's duty to cooperate and participate in any disciplinary investigation pending against the attorney.

By not providing a written response to the State Bar's four letters or otherwise cooperate in its investigation, respondent failed to cooperate in a disciplinary investigation in wilful violation of section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factor was shown by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[5]

B. Aggravation

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

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[4]References to rules are to the current Rules of Professional Conduct.

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

Respondent has two prior records of discipline.[6] (Std. 1.2(b)(i).) On November 12, 2000, respondent, upon stipulation, was privately reproved for misconduct in one client matter, including failure to perform services competently, improper withdrawal from employment, and failure to communicate (State Bar Court case No. 99-O-11618).

On April 11, 2004, in the underlying matter, respondent stipulated to a stayed suspension for two years and probation for two years subject to the conditions of probation, including an actual suspension of 150 days and until he pays a fine of $500. On June 20, 2003, respondent stipulated to many acts of misconduct in five matters, including:

- Violating the probations conditions attached to his private reproval, including attending the Ethics School, taking and passing the MPRE, submitting quarterly reports, and failing to respond to State Bar's inquiries;
- Failing to perform services in one client matter and violating a court order to pay sanctions of $500;
- Violating his trust account from March 2002 through February 2003 by commingling in that he issued checks, made cash and ATM withdrawals, and made check card purchases and point of sale purchases for his own use and purpose, and by making multiple NSF transactions;
- Engaging in the unauthorized practice of law during his involuntary inactive enrollment on November 12, 2002; and
- Failing to cooperate with the State Bar in its investigations of various matters. (No.

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[6]Although the State Bar submitted a copy of respondent's second prior record of discipline, it failed to submit a copy of his first prior record of discipline, case No. 99-O-11618. The court will take judicial notice of that record pursuant to Evidence Code section 452. However, the "long-standing prescribed procedure in the State Bar Court is to offer in evidence the admissible prior record ....This procedure of physically admitting a prior record of discipline insures that all bodies vested with deciding this case, including [the Review Department] and the Supreme Court, are examining the identical documents and all counsel can cite uniformly to those documents. " (*In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87, 93.) Thus, a certified copy of all prior records of discipline should have been submitted. (Rules Proc. of State Bar, rule 216.)

S121456; State Bar Court case Nos. 02-H-13002; 02-O-12588; 02-O-14074; 03-O-00757; 03-O-01108.)

In short, respondent's previous misconduct was similar to that of the current misconduct found in this proceeding.

Respondent committed multiple acts of wrongdoing, including violation of a Supreme Court order; unauthorized practice of law; committing an act of moral turpitude; commingling personal funds in his client trust account; and failure to cooperate in a State Bar investigation. (Std. 1.2(b)(ii).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with rule 955(c) even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

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.)

Respondent's misconduct involved three matters. 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, 1.7, 2.2(b), 2.3, and 2.6(a)(b) and (d).) 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 court will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges disbarment. In support of its recommendation, the State Bar cited two cases, *In the Matter of Snyder* (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593 and *In the Matter of Babero* (Rev. Dept. 1993) Cal. State Bar Rptr. 322.

Respondent argues that he should not be disbarred, citing *In the Matter of Rose* (Rev. Dept.

1994) 3 Cal. State Bar Ct. Rptr. 192.

In *In the Matter of Babero, supra,* 2 Cal. State Bar Ct. Rptr. 322, the review department found that the attorney's efforts at compliance with rule 955 were inadequate, and that his failure to comply was aggravated by his transfer of cases to successor counsel in an irresponsible manner and by his submission of an inaccurate declaration regarding his efforts to comply. Thus, disbarment was appropriate.

In *In the Matter of Snyder, supra,* 2 Cal. State Bar Ct. Rptr. 593, the attorney perjured himself in his rule 955(c) declaration of compliance;[7] engaged in the unauthorized practice of law; did not account for or return unearned fees; and appeared for a client without the client's authority. Aggravating factors included one prior instance of discipline such that his current and prior misconduct included six out of his ten years of practice; and lack of candor. Although respondent Snyder presented mitigating evidence of family pressures and misfortune, good character, therapy, community service and compliance with probation conditions, some similar evidence of which had been considered mitigating in his first disciplinary case, it was found insufficient to avert disbarment in this case after the court considered his additional serious misconduct and the need to protect the public.

In *In the Matter of Rose, supra,* 3 Cal. State Bar Ct. Rptr. 192, the court reduced the attorney's level of discipline from disbarment to two years of actual suspension for his probation violations and to nine months of actual suspension, to run concurrently, for his failure to timely comply with rule 955. In the rule 955 matter, the court found that respondent attempted to file the affidavit required by rule 955 within two weeks of when it was due. The attorney claimed that he did not have to comply with rule 955 because he had not practiced law. The court found that the attorney's unilateral and ill-conceived interpretations of disciplinary orders demonstrated tendency toward interpreting important and significant court orders in such a way as to fit his needs, which might negatively impact future clients and thus raised concern about the need to protect the public.

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[7]The attorney did not advise a client, the insurer-defendant or the superior court in which litigation was pending that he was suspended from practice but misrepresented in the declaration of compliance that he had notified all clients, courts and opposing parties of his suspension.

Similarly, respondent also attempted to file the rule 955 affidavit after the due date. However, unlike the attorney in *Rose*, the declaration was rejected, and when he was filing it, respondent had not given notices of his suspension to his clients, opposing counsel, and the courts, as was required by rule 955. In fact, respondent practiced law while suspended. Contrary to respondent's argument that his unilateral interpretation of rule 955 more than satisfied its requirements, his duty to comply with rule 955 cannot be delegated to another attorney. To date, respondent has not filed a declaration of compliance under rule 955.

Thus, respondent's wilful failure to comply with rule 955 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys

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.) A most significant factor is his complete lack of insight, recognition or remorse for any of his wrongdoing.

In view of his second prior record of discipline, which involved similar misconduct as the current violations of trust account rules and unauthorized practice of law, respondent continued to commingle funds in his trust account for personal and business use and issue NSF checks, involving more than $30,600. Instead of recognizing his wrongdoing, respondent went to great length during his testimony to excuse his misconduct.

Therefore, having considered the facts and the law, the court recommends disbarment because of the gravity of the misconduct and because the aggravating factors present herein clearly predominate over the lack of any mitigating factor. Accordingly, respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. Moreover, it would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his wilful disobedience of the Supreme Court order.

VI. Discipline Recommendation

It is hereby recommended that respondent **Meredith M. Chang** be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

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.

VII. Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VIII. Order Regarding Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007(c)(4). The inactive enrollment will become effective three calendar days from the date of service of this order.

Dated: May 1, 2006

RICHARD A. PLATEL
Judge of the State Bar Court