

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case No. 04-O-11900-JMR
)	
MORRIS BEE JENNINGS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 61618,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default matter, respondent **Morris Bee Jennings** is charged with seven counts of misconduct. The court finds, by clear and convincing evidence, that respondent is culpable of all of the charges, which include (1) failure to maintain funds in a client trust account, (2) misappropriation of \$14,460, (3) failure to pay client funds promptly, (4) violation of a court order, (5) submission of a false statement on an affidavit under California Rules of Court, rule 955, (6) unauthorized practice of law, and (7) an act of moral turpitude.

In view of respondent's misconduct, his two prior records of discipline and other evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

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) on November 8, 2005. Respondent filed a response to the NDC on December 21, 2005.

Respondent represented himself. The State Bar was represented by Deputy Trial Counsel Robin Brune. By respondent's motion, the trial was continued twice, from May to June to July 2006.

At a pretrial conference on July 10, 2006, respondent made an oral motion requesting that the undersigned judge recuse herself from this proceeding. Finding no good cause, the court denied his request.¹ By letter dated and sent via facsimile to the court on July 17, 2006, respondent again sought to recuse the undersigned judge and indicated that he would not show for trial if his request was rejected. To the extent the letter was considered a motion for reconsideration, finding no good cause, the court again denied respondent's request.

On the first day of trial, July 18, 2006, respondent failed to appear and his default was entered. A default hearing was then held. (Rules Proc. of State Bar, rule 200 et seq.) Respondent was enrolled as an inactive member on July 22, 2006, under Business and Professions Code section 6007, subdivision (e).²

This matter was deemed submitted on July 28, 2006, following the filing of State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the evidence and testimony introduced at this default proceeding (Agustine Alba and his son, Oscar Alba, testified), and on the parties' stipulation as to facts filed May 24, 2006, which was admitted into evidence. Also, all factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on December 18, 1974, and has been a member of the State Bar of California at all times since that date.

The Albas Matter and the Unauthorized Practice of Law

Agustine and Graciela Alba are Mexican immigrants who do not speak English. They and their two minor children, Oscar and Manuel, were in a car accident in September 1992 and suffered injuries. After receiving invoices from hospitals and ambulances, Agustine became worried and

¹The court reminded respondent that any further motion to recuse must comply with rule 106 of the Rules of Procedure of the State Bar of California.

²All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

decided to hire an attorney for assistance.

In October 1992, Agustine and Graciela Alba employed respondent to represent his family in their personal injury matter. Their fee agreement specified that respondent was entitled to 40% of the gross recovery if a lawsuit was filed, but settled prior to trial. In addition to his fee, respondent was entitled to a reimbursement of his costs from the recovery.

The Albas' insurance company directly paid more than \$15,100 to medical providers and \$6,200 for truck repair on behalf of the Albas prior to the case settling. Respondent did not receive those funds.

On November 1, 1993, respondent filed a First Amended Complaint for Damages for Negligence, case No. 494172-0, in Fresno County Superior Court, on behalf of the Albas.

Also, on November 1, 1993, respondent filed a Petition for Appointment As Guardians Ad Litem and Order Thereon, a Declaration of Morris Jennings, and an Ex Parte Application for Authorization to Compromise and Settle the Case of a Minor, For Attorneys Fees and Order on behalf of Manuel and Oscar. In his declaration, respondent reported to the court that there was a \$1,100 settlement for Manuel and \$15,000 for Oscar. Respondent indicated he had costs of \$333, fees of 40%, and that there were outstanding medical liens in the sum of \$9,649 and \$2,600 which he intended to negotiate.

Pursuant to respondent's request, the court ordered that Agustine and Graciela, as parents and guardians for Oscar and Manuel, were authorized to settle Manuel's claim for \$1,100 and Oscar's claim for \$15,000, with \$6,000 for attorney fees on Oscar's matter, \$440 as attorney fees on Manuel's matter, and \$332 for costs. Respondent was authorized to hold the proceeds of the settlement of the cases of Oscar and Manuel in his client trust account and to negotiate the liens asserted by Rudy Facciani Company, Agustine's employer's private insurance company, and pay Agustine and Graciela the proceeds of any reduced lien amount, to be placed into a trust account for the minors.³

³In November of 1993, Oscar was approximately 11 years old and Manuel was 5 years old. Manuel's 18th birthday was on May 14, 2006.

Respondent also settled Augustine and Graciela's case for a total of \$8,000 (\$4,000 each).

On November 12, 1993, respondent wrote to the Albas. In the letter he explained the settlement amounts, that he would hold the children's money in trust until they turned 18 years old, that he would try to negotiate a reduction in the Facciani lien, and that he would pay Augustine and Graciela's portions directly to them. Respondent also stated that once he reduced the medical liens he was willing to reduce his fee by \$1,000 to \$2,000 so that they would have more money.

On November 16, 1993, the California State Automobile Association made the following payments in settlement of the Albas' claims:

<u>Amount</u>	<u>Payees</u>
\$4,000	Agustine and respondent
\$4,000	Graciela and respondent
\$9,000	Agustine Alba, Legal Parent of Oscar Alba, A Minor Child, and respondent
\$ 660	Agustine Alba, Legal Parent of Manuel Alba, A Minor

After receiving the settlement drafts, respondent deposited them in his client trust account, Bank of America account No. 16648-02714 (CTA) in November 1993.

On November 16, 1993, California State Automobile Association also paid respondent a total of \$6,440 for his legal fees in settlement of the children's claims (\$6,000 for Oscar's case and \$440 for Manuel's case), as ordered by the court.

Based on Augustine and Graciela's settlement amount of \$8,000, respondent was entitled to a fee of \$3,200 (40% of \$8,000) and the clients were entitled to a settlement of \$4,800 (\$8,000 - \$3,200).

Thus, respondent was entitled to a total fee of \$9,640, as follows:

<u>Legal Fees</u>	<u>Clients</u>
\$6,000	Oscar
\$ 440	Manuel
<u>\$3,200</u>	Agustine and Graciela
<i>\$9,640</i>	<i>Total Legal Fees</i>

And the four clients are entitled to a total sum of \$14,460, as follows:

<u>Settlement</u>	<u>Clients</u>
\$4,800	Agustine and Graciela
\$9,000	Oscar
<u>\$ 660</u>	Manuel
<i>\$14,460</i>	<i>Total Settlement Funds</i>

Meanwhile, on December 7, 1993, respondent was disciplined for professional misconduct. The Supreme Court ordered respondent suspended from the practice of law for two years, stayed, be placed on probation for four years and until he made restitution and be actually suspended for 90 days, pursuant to a Supreme Court Order in case No. S035298. The order required that respondent comply with California Rules of Court, rule 955(a) and (c), within 30 and 40 days respectively of the effective date of the order – January 6, 1994.

Respondent remained suspended from January 6, 1994, until January 21, 1995, except during the period between August 26 and 28, 1994, in which respondent was denoted as active but was returned to inactive status on August 29.

On August 29, 1994, respondent was returned to inactive status pursuant to a California Supreme Court order suspending respondent from the practice of law for failure to pay State Bar dues. The State Bar membership records office properly served a copy of this order on the respondent at his State Bar membership records address. Thus, respondent remained suspended until he paid his fees and was reinstated to active status on or about January 21, 1995.

Respondent did not, at any time, advise the Albas of his suspension from the practice of law. In 1993, respondent would telephone Agustine and inform him that he was negotiating with medical providers regarding their bills. Sometime in 1994, respondent stopped telephoning Agustine. Since Agustine was not getting any more collection calls from hospitals, he thought everything was going well. He trusted respondent was handling his family's personal injury matter.

Respondent continued to practice law during his suspension. In November 1994, respondent wrote several letters to medical providers and other lien holders to attempt to reduce the lien amounts. Respondent used letterheads that stated attorney at law and the designation "Attorney at

law” appeared on the signature line. On December 1, 1994, respondent wrote to the Albas on his letterhead. He signed the letter as “Morris Jennings, Attorney at Law.” In the letter, respondent enclosed copies of letters he sent to medical providers. When Augustine received respondent’s letter, he thought respondent was still handling his case, especially since he was unfamiliar with the legal system.

However, after the November 1994 letters to medical providers, respondent took no further steps to reduce the liens or to pay the amounts. Respondent never paid any third party medical providers or lienholders on behalf of any of the Albas. Although respondent received \$14,460 in settlement funds on behalf of his clients in 1993, he did not disburse any funds to the Albas until 10 years later.

In 1995, when Augustine went to respondent’s office, it was closed. Respondent’s telephone number was disconnected. Augustine tried to locate respondent, but was unsuccessful. Thereafter, Augustine lost communication with respondent.

In 2003, a notary public advised Augustine that he should find out what happened to his case and not just assume it had been taken care of by respondent. After searching on the internet, Augustine’s son, Oscar, who had reached the age of majority, located respondent’s whereabouts. When Augustine telephoned respondent, respondent admitted that he did not maintain the settlement funds in his CTA and that he had spent the money. But he promised to pay Augustine back with interest. Augustine believed respondent.

Thereafter, respondent made eight installment payments, a total of \$5,450, to the Albas between March and October 2003, as follows:

<u>Date</u>	<u>Payments</u>
3/10/03	\$ 500
4/11/03	550
5/12/03	700
6/11/03	800
7/11/03	800
8/13/03	700
9/16/03	700
10/21/03	<u>700</u>
<i>Total</i>	<i>\$5,450</i>

After October 2003, respondent stopped making any further payments to the Albas.

Respondent's CTA balances from 1997 to 2003 were as follows:

<i>Date</i>	<i>CTA Balance</i>
9/12/1997	\$ 4,062.08
12/10/1997	\$ 2,562.08
5/9/1998	\$ 62.08
1999	\$ 118.08
2000	\$ 120.18 ⁴ or less
1/31/2001	\$15,134.18
2/01 - 12/01	\$ 4,271.18 or less
2002	\$ 103.23 or less
3/ 31/2003	\$ 21.73

On May 24 and July 28, 2004, State Bar Investigator Lisa Edwards wrote to respondent regarding the Alba's complaint. In his August 16, 2004 response, respondent stated: "I acknowledge that I owe them the money and it was strictly my fault that the funds were not there when I asked Mr. Alba if I could repay him and his family in monthly installments."

Violations of a Court Order and Rule 955

On January 10, 1994, respondent filed an "Attestation Engagement" with the Probation Unit of the State Bar in connection with his probation in Supreme Court case No. S035298. The Attestation Engagement was a letter from Robert Hornbeck, CPA, attesting to the fact that he reviewed the financial records of respondent for the fourth quarter of 1993 in the case of Augustine Alba.

On March 30, 1994, respondent filed an affidavit in connection with California Rules of Court, rule 955. In his affidavit, respondent swore, under penalty of perjury, that he had complied with the Supreme Court order directing him to notify all of the courts, all opposing counsel, and his clients of his suspension. As set forth above, respondent never told Alba of his suspension.

On April 8, 1994, respondent filed a probation report to Angelia Arthur, Probation Deputy of the State Bar. In his report, respondent stated that he was in possession of trust funds in the approximate amount of \$4,000 held for medical bills of Augustine and Graciela Alba. Respondent also advised that he had informed his clients and the appropriate courts and opposing counsel of his

⁴The March 31, 2000 balance was \$643.08.

suspension in accordance with the Supreme Court order.

On July 8, 1994, respondent filed another probation report for the period of March 27, 1994 to June 27, 1994. In his report, respondent stated: “I am not in possession of client trust funds at this time.”

Respondent filed additional quarterly reports for the following dates: October 5, 1994; January 5, April 5, June 26, July 17, and October 10, 1995; and July 11, 1996. As to each of these reports, respondent stated, under penalty of perjury, that he was not in possession of client funds.⁵

Count 1: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))⁶

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must 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.”

Respondent had a fiduciary duty to hold in trust at least \$14,460 of entrusted funds belonging to the Albas in his CTA. After September 1997, the balance in the CTA repeatedly fell below \$14,460. Thus, between approximately September 1997 and March 2003, respondent’s failure to hold in trust the Albas’ settlement funds in the CTA was clearly and convincingly in violation of rule 4-100(A).

Count 2: Misappropriation (§ 6106)

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

The mere fact that the balance in an attorney’s trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of

⁵The court finds that the matter is not barred by rule 51 of the Rules of Procedure of the State Bar of California because the five-year period of limitations was tolled based on the ongoing violations (i.e., failure to return the funds); respondent’s concealment of his misconduct to his clients and the State Bar; and the fact that Manuel was under the age of majority until this year.

⁶References to rules are to the current Rules of Professional Conduct.

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

Here, respondent received \$14,460 for the benefit of the Albas. But after he had deposited the funds into his CTA, the balance fell below \$14,460, beginning in September 1997. Therefore, because the balance in respondent's CTA fell to as low as \$62.08, and since respondent admitted to Augustine and to the State Bar that he had spent the money, respondent misappropriated the money and committed an act of moral turpitude in wilful violation of section 6106.

Count 3: Failure to Promptly Pay Client Funds (Rule 4-100(B)(4))

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

Respondent held \$14,460 in settlement funds and in 2003 paid the Albas a portion of the settlement, totaling \$5,450. He still owed his clients \$9,010 plus interest. By not paying any funds from November 1993 to March 2003, and by not paying the entire amount of \$14,460 due the Albas, respondent failed to pay promptly, as requested by a client, any funds in respondent's possession which the client is entitled to receive, in wilful violation of rule 4-100(B)(4).

Count 4: Violation of a Court Order (§ 6103)

The December 7, 1993 Supreme Court order required respondent to inform his clients of his suspension. By not notifying the Albas that he was suspended from the practice of law effective January 6, 1994, respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in wilful violation of section 6103.

Count 5: Moral Turpitude (§ 6106)

At the time respondent filed the rule 955 affidavit, under penalty of perjury, he knew that he had not notified the Albas of his suspension, and therefore, his statement that he had done so was false.

By making a false statement on his rule 955 affidavit filed with the State Bar Court, respondent committed an act involving moral turpitude, dishonesty or corruption, in wilful violation of section 6106.

Count 6: Unauthorized Practice of Law (§§ 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.

By clear and convincing evidence, respondent wilfully violated sections 6068, subdivision (a), 6125 and 6126. While he was on suspension between January 6, 1994, and January 21, 1995, respondent knew or should have known that he was not entitled to practice law. Yet, he held himself out as entitled to practice law when he wrote to the Albas in December 1994 and practiced law by attempting to negotiate the liens on the Albas' case when he was not an active member of the State Bar.

Count 7: Moral Turpitude (§ 6106)

By practicing law when he was not entitled to do so and concealing his suspension from the Albas, respondent committed an act involving moral turpitude, dishonesty or corruption, in wilful violation of section 6106.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

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

B. Aggravation

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

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

1. On May 28, 1992, respondent was suspended for one year, stayed, and placed on probation for three years for failure to promptly refund unearned fees, failure to deposit client funds in trust, moral turpitude for issuing NSF checks on his client trust account, and commingling trust account with personal funds. (Supreme Court case

⁷All further references to standards are to this source.

No. S024939, State Bar Court case No. 89-O-14401); and

2. On December 7, 1993, upon stipulation, respondent was suspended for two years, stayed, and placed on probation for four years until he made restitution and on condition that he be actually suspended for 90 days. Respondent stipulated to failure to communicate, failure to deposit client funds in trust, failure to promptly return a client file, communicating with a represented party, and failure to perform services competently in four client matters. (Supreme Court case No. S035298, State Bar Court case No. 90-O-16753 et al.).

Respondent committed multiple acts of wrongdoing, including failing to maintain and promptly pay client funds, misappropriating client funds, engaging in unauthorized practice of law, violating a court order, and making misrepresentations to the court and to the State Bar. (Std. 1.2(b)(ii).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Despite promises to return settlement funds of \$14,460 to his clients, respondent refunded only \$5,450 in 2003 and then abruptly stopped payment.

Respondent's failure to participate in this disciplinary matter before the entry of his default is a serious aggravating factor. His lack of candor to the Albas by concealing his misappropriation from them for 10 years is also an aggravating circumstance. (Std. 1.2(b)(vi).)

V. Discussion

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

Respondent's misconduct involved one client matter, unauthorized practice of law, violation of a Supreme Court order and false affidavit to the State Bar Court. The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 1.7, 2.2, 2.3, 2.6, and 2.10.)

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline,

the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has two prior records of discipline and no mitigation.

Standard 2.2(a) provides that wilful misappropriation of entrusted funds must result in disbarment absent compelling mitigation. Respondent's misappropriation is significant.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment. As discussed above, respondent's misappropriation and misrepresentations to his clients and to the court were acts of moral turpitude.

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.) 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, citing several supporting cases, including *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, *Grim v. State Bar* (1991) 53 Cal.3d 21 and *Chang v. State Bar* (1989) 49 Cal.3d 114.

In *Grim*, the Supreme Court disbarred an attorney for misappropriating \$5,546 from a client. The attorney did not make restitution until after the State Bar had commenced disciplinary proceedings. In aggravation, he was previously disciplined for commingling funds, took advantage of the client residing in another state and mismanaged his trust account. In mitigation, character witnesses testified to his good moral character and the attorney cooperated with the State Bar.

In *Chang*, the attorney was disbarred for misappropriating over \$7,000 by secretly opening a trust account in his own name while employed by a law firm, depositing his client's funds in the trust account, later taking the funds, failing to comply with the client's request for copies of bank records, and refusing to pay the client the funds owed. The attorney was also found to have failed to cooperate in the disciplinary investigation by making misrepresentations to a State Bar investigator. The attorney offered no evidence in mitigation, but it was noted that he had no prior record of discipline. In ordering disbarment, however, the Supreme Court noted that it had several

reasons to doubt that the attorney would conform his conduct in the future to the professional standards required of attorneys in California. In particular, the Supreme Court noted that the attorney had never acknowledged the impropriety of his actions, he had made no effort at reimbursing the client and displayed a lack of candor to the State Bar.

Similarly, respondent misappropriated \$14,460 in settlement funds and made partial payments only after the client had located his whereabouts after 10 years and confronted him about the settlement funds.

Respondent's misappropriation, misrepresentations to his clients and default in this matter weigh heavily in assessing the appropriate level of discipline. Like the attorney in *Grim*, the "misappropriation in this case . . . was not the result of carelessness or mistake; [respondent] acted deliberately and with full knowledge that the funds belonged to his client. Moreover, the evidence supports an inference that [respondent] intended to permanently deprive his client of [his] funds." (*Grim v. State Bar, supra*, 53 Cal.3d at p. 30.) "It is precisely when the attorney's need or desire for funds is greatest that the need for public protection afforded by the rule prohibiting misappropriation is greatest." (*Grim v. State Bar, supra*, 53 Cal.3d at p. 31.)

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.) An attorney's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) The court is seriously concerned about the possibility of similar misconduct recurring, particularly since the misconduct in respondent's prior and current disciplinary matters all involved client funds and moral turpitude and had continued for more than 10 years. Respondent has offered no indication that this will not happen again. Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding.

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Therefore, based on the severity of the offense, the serious aggravating circumstances and the lack of any mitigating factors, the court recommends disbarment.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **Morris Bee Jennings** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this State.

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

VII. Costs

The court recommends 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 of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status. (Bus. & Prof. Code, § 6007(c)(4), and Rules Proc. of State Bar, rule 220(c).) The inactive enrollment will become effective three calendar days after this order is filed.

Dated: October 26, 2006

JOANN M. REMKE
Judge of the State Bar Court

⁸Rule 955 is renumbered to rule 9.20, effective January 1, 2007.