FILED FEBRUARY 29, 2008

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **HELENA M. DAKOPOLOS**, **Member No. 166935**, A Member of the State Bar.	**Case No. 04-O-13145 – RAH** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

INTRODUCTION

In this original disciplinary proceeding, Susan I. Kagan appeared for the Office of the Chief Trial Counsel of the State Bar of California (hereafter "State Bar"). Brian H. Getz represented respondent Helena M. Dakopolos (hereafter "respondent").

The State Bar urges the court to order that respondent be disbarred. Respondent seeks a lesser discipline of actual suspension. However, the court agrees with the State Bar and recommends that respondent be disbarred for her misappropriation of over $400,000 from her clients, the commingling of personal funds in her client trust account, and a generally dismal record of maintaining appropriate financial records of client funds. Such a conclusion is compelled by the seriousness of the misappropriation and related misconduct. But, as set forth in more detail below, the court is cognizant of the substantial trauma respondent has suffered in her life and that the disabilities therefrom have been a large factor in causing the misconduct to occur in the first place. The court is also aware of the extensive efforts respondent has made in rectifying her misconduct and overcoming her disabilities.

1. PROCEDURAL HISTORY

The State Bar filed and served its Notice of Disciplinary Charges (hereafter "NDC") in this proceeding on September 27, 2005. Respondent filed her response to the NDC on October 31, 2005. An extensive Stipulation as to Facts was filed on August 1, 2007. Trial was commenced on July 23, 2007. Post-trial briefing occurred thereafter. A motion to strike "impermissible references to evidence that is not contained in the record" was filed by the State Bar and opposed by respondent. Good cause having been shown, the court GRANTS the motion. The matter was submitted on December 3, 2007 for decision.

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 13, 1993 and since that time has been an attorney at law and a member of the State Bar of California.

B. Facts

As noted above, the parties entered into an extensive Stipulation as to Facts, filed on August 1, 2007. The following findings of fact are based on the stipulation, the testimony and documentary evidence presented at trial, and the declarations and deposition transcript offered by respondent at or after the trial and received into evidence.

1. Relevant Personal Background

Respondent has had a difficult life filled with extraordinary trauma. She was molested by a family member at a young age. At the age of six, she had an undiagnosed condition which caused her to pass out. At age twelve, it was determined by medical doctors that this was the result of a brain tumor. She had chemotherapy and radiation at the age of twelve to resolve the problems associated with the brain tumor. Between ages seven and twelve, her father repeatedly beat her and her siblings. Frequently, she called the police when these beatings occurred, but they would simply talk to her father and then leave.

Respondent grew up in Stockton and graduated from St. Mary's High School in 1981. She attended community college in Stockton, then attended California State University Stanislaus and received a teaching credential. She got a master's degree in special education from National University and taught 6th grade and a 6-8 grade combination. In 1989, she enrolled in law school at night at Humphrey School of Law. She was admitted to the bar in December 1993. In 1994, she continued to teach in order to complete the contract that she had with the school district. While teaching, she was sexually assaulted by a student. She then sought therapy for the first time. Respondent began psychotherapy in 1994 with Cynthia Flannery. Thereafter, she began therapy with Rebecca Senderov, a licensed marriage and family therapist. She continued with Ms. Senderov up until approximately one year ago. Her therapy unearthed many of the previous traumas.

In 1990 she married Mark Pagano. Mr. Pagano suffered from serious health problems, requiring six surgeries over five years, from 1999 to 2004. During this time, she helped him recover. Despite her commitment to helping her husband, she never missed a court appearance during this period.

In 1997, respondent was stalked by a methamphetamine addict who lived across the street. She had two dogs that were poisoned. She believed that the poisoning was done by the stalker because he had threatened to do it a week earlier. Thereafter, her home was burglarized twice. Again, she felt that it was the person who was stalking her that committed the burglaries. She sought further therapy for these traumas. When the neighbor was eventually charged with stalking, she testified against him. Eventually, the stalker pled guilty and went to jail. He is now subject to a ten-year restraining order prohibiting him from being within 500 yards of respondent. In December 2004, respondent began to have suicidal thoughts. She was referred to Dr. Kent Rogerson and is now treating with him. She currently takes anti-depressants and anti-anxiety drugs.

Recently, respondent was treated again for cancer. She had surgeries in December 2006 and March 2007 to remove cysts and had radiation which was completed on July 27, 2007.

Respondent gets great joy from the practice of law. In large part, she feels this is because the courtroom provides her with a safe environment with established rules – something she feels she lacked growing up.

2. Relevant Professional Background.

Prior to September 2002, respondent was a partner in the law firm of Fass & Dakopolos (hereafter "Fass & Dakopolos"). Respondent worked with Barbara Fass either as an associate or a partner from May 1996 through mid-September 2002, when Ms. Fass retired from the practice of law. At that time, respondent opened her own law firm, the Law Offices of Helena M. Dakopolos (hereafter "respondent's law firm").

While at Fass & Dakopolos, respondent and her partner, Barbara Fass, maintained a client trust account in the name of Fass & Dakopolos at the Bank of Stockton, account no. 2137552601 (hereafter "F&D's CTA"). Both respondent and Ms. Fass were signatories on F&D's CTA. Fass & Dakopolos maintained F&D's CTA as their client trust account until March 3, 2003, when respondent transferred the remaining $33,206.47 in client funds into her new client trust account.

This new client trust account was opened by respondent, in the name of the Law Offices of Helena M. Dakopolos, on September 19, 2002. It was opened at the Bank of Stockton, account no. 2180607101 (hereafter "respondent's CTA" or "her CTA"). From September 19, 2002 through March 3, 2003, respondent maintained both her CTA and F&D's CTA. After March 3, 2003, respondent's CTA was her only client trust account.

On April 6, 2005, respondent opened a business account at the Bank of Stockton, account no. 28-30041601, for the purpose of depositing and distributing funds for four clients respondent

represented in a wrongful death action. Although not designated a client trust account, it was an account for these clients' funds. (Hereinafter this account shall be referred to as the "Business Account.")

Respondent failed to maintain ledgers, journals, and other records of client funds received by her and deposited into her client trust accounts as required by rule 4-100(B)(3) of the California Rules of Professional Conduct.[1]

3. Stipulation of Facts

As previously noted, on August 1, 2007, the parties filed an extremely thorough stipulation of facts. This stipulation tracked client funds held in respondent's CTA, F&D's CTA, and the Business Account between February 2002 and July 2007. During this time period, respondent deposited funds belonging to approximately forty-seven separate clients into these three accounts.

A review of the parties' stipulation shows that respondent acknowledges and admits misappropriating entrusted client funds on numerous occasions between February 2002 and August 2006. Respondent stipulated that the vast majority of the misappropriated client funds were taken for her own use and benefit. At other times, respondent would inexplicably pay clients more than they were due. Respondent further stipulated to commingling her own funds in F&D's CTA.

The court hereby incorporates by reference, as if fully set forth herein, the parties' stipulation filed on August 1, 2007.

4. Maintenance of Entrusted Funds

Between February 26, 2002 and June 7, 2005, respondent engaged in a protracted course of misconduct involving her duty to hold and maintain the entrusted funds of her clients. Said funds

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[1]References to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

were deposited into three accounts, her CTA, F&D's CTA, and the Business Account.[2] During this time period, respondent withdrew and misappropriated client funds over thirty times. The majority of these transactions involved withdrawals between the amounts of $5,000 to $25,000. In total, respondent misappropriated $401,112.74 of client funds, although not all of those funds were missing at any one time.

Respondent's misconduct began innocently enough on February 26, 2002, when she misappropriated $45.49 of client funds. Within six months of respondent's first misappropriation, she had committed two more withdrawals constituting misappropriation. By August 20, 2002, respondent had misappropriated and not reimbursed a total of $14,271.60 in funds belonging to five clients.[3]

From there things got progressively worse. By October 21, 2003, respondent had misappropriated and not reimbursed $102,335.74 in funds belonging to four clients. This amount would more than double less than a year later.

By July 6, 2004, respondent had misappropriated and not reimbursed $212,204.42 in funds belonging to five clients. On August 9, 2004, respondent's total misappropriation grew to $242,204.42 in funds belonging to five clients.

On August 13, 2004, respondent attended the State Bar's Client Trust Accounting School. However, in the four months that followed, the total amount of respondent's misappropriation sky-rocketed. By December 9, 2004, respondent had misappropriated $345,704.42 in funds belonging

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[2]As previously noted, the Business Account was not a client trust account; however, respondent was depositing and maintaining client funds in this account.

[3]The number of clients whose funds were misappropriated at any given time varies throughout the period of February 26, 2002 to June 7, 2005, as during this period of time, respondent was continuously misappropriating client funds, depositing client funds into her trust and business accounts, and paying client funds which had been previously misappropriated.

to seven clients.

On February 7, 2005, respondent's escalating levels of outstanding client funds finally reached their zenith. As of that day, respondent had misappropriated and not reimbursed client funds in the total amount of $347,704.42.[4]

On April 6, 2005, respondent partially reimbursed her CTA by depositing $280,000 from the Business Account. This reimbursement came, however, only after the State Bar had contacted respondent several times regarding a client's complaint of missing funds.[5] Further, respondent reimbursed her CTA by misappropriating $33,408.32 in client funds held in the Business Account.

The State Bar ultimately audited respondent's CTA and determined amounts due. Respondent has since promptly repaid all amounts that the State Bar has requested her to pay. In doing so, respondent has drastically reduced the amount of client funds that remain outstanding. Prior to trial in this matter, the State Bar advised respondent that $19,408.32, belonging to one client, remained outstanding.[6] The court did not receive any evidence regarding any additional client funds that have not been repaid.

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[4]This number denotes the amount of **outstanding** client funds as of February 7, 2005. Following this date, respondent began replenishing her trust account, however, she also committed additional acts misappropriation. In total, respondent misappropriated $401,112.74 in client funds.

[5]Respondent was initially contacted by the State Bar in August of 2004.

[6]The parties stipulated that as of July 31, 2007, respondent owed $19,408.32 to Rocio Doctolero, Guillermina Doctolero, Judit Doctolero, and Rosario Doctolero. As noted below, the court recommends that respondent pay restitution in the total amount of $19,408.32 plus interest to Rocio Doctolero, Guillermina Doctolero, Judit Doctolero, and Rosario Doctolero.

C. Conclusions of Law.

1. Count one – Section 6106[7] [Moral Turpitude – Misappropriation]

Section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption constitutes a cause for suspension or disbarment. Respondent wilfully misappropriated client funds, as set forth above, all in violation of section 6106. "'There is no doubt that the wilful misappropriation of a client's funds involves moral turpitude. [Citations.]' [Citations omitted.]" (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.)

2. Count two – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in an identifiable bank account which is properly labeled as a client trust account and no funds belonging to an attorney or law firm shall be deposited in such an account or otherwise commingled with such funds. As set forth above, respondent wilfully failed to maintain client funds in her client trust account, in wilful violation of rule 4-100(A).

3. LEVEL OF DISCIPLINE

A. Factors in Mitigation

Respondent suffers from emotional problems, in large part resulting from her traumatic past. As noted above, she was treated by several medical and psychological practitioners for this trauma. Testimony was only received from one such professional, **Rebecca Senderov**. This testimony was received by the lodging of her deposition. While the parties stipulated that the deposition transcript may be reviewed by the court, the State Bar objected to Ms. Senderov's testimony as an expert.

[7]Unless otherwise stated, all further references to sections refer to provisions of the Business and Professions Code.

Rebecca Senderov is a licensed marriage and family therapist who has seen respondent professionally, commencing in July 2002. She has not, however, seen respondent recently, as it appears her last visit with her was approximately one year ago.

Ms. Senderov currently holds a master's degree that she received at the University of San Francisco in 1982. She received her license thereafter, in approximately 1986 or 1987. In order to receive her license, it is necessary that she go through a period of clinical supervision under the direction of a licensed psychiatrist or psychologist.

Ms. Senderov testified extensively as to respondent's past. This testimony was based on several sessions that Ms. Senderov had with respondent in her role as a counselor.[8] Ms. Senderov also diagnosed that respondent suffered from a depressive disorder and certain traits of obsessive/compulsive disorder. All of these disorders contributed to her inability to make the right decisions in the last five years. As a licensed therapist, Ms. Senderov opined that respondent's medical and psychological background affected her decision making and diagnosed that respondent had an anxiety disorder that was uncontrollable. She also concluded that this problem was a substantial factor in contributing to her poor decisions with respect to her trust account. Ms. Senderov also concluded that, if respondent were given some structure through the assistance of someone acting as a monitor, she could comply with her ethical duties with respect to the trust account. It is significant that Ms. Senderov did not feel, at the time her deposition was taken in September 2007, that respondent was cured of her emotional or psychological problems. Although Ms. Senderov notes that respondent has improved in some ways, she readily acknowledges that respondent is not cured. Further, Ms. Senderov noted that the pain that respondent suffers as a result of her physical disabilities could have a profound effect on her mental functioning.

[8] Much of this background was testified to by respondent herself during trial.

However, Ms. Senderov recognized that respondent was not cured of those disabilities resulting in pain and, in fact, they were getting worse. Ms. Senderov recommended that respondent continue in therapy with ongoing individual treatment, and that she continue to be seen by a psychiatrist for medical reasons.

Respondent is entitled to some mitigation for these issues, since there was some evidence that respondent's psychological problems were the cause of her misconduct and that they have improved dramatically as a result of her therapy. However, the fact that these emotional or psychological problems have not been resolved and the lack of clear and convincing evidence from other medical practitioners besides Ms. Senderov acts to minimize the mitigative effect of her medical and psychological conditions. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct[9], Std. 1.2(e)(iv).)

By entering into an extensive stipulation, respondent has shown clear spontaneous candor and has cooperated with the State Bar. (Std. 1.2(e)(v).)

Respondent has received extraordinary support from several members of the legal community and the general public, all of whom know respondent very well and share a very high opinion of respondent's character. (Std. 1.2(e)(vi).)

Albert M. Ellis has been an attorney since 1978 and is a partner in the law firm of Hakeem, Ellis & Marengo. He practices law in San Joaquin County. He primarily practices in the area of family law, criminal defense, and general litigation. Generally, he is in court every day handling family law or criminal law cases. During those court appearances, he has frequently had an opportunity to observe respondent. In fact, he has personally handled cases opposing respondent.

[9]Future references to standard or std. are to this source.

It is Mr. Ellis's view that respondent is a conscientious and compassionate attorney. He has witnessed her focus on solving people's problems through the court system. He feels that respondent understands the difficulties that children present in the family law setting and that she possesses a certain quality of human understanding to assist the parties in resolving their problems in dissolving their marriage.

On one occasion, when Mr. Ellis was opposing respondent and respondent represented a woman who had limited English skills, he observed her taking a great deal of time to assure herself that her client understood the legal issues presented in the case and, at the same time, interacted with Mr. Ellis in a respectful manner without becoming caustic or angry in her interpersonal dealings. In this matter, Mr. Ellis and respondent spent a great deal of time at the courthouse attempting to resolve the case and, during that time, he found respondent's approaches to the attempted resolution of the case to be creative and with the thought in mind of attempting to resolve her client's issues so that she did not have to incur unnecessary legal fees or involve her client in the acrimony of litigation.

When Mr. Ellis attempted to contact respondent to discuss cases in which they opposed each other, Mr. Ellis found that she promptly returned his telephone calls and was always knowledgeable about the cases that they discussed.

While Mr. Ellis and respondent are not personal friends, during a hospital stay in San Francisco for a tumor that had developed on Mr. Ellis's spine, respondent made a trip to visit Mr. Ellis. He was touched by the compassion she showed in making that trip to visit an opposing counsel who had medical problems. He felt that this showed her strong character and compassion.

Mr. Ellis is aware of respondent's medical issues. He has observed her "working through" the pain when appearing in court and has discussed her ailments with her. He was impressed by the

fact that she continued to practice law and effectively represented her clients even though she did not feel well.

Mr. Ellis also has had an opportunity to represent respondent in a matter involving a vendor that respondent had hired to assist her in preparing video graphic items for a trial. Mr. Ellis had the opportunity to observe the level of preparation that respondent had performed for her client. He noted that she was well prepared in the analysis of the case and had spent a great deal of her own time and financial resources to gain an effective result for her clients. It was obvious to Mr. Ellis that respondent had gone out of her way to make sure that her clients received the best settlement possible. Further, he observed that she agonized over the fact that her clients needed future resources to educate themselves.

During meetings prior to the presiding judge in family law calling the calendar, Mr. Ellis has had many opportunities to meet with respondent and make small talk about her cases, clients and background. Through those conversations, Mr. Ellis has concluded that respondent is a very concerned attorney who interacts well with her clients and likes her clients. In fact, he has seen her in the hallways of the courthouse embrace her clients and has concluded that she genuinely cares about solving her client's problems and providing them with adequate representation. She becomes aware of personal facts about her client's life and uses those facts to effectively represent her clients in settlement conferences and before the court. Mr. Ellis has also discussed with respondent her commitment to pro bono activities. In one case, Mr. Ellis recalls that respondent discussed a young, single mother that needed her services but could not pay for the child custody proceeding. Respondent nevertheless took the case on behalf this client.

In making his declaration, Mr. Ellis was given a copy of the stipulation of facts that has been filed in this action, and was aware of the misconduct set forth in that stipulation. Despite that

stipulation, Mr. Ellis still feels strongly that respondent is a person of good moral character and an attorney dedicated to the well being of her clients.

Lisa M. Miles Fugazi has been an attorney since 1995. She practices in the area of family law, civil litigation, criminal law and estate planning, but her primary focus is family law. While Ms. Fugazi is an attorney, she has a very close personal friendship with respondent. She has known her since 1991 and considers her one of her closest and dearest friends. In fact, she considers her to be like a sister. Respondent is the godmother to Ms. Fugazi's oldest daughter, Isabella. In fact, when Ms. Fugazi was in the final stages of her 26 hour labor with Isabella, respondent was by her bedside helping her through the shock of the delivery. When Ms. Fugazi's brother passed away unexpectedly, respondent immediately rushed over to Ms. Fugazi's home to console her at the loss of her only sibling. Respondent stayed by her side and with her family and comforted them.

Respondent frequently comes to visit Ms. Fugazi and her family. Now, Isabella is 6 years old and Ms. Fugazi has two 3 year old twins. Often, respondent comes over for dinner and plays with the girls. Isabella has established a particularly close connection to respondent. Respondent frequently reads books to the kids and plays with dolls or other games. The children refer to her as Auntie Helena, and are always excited to see her because she spends quality time with them and makes them feel special.

Respondent knows all of Ms. Fugazi's family members and all of them think the world of respondent.

When Ms. Fugazi's father was diagnosed with leukemia, respondent spoke with her in detail about the debilitating side effects of chemotherapy and radiation, based on her own personal experience with cancer. Ms. Fugazi observed how helpful respondent was to her father when she discussed with him the effects the cancer and its treatment would have on his body. She felt that he

was able to fully understand what he was up against after speaking frankly with respondent.

Ms. Fugazi has personally observed respondent's kindness and high moral values. On several occasions, she has watched as respondent gave money to homeless people who approached her on the street. On one occasion, she witnessed respondent buy a homeless person an entire meal.

As an attorney, Ms. Fugazi has watched respondent handle her cases and is very impressed with the manner in which she resolves her client's matters. She notes that a family law attorney must be able to have compassion and be a good listener, and she has often witnessed respondent exhibiting those characteristics. She has watched respondent spend a lot of time and attention with her clients, giving them guidance. She has observed her patience and compassion.

Ms. Fugazi covered for respondent during her second bout with cancer. Often she would make court appearances and discuss matters with respondent's clients. Respondent's clients told Ms. Fugazi how much they respected respondent and how they hoped she would make a full recovery. When she was making these appearances for respondent, Judge Apple in the family law court often would ask Ms. Fugazi to approach the bench. At the bench, Judge Apple would ask Ms. Fugazi how respondent was doing and when she would be returning. Ms. Fugazi also observed opposing counsel frequently wishing respondent well in her recovery.

Ms. Fugazi has observed respondent handling pro bono matters. She is convinced that respondent is not an attorney who is in the profession of law for the money. She feels that respondent does what she does out of caring for her clients and other people. In doing that, she has observed that respondent will "run herself ragged" representing her clients.

Ms. Fugazi has also referred clients to respondent. She has heard from those clients that they received excellent representation by respondent and were very pleased with the referral.

Like Mr. Ellis, Ms. Fugazi has also read the stipulation of facts. Despite the misconduct

stated in the stipulation, Ms. Fugazi feels strongly that respondent is a person of outstanding moral character with a "huge heart" and with quality skills to do an outstanding job representing her clients. She feels that respondent should receive a second chance.

Janice Moore was a secretary in respondent's firm. She was originally hired in 1994 by Barbara Fass, and when Ms. Fass left in August 2002, Ms. Moore worked for respondent. Ms. Moore described the extensive pro bono work in which respondent participates. Ms. Moore estimated that approximately 40 percent of the work in the firm is pro bono. Several organizations refer work to respondent. Among those is Victim Witness. Individuals who have been threatened are referred to this program, usually by the San Joaquin County courts. Typically, matters referred through Victim Witness require consultations at the office and court appearances. The Public Defender's office in San Joaquin County also refers pro bono criminal cases to respondent, usually involving domestic violence. These matters involve both office consultations and court appearances. Respondent also receives cases from a local women's center, also involving domestic violence. Ms. Moore affirmed that there is no difference in the way respondent treats her pro bono cases and her paying clients. In both, she provides them with top quality service.

Ms. Moore also credibly testified as to the clients' high regard for respondent. She noted that they have a great deal of respect for her and they frequently thank her for the good job that she does for them. She has never received a call from an irate client complaining that the services had not been performed correctly or otherwise blaming respondent. She also noted that respondent's chemotherapy and radiation have not affected her relationship with her clients, nor have they affected her ability to handle her responsibilities in the law office.

Janice Moore also testified as to the changes that occurred in the operation of the firm's banking and financial activities since the misconduct was discovered by the State Bar. Whereas

before, the client trust account was not balanced, now the firm has changed its procedures. The current procedures require the client trust account to always be regularly balanced. The checks are kept in a locked drawer; ledgers are kept for each client; and lists are maintained of all clients and accounts. While Ms. Moore or the paralegal, Ms. Juma, typically prepare checks from the client trust account, it is always respondent that signs the check and verifies that it is properly documented.

Ms. Moore has reviewed the stipulation and is well aware of the charges of misconduct made by the bar against respondent. In fact, Ms. Moore was in the office when investigators came to review the financial records of respondent.

Respondent has also taken objective steps demonstrating remorse and recognition of her wrongdoing, including repaying nearly all of the amounts that the State Bar has advised her were owing. (Std. 1.2(e)(vii) .)

B. Factors in Aggravation

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) Respondent repeatedly and incrementally misappropriated her clients' funds for a period of over three years. Despite attending the State Bar's Client Trust Accounting School during her period of misconduct, respondent did not promptly act to curb her misconduct. In fact, in the four months following respondent's attendance at the State Bar's Client Trust Accounting School, respondent misappropriated an additional $100,000 in client funds.

Respondent's misconduct significantly harmed her clients. (Std. 1.2(b)(iv).) Respondent harmed her clients by failing to promptly turn over funds that they could have used for their own benefit. Instead, respondent used these funds to benefit herself.

During the time of the instant misconduct, respondent demonstrated an unwillingness or inability to determine the accurate amounts of client funds that were to be held in trust. (Std.

1.2(b)(iii).) Respondent ultimately relied on the State Bar to audit her accounts and to determine which client funds remained outstanding.

4. 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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(a), 2.2(b), and 2.3 apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for wilful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar urges that respondent be disbarred. The Supreme Court has repeatedly held that disbarment is the usual discipline for the wilful misappropriation of client funds. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; and *Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

The court finds the State Bar Court Review Department's decision in *In the Matter of Spaith* (1996) 3 Cal. State Bar Ct. Rptr. 511, to be particularly instructive. In that case, the respondent was found culpable of intentionally misappropriating approximately $40,000 from a client and intentionally misleading the client over a one-year period as to the status of the money. In mitigation, the respondent demonstrated good character; he provided community service and other pro bono activities; he cooperated with the State Bar by admitting to his wrongdoing and stipulating to the facts and culpability; and he had no prior record of discipline in over fifteen years of practicing law. The respondent did not receive mitigation for making restitution, due to the fact that none of the restitution was paid until after the respondent's client threatened to report him to the State Bar. In aggravation, the respondent's misconduct involved multiple acts of wrongdoing. In ordering respondent's disbarment, the Review Department noted that the mitigating circumstances were not sufficiently compelling to justify a lesser sanction than disbarment when weighed against the respondent's misconduct and aggravating circumstances. (*Id*. at p. 522.)

The court finds the facts involved in the instant case to be more egregious than those of *Spaith*. Although the instant case does not involve the added component of misleading a client, the circumstances surrounding respondent's misconduct are certainly more serious. Here, respondent misappropriated a total sum of $401,112.74. This amount is ten times the amount misappropriated in *Spaith*. Additionally, in the instant case, respondent committed repeated misappropriations for well-over three years. This conduct is quite different than that of *Spaith* where the respondent misappropriated his client's funds for little more than a year. Finally, *Spaith* only involved

misappropriation from a single client, while respondent misappropriated funds belonging to multiple clients.

The State Bar recommends disbarment. The court agrees, but wishes to emphasize that respondent appears to be on her way to rehabilitation as shown by her commitment to repaying the amounts misappropriated, her dedication to her clients, and her pro bono work. However, the amount and nature of the misappropriation unfortunately compels disbarment.

5. RECOMMENDED DISCIPLINE

This court recommends that respondent HELENA M. DAKOPOLOS be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys of all persons admitted to practice in this state.

It is recommended that HELENA M. DAKOPOLOS make restitution to Rocio Doctolero, Guillermina Doctolero, Judit Doctolero, and Rosario Doctolero in the amount of $19,408.32 plus 10% interest per annum from April 6, 2005 **(or to the Client Security Fund to the extent of any payment from the fund to Rocio Doctolero, Guillermina Doctolero, Judit Doctolero, and Rosario Doctolero, plus interest and costs, in accordance with Business and Professions Code section 6140.5)**, and furnish satisfactory proof thereof to the State Bar's Office of Probation. **Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).**

If respondent has already paid all or a portion of this recommended restitution to Rocio Doctolero, Guillermina Doctolero, Judit Doctolero, and Rosario Doctolero, or to the Client Security Fund, respondent must furnish satisfactory proof thereof to the State Bar's Office of Probation.

6. RULE 9.20

The court further recommends that DAKOPOLOS be ordered to comply with California Rules of Court, rule 9.20 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.[10]

7. COSTS

Finally, 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.

8. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that HELENA M. DAKOPOLOS be involuntarily enrolled as an inactive member of the State Bar of California effective twenty-one court days[11] after service of this decision and order by

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[10]Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, a ground for denying his or her petition for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

[11]The court has exercised its discretion and extended the number of days before the effective date of involuntary inactive enrollment beyond the three days set forth in Rules Proc. of State Bar, rule 220(c). This reflects the fact that respondent is no longer a threat to the public since she fully recognizes her errors, has cooperated fully with the State Bar, and has taken many remedial steps to prevent the recurrence of the misconduct. Further, given respondent's extensive pro bono case load, and the court's recognition of the difficulty in placing such clients with other attorneys, it is the court's view that the extra time will assist her in finding other attorneys willing to represent these clients in their cases.

mail (Rules Proc. of State Bar, rule 220(c)).[12]

Dated: February ___, 2008

RICHARD A. HONN
Judge of the State Bar Court

[12]Only active members of the State Bar may lawfully practice law in California. (Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice of law, or to even hold himself or herself out as entitled to practice law. (Bus. & Prof. Code, § 6126, subd. (b).) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)