

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

In the Matter of)	Case No. 04-O-13676-JMR
)	
MATTHEW BERNARD WEBER,)	04-O-15525; 05-O-00026
)	05-O-00328; 05-O-01575
Member No. 202719,)	05-O-04841 (Cons.)
)	
A Member of the State Bar.)	DECISION
)	
)	
<hr style="width: 100%;"/>)	

I. INTRODUCTION

In this disciplinary matter, Robert A. Henderson appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Matthew Bernard Weber did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be suspended for two years, that said suspension be stayed, and that he be actually suspended for two years and until he complies with standard 1.4(c)(ii) and until he makes specified restitution, and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on June 19, 2006, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section¹ 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The return receipt was returned to the State

¹Future references to section are to this source.

Bar on June 26, 2006, signed by “P. Chu.”

On July 5, 2006, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on July 31, 2006. He did not appear at the status conference. A post-status conference order was properly served on him by first-class mail, postage prepaid, at his official address on July 31, 2006.

Respondent did not file a responsive pleading to the NDC. On July 17, 2006, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of three years’ stayed suspension and one year of actual suspension would be sought if he was found culpable. Respondent did not respond to the motion.

On August 2, 2006, the court entered respondent’s default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested. The court judicially notices its records pursuant to Evidence Code section 452(d) which indicate that this correspondence was returned unclaimed.

The State Bar’s and the court’s efforts to contact respondent were fruitless.

The matter was submitted for decision without hearing on August 22, 2006.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court’s findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Procedure, rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

A. Jurisdiction

Respondent was admitted to the practice of law in California on November 22, 1999, and has been a member of the State Bar at all times since.

B. Case no. 04-O-13676 (Miller)

1. Facts

Attorney Christopher Miller represented Lawrence Lin in *Lin v. Nextra Enterprises, Inc.*,

et al, San Francisco Superior Court case no. CGC-03-419351, which resulted in a February 18, 2004, settlement that required Nextra to pay Lin \$112,500. In March 2004, after Lin disputed the amount he should pay Miller, Miller filed a notice of attorney's lien for \$82,096.47 as the reasonable value of the services he provided. On April 1, 2004, the court ordered Nextra to pay \$112,500 in full satisfaction of their obligation pursuant to the settlement agreement; to make the payment jointly payable to Lin and Miller; and to deliver the payment to Miller. Miller received the funds on April 5, 2004.

Around mid-May 2004, Lin retained respondent to represent him in a fee dispute with Miller. Lin told respondent at the time that Miller had filed a lien and that there was a court order requiring the settlement check to be delivered to him. At all relevant times, respondent knew that Miller had to endorse the check and that he had a lien on the funds, that the court had ordered Miller's name to be on the check and that it was to be given to Miller. He also knew that the disputed funds had to remain in a trust account until the dispute was resolved.

Miller thereafter gave respondent the check with the understanding that Lin would obtain Lin's signature and return the check to Miller. They made an appointment for the next day to deposit the check and distribute the settlement proceeds according to their agreement. Respondent did not keep the appointment or return the check to Miller.

On May 21, 2004, respondent prepared an agreement between Lin and Miller setting forth in writing the agreement respondent and Miller had reached in mid-May, namely that Lin and Miller would endorse the check; Miller would deposit the check in his trust account and immediately pay Lin \$34,403.53, the undisputed portion of the funds; and Miller would maintain the balance of \$82,096.47 in his trust account until the dispute was resolved. Lin executed the agreement on May 21, 2004. Respondent never tried to obtain Miller's signature on it.

On May 21, 2004, respondent told Lin that he had done some legal research which indicated that Miller's lien was invalid. In reality, this was incorrect.

Lin endorsed the check on May 24, 2004. Respondent opened a trust account that same date to deposit the check and misrepresented to Ilya Fee, the operations supervisor at Washington Mutual, that the account needed to be in his name because Miller was no longer counsel of

record and could not endorse the check.² Respondent further misrepresented that he had to endorse the check since he currently represented Lin. He never disclosed to Fee that Miller had a lien on the settlement funds or that the court had ordered the check delivered to Miller. Based on respondent's misrepresentations, Fee allowed him to endorse the check and to deposit it into the trust account.

On May 30, 2004, Miller sent respondent a letter by facsimile informing him that, pursuant to the court's order, Miller was to have custody of the check and, if it was not returned to him by June 1, 2004, Miller would report respondent to the State Bar and to the District Attorney's office. Respondent did not respond to the letter nor did he return the check or the disputed portion of the funds to Miller.

About June 7, 2004, respondent and Lin agreed that respondent would pay Lin \$100,000 from the settlement funds and respondent would retain \$12,500 as advanced fees for representing Lin in other matters. On June 9, 2004, respondent gave Lin check no. 1010 in the sum of \$100,000, which Lin endorsed the next day.

On June 21, 2004, Miller contacted Nextra and learned that the settlement check had been negotiated. On that same date, Miller wrote to respondent informing him of what he had learned and asking respondent for the account information where the funds were being maintained. Respondent did not respond to the letter or provide Miller with the account information or with the disputed funds.

Prior to July 12, 2004, Miller obtained a copy of the negotiated check from Nextra and learned that respondent had deposited it into the Washington Mutual account. On that same date, Miller sent Washington Mutual a letter demanding that it pay the disputed funds. On August 13, 2004, Washington Mutual investigated the matter and determined that it should not have negotiated the check because Miller had not properly endorsed it.

After Lin negotiated the \$100,000 check, the balance in respondent's trust account was \$10,200. On June 28, 2004, the trust account balance was \$196.21. Between June 30 and

²This account is hereafter referenced as the trust account or the Washington Mutual account.

August 30, 2004, respondent's trust account balance fluctuated between \$85,196 and \$76,404.82. Respondent should have maintained at least \$82,096.47 in the trust account, the amount of the disputed funds.

On August 30, 2004, Washington Mutual removed \$76,404.82, all of the funds from respondent's trust account. It later returned \$112,500 to Nextra. Washington Mutual paid Miller his full lien and received from Nextra \$100,000 as its settlement payment. Washington Mutual is still negotiating a settlement with Lin. So far, it has paid out \$18,500 more than it has collected.

On July 1, 2004, the State Bar opened an investigation on case no. 04-O-13676. On December 9 and 22, 2004, a State Bar investigator sent respondent letters requesting that respondent answer in writing by December 20, 2004, and January 1, 2005, respectively, specific allegations of misconduct regarding the complaint in the Miller matter. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither letter was returned to the State Bar as undeliverable or for any other reason. Respondent did not answer the letters.

On January 5, 2005, respondent obtained from the State Bar investigator an extension until January 17, 2005, to respond in writing to the allegations of misconduct. On that same date, the investigator sent respondent a letter confirming this agreement and noting that, if there was no response by January 17, 2005, the case would proceed. The letter was sent to respondent's official address by first-class mail, postage prepaid, and was not returned as undeliverable or for any other reason. Respondent did not provide a written response to the allegations of misconduct.

2. Conclusions of Law

a. Count 1A - Section 6106 (Moral Turpitude)

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.

There is clear and convincing evidence that respondent violated section 6106. He breached his fiduciary duty to Miller by not maintaining the disputed funds in trust and, instead,

paying them to Lin and to himself. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

b. Count 1B - Section 6068, subdivision (a) (Breach of Fiduciary Duty)

Section 6068, subdivision (a) requires an attorney to support the Constitution and laws of the United States and of this state.

It is alleged that respondent violated section 6068, subdivision (a) by breaching his fiduciary duty to Miller by distributing the disputed funds to Lin and to himself. However, it is generally inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct. “There is ‘little, if any, purpose served by duplicative allegations of misconduct.’” (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Accordingly, this charge is dismissed with prejudice as it is duplicative of the violation of section 6106 found in count 1A.

c. Count 1C - Section 6106 (Moral Turpitude)

There is clear and convincing evidence that respondent violated section 6106 by making misrepresentations to Washington Mutual. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

d. Count 7 - Section 6068, subdivision (i) (Failure to Participate in a Disciplinary Investigation)³

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not responding to the December 9 and 22, 2004, letters or providing a written response by January 17, 2005, as agreed, respondent did not participate in the investigation of the

³The NDC contained a count 7 which set forth collectively allegations of violations of section 6068, subdivision (i) with regard to all of the cases addressed herein except the Lin matter, *infra*. The court has addressed these allegations with the other allegations of misconduct of each case rather than collectively.

allegations of misconduct regarding the Miller case in wilful violation of 6068, subdivision (i).

C. Case no. 04-O-15525 (Lin)

1. Facts

On June 30, 2004, Lin gave respondent \$85,000 to hold in the Washington Mutual trust account respondent opened on May 24, 2004.

Lin did not authorize respondent to withdraw any of these funds from the trust account. However, on August 30, 2004, the balance in the trust account was \$76,404.82. On that same date, Washington Mutual withdrew all of these funds from the account because of respondent's improper endorsement of the settlement check, as more fully described above.

2. Conclusions of Law

a. Count 2A - Section 6106 (Moral Turpitude)

There is clear and convincing evidence that respondent violated section 6106 by not maintaining \$85,000 for Lin in his trust account. By allowing the balance to dip to \$76,404.82, respondent misappropriated \$8,595.18 from Lin. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

D. Case no. 05-O-01575 (Trust Account)

1. Facts

Respondent maintained personal and client funds in the trust account and used his trust account to pay for personal expenses.

On June 6, 2004, respondent paid his law clerk \$700 from the trust account for her work.

On June 15, 2004, respondent electronically transferred \$4.75 and \$490.23 in payment of personal debts to Forster and Garbus, a collection agency.

On March 29, 2005, the State Bar opened an investigation on case no. 05-O-01575 regarding allegations that respondent mishandled his trust account. On October 31 and November 15, 2005, a State Bar investigator sent respondent letters requesting that respondent answer in writing specific allegations of misconduct regarding this matter. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable or for any other reason.

Respondent did not answer the letters or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 3A- Rule 4-100(A) of the California Rules of Professional Conduct⁴ (Failure to Maintain Client Funds in Trust Account)

Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a client trust account.

There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) by using funds from the trust account to pay for personal expenses.

b. Count 7 - Section 6068, subdivision (i) (Failure to Participate in a Disciplinary Investigation)

By not responding to the State Bar investigator's letters dated October 31 and November 15, 2005, respondent did not participate in the investigation of the allegations of misconduct regarding respondent's handling of his trust account in wilful violation of 6068, subdivision (i).

E. Case no. 05-O-00026 (Montoya)

1. Facts

On August 1, 2004, Arturo and Rosa Montoya retained respondent to represent them in an unlawful detainer proceeding commenced after they defaulted on their mortgage. Respondent did not provide them with a fee agreement.

Between August 17 and September 14, 2004, the Montoyas paid respondent \$2,050 in fees for litigation against their lender regarding their home's foreclosure.

On August 23, 2004, respondent and attorney Joel Tracey entered into a fee-splitting arrangement for the Montoya case. They were not partners, associates or shareholders of each other. Respondent agreed to pay Tracey between 66% and 90% of the fees respondent collected from the Montoyas for the work Tracey performed on the case. Pursuant to this agreement, respondent paid Tracey \$100 for the fees he received from the Montoyas for the work Tracey performed on their case. Respondent never provided the Montoyas with a written disclosure

⁴All further references to rules are to the Rules of Professional Conduct.

about this arrangement or its terms and did not obtain their consent to the agreement.

Respondent represented the Montoyas at the unsuccessful September 14, 2004, unlawful detainer trial. On that same date, he agreed to represent them in an action against their lender for improperly foreclosing on their property. He did not give them a fee agreement. Thereafter, respondent did not perform any services for them.

The Montoyas telephoned and left respondent messages seeking a status update on their case on November 4, 5, 13 and 17, 2004. He did not return the calls or provide an update.

On December 7, 2004, the Montoyas left respondent a message terminating his services and asking him for an accounting and to return their file. They also asked that he return their call and give them a status update on the case.

On that same date, the Montoyas also wrote to respondent noting their frustration with his handling of their case. They said that respondent had not given them a new address after he told them he was moving his office and that he had not returned their calls. They instructed him to stop working on their case and to provide them with an accounting of their funds. They also requested a meeting with him to discuss the case.

Respondent did not inform the Montoyas about the status of their case, give them an accounting of their funds or return their file.

In November 2004, respondent abandoned his law office. He constructively terminated his employment with the Montoyas by not performing any services for them; not returning their calls or their file; and not giving them an accounting of their funds or advising the status of their case. He did not tell them that he was no longer performing any services on their behalf.

On December 20, 2004, the State Bar opened an investigation on case no. 05-O-00026 regarding allegations of misconduct by respondent in this matter. On January 13 and February 4, 2005, a State Bar investigator sent respondent letters requesting that respondent answer in writing specific allegations of misconduct regarding the Montoya matter. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable or for any other reason. Respondent did not answer the letters or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 4A - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until he has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D) and with other applicable laws and rules.

By not performing any services for the Montoyas; not returning their calls or their file; and not advising the status of their case, respondent effectively withdrew from employment. He did not tell them that he was withdrawing from employment. Respondent's withdrawal prejudiced them. By not informing them of his intent to withdraw from employment, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to them in wilful violation of rule 3-700(A)(2).

b. Count 4B - Section 6068, subdivision (m) (Failure to Communicate)

It is alleged that respondent violated section 6068, subdivision (m), which requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. However, as this charge is duplicative of the violation of rule 3-700(A)(2), it is dismissed with prejudice.

c. Count 4C - Rule 3-700(D)(1) (Failure to Return Client Papers or Property)

It is alleged that respondent violated rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. However, as this charge is duplicative of the violation of rule 3-700(A)(2), it is dismissed with prejudice.

d. Count 4D - Rule 4-100(B)(3) (Failure to Account)

Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such records for no less than five years after final appropriate distribution of the funds or property.

By not providing the Montoyas with an accounting of their funds in his possession, respondent wilfully violated rule 4-100(B)(3).

d. Count 4E - Rule 2-200 (Financial Arrangements Among Lawyers)

Rule 2-200 prohibits a lawyer from dividing a fee for legal services with a lawyer who is not a partner, associate or shareholder unless the client has consented in writing after a full written disclosure about the fee division has been made and the total fee charged by all of the lawyers is not increased solely because of the fee division and is not unconscionable as defined in rule 4-200.

By splitting the fees with Tracey that he obtained from the Montoyas without disclosing the arrangement and obtaining their consent thereto, respondent wilfully violated rule 2-200.

f. Count 7 - Section 6068, subdivision (i) (Failure to Participate in a Disciplinary Investigation)

By not responding to the State Bar investigator's letters dated January 13 and February 4, 2005, respondent did not participate in the investigation of the allegations of misconduct regarding the Montoya case in wilful violation of 6068, subdivision (i).

F. Case no. 05-O-04841 (Ortiz)

1. Facts

Alberto Ortiz retained respondent to represent him in the criminal case entitled *People v. Ortiz*, Alameda County Superior Court case no. H38224B.

Respondent represented Ortiz at a hearing held on September 13, 2005, during which the court continued the matter until September 20, 2005. At the September 20 hearing, which respondent attended, the court continued the matter until October 4, 2005.

Respondent did not appear at the October 4 hearing and he was sanctioned \$250 for failing to appear. The court continued the matter until October 20, 2005. Respondent did not pay the sanctions.

Respondent did not appear at the October 20 hearing and the court continued the case until October 25, 2005.

Respondent did not appear at the October 25 hearing and the court continued the case

until November 4, 2005. Respondent was also removed as counsel of record.

Between September 20 and October 25, 2005, members of Ortiz's family tried to contact respondent to determine whether he intended to continue representing Ortiz. They were unable to reach him.

Respondent had no further contact or communication with Ortiz and did not perform legal services for him after September 20. Respondent did not inform Ortiz that he did not intend to appear at the October 4, 20 and 25 hearings or that he was no longer going to perform legal services for him. He did not arrange for other counsel to represent Ortiz. Respondent constructively withdrew from employment in the Ortiz case.

On November 4, 2005, the State Bar opened an investigation on case no. 05-O-04841 regarding allegations of misconduct in this matter. On February 3 and March 9, 2006, a State Bar investigator sent respondent letters requesting that respondent answer in writing specific allegations of misconduct regarding the Ortiz matter. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable or for any other reason. Respondent did not answer the letters or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 5A - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

By not appearing at hearings and by not communicating with Ortiz's family, respondent effectively withdrew from employment. He did not tell the client that he was withdrawing from employment. Respondent's withdrawal prejudiced the client. By not informing the client of his intent to withdraw from employment, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

b. Count 7 - Section 6068, subdivision (i) (Failure to Participate in a Disciplinary Investigation)

By not responding to the State Bar investigator's letters dated February 3 and March 9, 2006, respondent did not participate in the investigation of the allegations of misconduct regarding the Ortiz case in wilful violation of 6068, subdivision (i).

G. Case no. 05-O-00328 (Ferguson)

1. Facts

In February 2004, respondent substituted in to represent Chris Ferguson in the matter entitled *Ferguson v. New Horizons*, Santa Clara Superior Court case no. 1-02-CV-811509.

On June 1, 2004, respondent appeared at a trial setting conference and provided the court with his address.

On January 26, 2005, respondent did not appear at a settlement conference. On January 31, 2005, the court clerk properly served respondent at the address he provided with a notice of hearing on an order to show cause (OSC) regarding dismissal for his failure to appear at the settlement conference. Respondent appeared at the March 3, 2005, hearing on the OSC.

On March 4, 2005, the court clerk properly served respondent at another, more recent address that he had provided the court with an order memorializing the March 3 hearing. This order discharged the OSC and ordered respondent and Ferguson to pay sanctions of \$500 to each defense counsel John Colistra and Jonathan Carlson. These sanctions totaled \$1,000 and were not for noncompliance with discovery obligations. Neither respondent nor Ferguson paid the sanctions. Respondent did not report the sanctions to the State Bar.

On July 11, 2005, the parties reached a settlement which the court placed on the record. Respondent participated in the settlement conference. At the end of the conference, the court ordered the parties to appear at a status review on September 16, 2005.

At the September 16 appearance, the court reset the status review for September 19, 2005. Respondent arranged for another attorney, Harjot Walia, to specially appear on September 19.

On September 19, the court continued the matter until October 3 and ordered respondent and Ferguson to be present on that date. On September 28, 2005, the court clerk properly served respondent at another, more recent address that he had provided the court with a notice of this hearing. The notice, however, did not contain the date of the hearing. On September 29, 2005, the court clerk properly served respondent at the most recent address he had provided the court with an amended notice of hearing ordering him to appear on October 3, 2005, at 9:00 a.m.

Respondent did not appear at the October 3 hearing. He called the court at 9:30 a.m.,

stating that he did not drive and that his driver was late. The clerk informed respondent that the next hearing was on October 31, 2005, and that he was to be present personally at the hearing.

On October 6, 2006, one of the defense counsel filed a motion for sanctions because respondent did not execute the settlement agreement memorializing the settlement reached on July 11 and because he did not appear at the three status review hearings.

Respondent appeared at the October 31, 2005, hearing. The sanctions motion was taken under submission and a further status review was set for December 5, 2005.

On November 1, 2005, the court issued an order finding that respondent did not appear at the September 16 and October 3 hearings. It also found that respondent was solely responsible for his and Ferguson's failure to appear at the status review hearings. The order imposed sanctions on respondent, requiring him to pay Colistra \$300 and Carlson \$385. On November 1, 2005, the court clerk properly served respondent at the most recent address he had provided the court with a copy of the November 1 order.

Respondent did not pay the sanctions ordered on November 1.

On December 9, 2005, the parties filed a request for dismissal of all pending actions.

On January 24, 2005, the State Bar opened an investigation on case no. 05-O-00328 regarding allegations of misconduct in this matter. On April 5 and 20, 2006, a State Bar investigator sent respondent letters requesting that respondent answer in writing specific allegations of misconduct regarding the Ferguson matter. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable or for any other reason. Respondent did not answer the letters or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 6A - Section 6103 (Violation of Court Order)

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him to do or to forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear.

By not appearing at the September 16 and October 3 status review hearings and by not

paying the sanctions ordered on March 4 and November 1, 2005, as ordered, respondent wilfully disobeyed a court order in wilful violation of section 6103.

b. Count 6B - Section 6068(o)(3) (Failing to Report Judicial Sanctions)

Section 6068(o)(3) requires an attorney to report in writing to the State Bar the imposition of any judicial sanctions against him except for sanctions for failure to make discovery or monetary sanctions of less than \$1,000. The report must be made within 30 days of the time the attorney has knowledge of the sanctions.

Respondent knew of, but did not report, the court-ordered sanctions totaling \$1,000 pursuant to the March 4, 2005, order to the State Bar in wilful violation of section 6068(o)(3).

c. Count 7 - Section 6068, subdivision (i) (Failure to Participate in a Disciplinary Investigation)

By not responding to the State Bar investigator's April 5 and 20, 2006, letters, respondent did not participate in the investigation of the allegations of misconduct regarding the Ferguson case in wilful violation of 6068, subdivision (i).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed clients, the public or the administration of justice. (Std. 1.2(b)(iv).) Washington Mutual paid out \$18,500 more than it collected as a result of respondent's misrepresentations on the Miller case. Because of respondent's conduct, clients had to repeatedly try to contact him or their matters were delayed, and courts had to continue matters.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Stansbury*

(Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

C. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*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 shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Respondent has been found culpable of abandoning clients, commingling entrusted funds, disobeying court orders, not reporting sanctions, fee splitting, committing acts of moral turpitude and not cooperating with the State Bar's investigation. In aggravation, the court considered multiple acts of misconduct, harm to clients, the public and the administration of justice and not participating in the proceedings prior to the entry of default. There are no mitigating factors.

Standards 2.2(b), 2.3, 2.6 and 2.10 apply in this matter. The more severe sanction is suggested by standard 2.2(b): at least three months actual suspension regardless of mitigating circumstances for commingling entrusted funds or property with personal property or committing another violation of rule 4-100, none of which result in the wilful misappropriation of entrusted funds or property.

The State Bar recommends discipline of two years' stayed suspension and one year of actual suspension, among other things. Having considered the facts and the law, the court believes that an actual suspension of two years is merited.

The court finds *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126 to be instructive. There, the attorney was found culpable of misappropriation through gross neglect, withholding an illegal fee, failure to perform services competently, failure to return unearned fees and failure to render an appropriate accounting in four client matters. The attorney participated in the proceedings. Mitigating factors included evidence of good character and pro bono work; very limited weight was afforded to his seven years of discipline-free practice at the time of the misconduct; and a finding of gross carelessness in accounting for funds, rather than intentional dishonesty. Aggravating factors included multiple acts of misconduct; significant client harm; conduct surrounded by overreaching and bad faith; indifference toward rectification of the consequences of the misconduct; and lack of candor at trial. He was given a two-year stayed suspension, a two-year probation and a one-year actual suspension and until he made restitution of \$8,000 to one client. The misconduct in the instant case was more egregious and is unexplained since respondent defaulted in these proceedings, thereby warranting a greater level of discipline.

Respondent's misconduct and lack of participation in this matter raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Having considered the evidence and the law, the court believes that an actual suspension to remain in effect until he shows his rehabilitation and makes restitution, and manifests his willingness to comply fully with probation conditions that may hereafter be imposed, among other things, is adequate to protect the public and proportionate to the misconduct found.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent Matthew Bernard Weber be suspended from the practice of law for two years, that said suspension be stayed, and that he be actually suspended from the practice of law for two years and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, and until he makes restitution to Lawrence Lin in the amount of \$8,595.18 plus 10% interest per annum from August 30, 2004 (or to the Client Security Fund to the extent of any

payment from the fund to Lawrence Lin, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation,⁵ and until the State Bar Court grants a motion to terminate respondent's actual suspension at its conclusion or upon such later date ordered by the court (Rules Proc. of State Bar, rule 205(a) and (c)).

It is also recommended that he be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

It is also recommended that respondent be ordered to comply with the requirements of the California Rules of Court, rule 955(a),⁶ within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in rule 955(c) within 40 days of the effective date of the order showing his compliance with said order.

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners during his actual suspension and furnish satisfactory proof of such to the State Bar Office of Probation within said period.

VI. 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.

Dated: October 31, 2006

JOANN M. REMKE
Judge of the State Bar Court

⁵Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

⁶Rule 955 is renumbered to rule 9.20, effective January 1, 2007.