FILED APRIL 30, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: **04-O-14674-RAP** [04-O-14780
	)	04-O-14962; 04-O-14964
	)	04-O-15120; 04-O-15432
STEPHEN ALLAN RODRIGUEZ,	)	04-O-15451; 04-O-15491
	)	04-O-15492; 04-O-15505
Member No. 158840	)	04-O-15816; 04-O-15817
	)	05-O-00037; 05-O-00128
	)	05-O-00510; 05-O-00894
A Member of the State Bar.	)	05-O-03939]; **05-O-05190**.
	)	
	)	**DECISION INCLUDING DISBARMENT**
	)	**RECOMMENDATION AND**
	)	**INVOLUNTARY INACTIVE**
	)	**ENROLLMENT ORDER**

I. Introduction

In this contested matter, respondent **STEPHEN ALLEN RODRIGUEZ** is charged with 32 counts of misconduct in 18 filed matters. The court finds, by clear and convincing evidence, that respondent is culpable of 20 counts of misconduct.

The court recommends that respondent be disbarred and ordered to make restitution.

II. Significant Procedural History

The notice of disciplinary charges (NDC) on case no. 04-O-14674 was filed on August 25, 2006. An NDC was filed on case no. 05-O-05190 on January 18, 2007. Respondent filed his

responses to the NDCs on October 12, 2006, and October 17, 2007. The matters were consolidated for trial.

On October 25, 2007, the court issued an order to dismiss counts 26 and 28 of case no. 05-O-00037 with prejudice.

On July 14, 2008, the court issued an order to dismiss with prejudice counts 18, 19 and 20 of case no. 04-O-15505 and counts 29 and 30 of case no. 05-O-03939.

On November 13, 2007, the court dismissed with prejudice counts 1 and 2 of case no. 05-O-05190.

On November 13, 2007, the parties stipulated that respondent is culpable of misconduct as alleged in count 21 of case no. 04-O-15505 and 22 of case no. 04-O-15816.

The following witnesses testified at trial: Respondent; Attorneys Mark Galyean, Mark Kim, Wayne Wilhelm, Kenneth Szalonek and Eric Blum; Fernando and Juan Mendoza; Anahid Anita Minassian; Nelly Rodriguez; Julio Reyes; Erika Castaneda and Caroline Tomasino.

The case was submitted for decision on February 20, 2009.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 8, 1992, and has been a member of the State Bar since that time.

B. Credibility Determinations

With respect to credibility of the witnesses, the court has carefully weighed and considered their demeanor while testifying; the manner in which they testified; their personal interest or lack thereof in the outcome of this proceeding; and their capacity to accurately perceive, recollect, and communicate the matters on which they testified. (See, e.g., Evid. Code section 780 [lists of factors to consider in determining credibility].) Except as otherwise noted,

the court finds the testimony of the witnesses to be credible, except for the testimony of respondent, which lacked candor, and that of Evelyn Oberhuber (by deposition transcript) who is a convicted felon.

C. Stipulated and Other Facts

1. Background

From March 1998 until October 2004, respondent employed Evelyn Oberhuber to work for him, initially at his Los Angeles office. About two months later, she moved to his Santa Ana office, where she eventually became the office manager.

Between 1999 and 2004, respondent also employed several attorneys to work in the Santa Ana office, including Mark Galyean and Kenneth Szalonek.

Beginning in May 2004 and continuing through 2005, Oberhuber embarked on a course of criminal conduct involving grand theft, forgery and recording false instruments. One of respondent's clients, Anita Minassian, was a victim of Oberhuber's criminal conduct. In October 2006, Oberhuber was the subject of a criminal complaint alleging 102 felony counts. She pleaded guilty to 49 counts and was sentenced to 10 years in state prison.

2. Case Nos. 04-O-14674; 04-O-14780; 04-O-14962; 04-O-14964; 04-O-14674; 04-O-15432; 05-O-00510; and 05-O-00894 - Count 1 (CTA 1 and CTA 2)

a. Facts

Until approximately 2003, no separate bank accounts were established for the Santa Ana office. In January 2003, Galyean established a general business account and a client trust account (CTA 1) at Union Bank of California for the Santa Ana office under respondent's name. Oberhuber, Galyean and respondent were signatories on both accounts.

Oberhuber wrote the following dishonored checks, totaling $60,161.38, from CTA 1:

Check No.	Amount	Issue Date
1153	$ 1,500	6/14/04
1168	$ 9,976	6/17/04

unknown	$ 110.38	unknown
1155	$ 5,000	6/16/04
1156	$21,750	6/21/04
1157	$21,750	6/21/04
unknown	$ 75	unknown

On July 6, 2004, the State Bar wrote to respondent at the Santa Ana office regarding the dishonored checks from CTA 1. Oberhuber responded to the State Bar's letter with a letter dated August 2, 2004, which she signed with respondent's name. Respondent was unaware that these checks on CTA 1 had been written until the State Bar sent him a letter on October 20, 2004.

In June 2004, Oberhuber opened a new general account and a new client trust account (CTA 2) at Wells Fargo Bank under respondent's name. She was a signatory on both of these accounts. Szalonek was also a signatory on the CTA.

Oberhuber wrote the following dishonored checks totaling $548,269.14 on CTA 2:

Check No.	**Amount**	**Issue Date**
1028	$ 2,506	Unknown
1071	$ 18,850	9/30/04
1046	$ 1,803	9/30/04
1044	$ 3,000	9/24/04
1072	$ 55.07	9/27/04
1097	$322,000	9/20/04
1111	$100,000	10/7/04
1072	$ 55.07	9/27/04
1121	$100,000	10/4/04

Oberhuber signed respondent's name to check nos. 1097 and 1111.

On October 21, 2004, the balance in CTA 2 was -$72.82.

Oberhuber opened a general account at the Bank of the West in August 2004 in respondent's name. She was a signatory to this account.

The record clearly establishes, and respondent now does not contest culpability, for the dishonored checks as listed in CTA 1. However, respondent does contest responsibility for the dishonored checks in CTA 2. He claims no knowledge of this account being opened by

Oberhuber and avers that the bank was negligent for opening the account without his knowledge. The court disagrees. Respondent endorsed several checks written on CTA 2. It was his duty to supervise his staff and to be aware of all bank accounts being utilized in his office. Respondent's assertion that he was unaware that CTA 2 existed leads to one of two conclusions: that he was grossly negligent in the supervision of his office's bank accounts or that he was blindly signing checks without considering from what account the checks were issued. Respondent cannot turn a blind eye to his supervisory duties. His conduct constitutes acts of gross negligence and the court finds him culpable for the dishonored checks issued from CTA 2.

b. Legal Conclusions

(1) Count 1: Moral Turpitude (Bus. & Prof. Code, section 6106)

Section 6106 of the Business and Professions Code[1] 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 by acting with gross negligence in the supervision of client trust accounts. He or his staff, without adequate supervision, repeatedly issued checks from CTAs 1 and 2 when he knew or should have known that there were insufficient funds in the accounts to pay the checks. Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

3. Case No. 04-O-15120 - Counts 2 through 9 (The Minassian Matter)

a. Facts

In March 2002, Anahid Anita Minassian employed respondent to represent her in a

[1] Future references to section are to this source.

marital dissolution matter and paid him advanced fees of $1,000. On April 8, 2004, a petition for marital dissolution was filed for Minassian. Respondent did no further work on this matter.

A bankruptcy issue arose and respondent referred Minassian to his Santa Ana office because she lived in Orange County. In Santa Ana, Minassian met with Oberhuber, who described herself as a paralegal and stated that she took care of things in the office. Oberhuber and Minassian discussed her problems concerning foreclosure of her house and Oberhuber made suggestions about what type of bankruptcy to file.

In April 2002, Minassian employed respondent to represent her in a Chapter 13 bankruptcy proceeding and paid him $685 in advanced fees and $25 for costs.

Respondent filed a Chapter 13 bankruptcy petition in April 2002. This petition was dismissed in August 2002. He filed a second Chapter 13 bankruptcy petition on September 13, 2002, which also was dismissed. Minassian was surprised to learn that the second bankruptcy had been filed as a chapter 13. Minassian learned later, through a title company, that the bankruptcy petitions had been dismissed.

Minassian intended to acquire title to property located in Yorba Linda, CA. Minassian's sister, Marall Vartanian, obtained a loan intending to provide its proceeds to Minassian to acquire it.

On December 5, 2003, Wells Fargo Home Mortgage informed Oberhuber that the mortgage payoff amount on the Yorba Linda property was $92,725.56.

On December 15, 2003, at Oberhuber's direction, Vartanian wired $100,000 to CTA 1.

Oberhuber later represented to Vartanian that the mortgage on the Yorba Linda property had been paid in full when, in fact, she only cured the mortgage arrearages. She then began making regular monthly mortgage payments on Minassian's mortgage of $853.57 until

September 2004, for a total of $13,056.73 ($1,959.57 for principal and the balance for interest and fees). The checks used to make these payments were drawn from CTA 1.

On February 28, 2004, Oberhuber issued a check to Minassian in the amount of $4,000 drawn on an unknown account. This check was not honored.

Oberhuber made several payments totaling $30,718.34 from CTA 1 to Minassian. All of the following checks were paid:

Check No.	Amount	Issue Date
1126	$3,000	3/3/04
1127	$6,000	3/3/04
1130	$3,000	3/15/04
1131	$6,000	3/15/04
1145	$6,000	4/8/04
1147	$6,718.34	4/8/04

Check no. 1145 was payable to Minassian's son, Hrant George.

On April 28, 2004, Oberhuber paid Minassian the sum of $1,321.26.

In September 2004, Oberhuber misrepresented to Minassian that there had been unexpected delays in processing the mortgage payoff and obtaining the necessary paperwork.

On September 23, 2004, Oberhuber issued check no. 5060 in the amount of $10,000 payable to Hrant Minassian and drawn on the Bank of the West account. This check was not honored as the account had been closed.

On October 8, 2004, Oberhuber issued check no. 1120 in the amount of $90,843.90 payable to Castlehead Escrow and drawn on CTA 2. The check was dishonored due to insufficient funds.

On October 12, 2004, attorney Eric Blum wrote a letter to respondent on behalf of Minassian demanding an accounting and an explanation of why the Yorba Linda property's mortgage had not been paid off.

In November 2004, Oberhuber delivered two cashier's checks of $5,000 each to Hrant George drawn on an account at Orange County Federal Teacher's Union.

b. Legal Conclusions

(1) Count 2: Competence (Rules of Professional Conduct, Rule 3-110(A))

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not pursuing the dissolution and bankruptcy matters for Minassian, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

The record is not clear that Minassian retained respondent to assist her regarding the Yorba Linda property matter. Minassian and Oberhuber were involved in another real estate deal where Minassian cleared between $22,000 to $30,000. There is nothing in the record to suggest that respondent was aware of either real estate transaction involving Minassian and Oberhuber. Oberhuber had money wire-transferred into CTA 1 and issued checks from CTA 1 to Minassian concerning the Yorba Linda property. Had respondent properly supervised his trust accounts, however, he undoubtedly would have noticed these transactions. Since there is insufficient evidence to show the Minassian retained respondent in the Yorba Linda real estate transaction, the court cannot find that he failed to perform in that matter.

(2) Count 3: Not Paying Client Funds Promptly (Rule 4-100(B)(4))

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

There is no evidence in the record that Minassian made a demand on respondent to pay off the loan on the Yorba Linda property. The record also shows that respondent was unaware of

the private dealing between Oberhuber and Minassian concerning the property. Accordingly, the court finds that respondent is not culpable for failing to pay client funds promptly.

(3) Count 4: Not Accounting for Client Funds (Rule 4-100(B)(3))

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 Minassian with an accounting of the $100,000 deposited into respondent's CTA 1, respondent wilfully violated rule 4-100(B)(3).

Respondent failed to render an accounting when requested by attorney Blum on behalf of Minassian of the $100,000 wired deposited CTA 1. The record shows that respondent was aware of the request for an accounting and that no accounting was ever provided. Respondent claims that it was Blum's letter that notified him of problems concerning Oberhuber, thus he was unaware of the $100,000 and whether or not it was placed into his CTA 1.

The record shows that the $100,000 was wired and deposited into respondent's CTA 1 and later removed. Respondent is and was at all times responsible for the funds deposited into CTA 1 and Minassian was respondent's client, although not specifically for the Yorba Linda property matter. Respondent is responsible to account for client funds held in his trust account and, therefore, is culpable for failing to render an appropriate accounting of client funds held in his possession.

(4) Count 5: Not Maintaining Client Funds in Trust Account (Rule 4-100(A))

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 not maintaining $100,000 of Minassian's funds in the trust account.

As of June 14, 2004, the balance in CTA 1 was a negative amount**.** Minassian was respondent's client. Due to respondent's gross negligence in the supervision of Oberhuber and the handling of CTA 1 and CTA 2, Minassian's funds were placed in and then later removed from CTA 1 without Minassian's approval or knowledge. Respondent is responsible for the safekeeping of client funds and property in his possession and it was his duty to ensure that Minassian's funds in CTA 1 were safe. This respondent utterly failed to do. He is culpable for his failure to keep client funds in his possession in his client trust account.

(5) Counts 6 and 7 - Moral Turpitude (Section 6106)

The court finds by clear and convincing evidence that respondent wilfully violated section 6106 by acting with gross negligence in the supervision of his staff and his office bank accounts. He misappropriated $58,572.40 of the $100,000 placed in CTA 1 for Minassian. By June 30, 2004, the balance in CTA 1 was zero, with the remaining funds of $58,572.40 not being returned to Minassian. Accordingly, respondent was grossly negligent in the supervision of Oberhuber and the handling of CTA 1 and CTA 2 and is culpable for misappropriation of $58,572.40.

The court finds by clear and convincing evidence that respondent wilfully violated section 6106 by sending Minassian nine insufficient fund checks issued from CTA 1 and CTA 2. The record shows that respondent did not issue or sign these checks nor is there any evidence that respondent was aware that Oberhuber was issuing these checks. However, the duty to keep clients' funds safe is a personal, nondelegable obligation of an attorney. (*Palomo v. State Ba*r (1984) 36 Cal.3d 785, 795; *Coppock v. State Bar* (1988) 44 Cal.3d 665, 680; *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 713.) The trust fund and trust

account rules are designed to safeguard client funds from the serious risk of loss or misappropriation, whether through carelessness or design. (*In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411, 420.) If misappropriation of clients' funds was caused by serious and inexcusable violations of an attorney's duties to oversee client funds entrusted to his or her care and to keep detailed records and accounts, the violation is deemed wilful, even in the absence of deliberate wrongdoing. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 37. See also, *Guzetta v. State Bar* (1987) 43 Cal.3d 962 [attorney's claim that his mismanagement is not wilful or fraudulent is not a defense to a charge of violating former rule 8-101 [now, rule 4-100] even if no person is injured].)

(6) Count 8 – Not Informing Client of Significant Developments (Section 6068, subd. (m))

In relevant part, section 6068, subdivision (m) requires an attorney to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not informing Minassian about the status of her dissolution of marriage or of her bankruptcy petitions, respondent did not keep her reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

(7) Count 9 – Not Returning Unearned Fees (Rule 3-700(D)(2))

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. This rule does not apply to true retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a matter.

There is insufficient evidence that respondent failed to return unearned fees of $1,000 in Minassian's marriage dissolution matter and fees and costs of $710 in Minassian's bankruptcy

matter. The State Bar requested that this count be dismissed in the interest justice. Therefore, count nine is dismissed with prejudice.

4. Case No. 04-O-15451 - Count 10 (The Fernando Mendoza Matter)

a. Facts

In June 2004, Fernando Mendoza employed respondent to prepare and file a Chapter 7 bankruptcy. Szalonek was assigned to work on the case. Fernando paid $500 cash to Oberhuber and $200 cash to Szalonek. Both payments were reported to respondent on the weekly reporting forms.

Fernando dealt exclusively with respondent's Santa Ana office with regard to his bankruptcy and DUI matters.

Fernando's chapter 7 bankruptcy petition was filed on September 29, 2004, and he received his discharge in bankruptcy in January 2005.

During a conversation with Oberhuber about his bankruptcy matter, she told him to take $19,000 from his 401(K) plan and give it to her for protection. She would return the money once his bankruptcy case had ended. Acting on Oberhuber's instructions, Fernando withdrew $19,000 from 401(K) and got a cashier's check for that amount made out to respondent, which he gave to Oberhuber in July 2004. He gave her the money because he trusted her. She deposited the money in respondent's Wells Fargo general account. Fernando never received any of the $19,000 after he gave it to Oberhuber. His funds were misappropriated. When Fernando later met respondent and asked for his money, respondent said that he did not have it.

On November 22, 2004, respondent became aware that Oberhuber had misappropriated Fernando's funds and reported it to the State Bar by letter directed to a State Bar investigator.

b. Legal Conclusions

(1) Count 10 - Competence (Rule 3-110(A))

The court finds by clear and convincing evidence that respondent wilfully violated rule 3-110(A) by not properly supervising his business bank accounts and his staff in the handling of Fernando Mendoza's bankruptcy matter. Oberhuber, respondent's employee, advised Fernando to hide assets thereby exposing him to possible criminal and civil liability.

(2) Count 11 - Moral Turpitude (Section 6106)

The court finds by clear and convincing evidence that respondent wilfully violated section 6106 by acting with gross negligence in supervising his office and business bank accounts, resulting in commingling client funds in his general account and misappropriating $19,000 of Fernando's funds.

5. Case No. 04-0-15491 - Counts 12 and 13 (The Juan Mendoza Matter)

a. Facts

In March 2004, Juan Mendoza employed respondent to represent him in a marital dissolution matter. Juan authorized charges on his credit card of $500 on March 23, 2004 and $2,000 on the next day to pay respondent's advanced fees. Those charges were reported to respondent on the weekly reporting forms.

Juan first met with Anna Sanchez at respondent's Santa Ana office and later met with Szalonek. Eventually, he communicated with Oberhuber who would inform him of the progress of his case once or twice a week.

On May 2004, Oberhuber asked Juan for authorization to charge $5,000 to his credit card to open an escrow for the refinancing of his house and said that an adjustment would be made at the end of the case. Juan authorized this charge. Although not an attorney, Oberhuber advised

Juan that if he wanted to keep his house, he should refinance it and then pay his spouse her interest in it.

In June 2004, Oberhuber charged an additional $3,000 to Juan's credit card without his authorization. Later, Juan asked respondent for the return of the remaining $3,000. Although respondent promised to return the funds, Juan has not received any of the $3,000.

On November 22, 2004, respondent became aware that Oberhuber charged $8,000 against Juan's credit card and reported it to the State Bar by letter to a State Bar investigator.

Respondent completed work on Juan's marital dissolution matter in January 5, 2005.

In January 2005, Oberhuber paid Juan $5,000 by cashier's check. Respondent still has not paid him the $3,000 as promised.

b. Legal Conclusions

(1) Count 12 - Competence (Rule 3-110(A))

The court finds by clear and convincing evidence that respondent wilfully violated rule 3-100(A). By not properly supervising his business bank accounts and staff, respondent is culpable of not performing legal services with competence. The lack of supervision allowed Oberhuber the opportunity to give Juan Mendoza legal advice and to make unauthorized charges to his credit card.

(2) Count 13 - Moral Turpitude (Section 6106)

The court finds by clear and convincing evidence that respondent wilfully violated section 6106. He was grossly negligent in the supervision of his business bank accounts and staff, respondent is culpable of committing an act or acts of moral turpitude. He facilitated the unauthorized practice of law and the misappropriation of client funds by his lax supervision.

6. Case No. 04-O-15491 - Counts 14, 15, 16 and 17 (The Taylor Matter)

a. Facts

On March 29, 2002, a default judgment for $15,923.79 was entered against Stanya Taylor. (Orange County Superior Court case no. 01SL05466).

In August 2004, Taylor's employer was served with an order to garnish Taylor's wages.

On September 1, 2004, Taylor employed respondent to represent her in regarding the wage garnishment. Taylor spoke with Oberhuber at respondent's Santa Ana office and paid her an advance fee of $500.

On that same day, Oberhuber represented to Taylor that she had negotiated a settlement of $8,000 with Chrysler Financial, the judgment creditor. Taylor gave Oberhuber a personal check for $8,000. Oberhuber deposited it into the Bank of the West general account. She gave Taylor a copy of check no. 5051 in the amount of $8,000 drawn on the Bank of the West account and made payable to Chrysler's attorneys, Patenaude & Felix. Oberhuber never sent check no. 5051 to Patenaude & Felix.

On that same day, Oberhuber contacted Taylor and told her that it was necessary to wire-transfer the settlement funds to the Bank of the West account because Chrysler would not accept a check. Oberhuber represented to Taylor that she would receive a refund of the $8,000 that had previously been deposited into that account. On September 2, 2004, Taylor wire-transferred $8,000 into the Bank of the West account.

On September 24, 2004, Oberhuber tendered to Taylor check no. 1043 drawn on the Wells Fargo Bank trust account, CTA 2, in the amount of $8,000. This check was honored.

On September 21, 2004, Taylor received check no. 5052 drawn on the Bank of the West account in the amount of $8,000. This check was not honored as Oberhuber had closed the account on September 14, 2004 with a zero balance.

On October 13, 2004, Oberhuber issued Taylor check no. 1300 in the amount of $9,000 from her personal checking account at Union Bank. This check was dishonored due to insufficient funds.

In March 2005, Oberhuber made restitution to Taylor in the amount of $9,000.

Respondent never refunded Taylor's $500 advanced fee.

(b) Legal Conclusions

(1) Count 14 - Competence (Rule 3-110(A))

The court finds by clear and convincing evidence that respondent wilfully violated rule 3-110(A) by not supervising his staff. In the Taylor matter, due to his lax supervision, he allowed Oberhuber to deal directly with his client and to negotiate a refund with his client. He also did not take any steps to negotiate a resolution with Chrysler on Taylor's behalf. Accordingly, respondent intentionally, recklessly or repeatedly did not perform legal services with competence in wilful violation of rule 3-110(A).

(2) Count 15 - Not Maintaining Client Funds in Trust Account (Rule 4-100(A))

The court finds by clear and convincing evidence that respondent wilfully violated rule 4-100(A) by not maintaining Taylor's $16,000 in a client trust account.

(3) Count 16 - Moral Turpitude (Section 6106)

The court finds by clear and convincing evidence that respondent wilfully violated section 6106. Taylor issued checks and wired deposits to respondent's staff in the amount of $16,000 which Oberhuber deposited into an account opened under respondent's name but with Oberhuber as the signatory. There is no evidence that respondent was aware of this account at the time of the Taylor matter. Oberhuber was able to open this account and place Taylor's funds into the account without detection due to respondent's gross negligence in supervision of his office staff and the supervision of his checking accounts. Respondent was required to, but did

not, ensure that Taylor's funds totaling $16,000 were deposited and held in a client trust account. He was grossly negligent in supervising his staff and accounts resulting in the misappropriation of $16,000 of Taylor's funds. Accordingly, he committed acts of moral turpitude in wilful violation of section 6106.

(4) Count 17 – Not Refunding Unearned Fees (Rule 3-700(D)(2))

The court finds that there is clear and convincing evidence that respondent wilfully violated rule 3-700(D)(2) by not returning Taylor's $500 advanced fee.

7. Case No. 04-O-15505 - Count 21 (The Garcia Matter)

a. Facts

On July 15, 2004, Caroline Tomasino employed respondent to defend her husband Saul Garcia in a domestic violence criminal matter. He already was on probation for a prior offense and had been represented by the public defender. Tomasino paid respondent $1,500 to represent Garcia in all aspects of the new criminal matter through the preliminary hearing. An arraignment was set for July 21, 2004.

On July 21, 2004, Garcia was represented at the arraignment by the public defender. Respondent was late and was not present when Garcia's case was called. Garcia pled guilty to the probation violation. He was represented by the public defender thereafter in all of the subsequent aspects of these proceedings.

In a January 2005 letter to the State Bar, respondent said that he had refunded $1,000 to Tomasino and had retained $500 for his court appearance. Respondent never refunded the $1,000 to Tomasino.

b. Legal Conclusions

(1) Count 21 – Not Refunding Unearned Fees (Rule 3-700(D)(2))

The court finds, as stipulated by the parties, that respondent wilfully violated rule 3-700(D)(2) by not promptly returning the $1,000 unearned fee that Tomasino had paid for the Garcia matter.

8. Case No. 04-O-15816 - Count 22 (The Olivares Matter)

a. Facts

On October 15, 2002, Nabor Olivares employed respondent to represent him in a dissolution of marriage. (*Olivares v. Olivares*, Orange County Superior Court case no. 02D00597.) Olivares paid respondent $1,200 as a deposit for advanced fees and costs.

On February 8, 2003, attorney Roland Rubalcava, who represented Caroline Olivares sent Galyean a letter stating that the Olivares' biggest asset was the family residence.

Between April 1 and August 7, 2003, Nabor represented himself while he and Caroline attempted a reconciliation.

On August 7, 2003, Nabor again employed respondent and Galyean to represent him in the dissolution and paid respondent an additional $2,000 in advanced fees and costs.

On May 13, 2004, respondent's associate Szalonek substituted in for Galyean as attorney of record in the Olivares dissolution.

On May 14, 2004, Szalonek filed an application seeking an order that the family residence be sold.

On July 19, 2004, a grant deed was recorded in Orange County purportedly transferring the family residence from Nabor and Caroline to Xanthia Bao Tran. The signatures of Nabor and Caroline on the grant deed were forged. The grant deed purportedly was notarized by

Szalonek and witnessed by Oberhuber. Szalonek did not notarize the grant deed , but his seal and stamp was used without his knowledge or permission.

Concurrently with the recordation of the fraudulent grant deed, an interspousal grant deed was recorded on July 19, 2004, purportedly transferring the family residence to Tran from her spouse as Tran's sole and separate property.

On July 27, 2004, Rubalcava sent a letter to respondent's Santa Ana office addressed to Szalonek informing him that the deeds recorded against the Olivares' family residence were fraudulent.

On April 20, 2007, respondent represented Olivares in the trial of his marital dissolution matter. The court found that grant deed forged by Oberhuber was void, thus making the family residence community property.

b. Legal Conclusions

(1) Count 22 - Competence (Rule 3-110(A))

The court finds, as stipulated by the parties, that respondent wilfully violated rule 3-110(A) by not supervising his staff. Due to his lax supervision, Oberhuber assisted in the falsifying the grant deed and respondent facilitated the illegal transfer of the Olivares' family residence to a third party by using forged signatures and a falsified notary stamp as well as by Oberhuber's false testimony. Accordingly, respondent intentionally, recklessly or repeatedly did not perform legal services with competence.

9. Case No. 04-O-15817 - Counts 23, 24 and 25 (The Rodriguez Matter)

a. Facts

On March 9, 2004, Nelly Rodriguez employed respondent to represent her sister Mara and Ismael Rodriguez in a criminal case. (*United States v. Rodriguez*, United States District

Court, Central District of California, case no. 04-CR-262.) Nelly paid respondent $20,000 in advanced fees for Mara's representation and $20,000 for Ismael's representation.

In July 2004, someone advised Mara's sister, Erika Castaneda Chaires, that respondent could get Mara out of custody by posting $100,000 bail. Oberhuber instructed Chaires to wire-transfer the funds to CTA 2.

On August 29, 2004, Nelly Rodriguez delivered of $25,000 to respondent's Santa Ana office.

Between about August 17 and 29, 2004, another member of the Rodriguez family made a separate delivery of $25,000, respondent's Santa Ana office.

On September 8, 2004, Chaires wire-transferred a total of $50,000 into the Bank of the West general account. Chaires sold her house to help raise the $100,000. Respondent telephoned Chaires on numerous occasions asking for the $100,000 and more, for Mara's case. After sending the money, respondent told Chaires that he would file the bond motion.

Szalonek filed an application on behalf of Mara for reduction of bail. The application was opposed by the United States and denied by the court on August 17, 2004. A further bond hearing was held on September 21, 2004, and bail was again denied. Respondent never obtained Mara's or Ismael's release and the $100,000 was not used for that purpose.

In October 2004, Chaires requested that the $100,000 she provided be returned.

On October 4, 2004, Oberhuber issued and signed check no. 1121 in the amount of $100,000 drawn on CTA 2 and transmitted it to Chaires. It was not honored due to insufficient funds. On October 4, 2004, the balance in the CTA 2 was $9,329.68.

On October 7, 2004, Oberhuber issued check no. 1111 drawn on CTA 2 in the amount of $100,000 payable to Chaires's attorney, Simon Etehad. Oberhuber signed respondent's name to

this check. The check was not honored due to insufficient funds. On October 7, 2004, the balance in CTA 2 was $2,089.68.

On October 24, 2004, attorney Simon Etehad wrote to respondent and informed him that his services were terminated and that Etehad was representing Mara. He also asked respondent for an accounting of the $20,000 in fees he had been paid to represent Mara.

On October 29, 2004, respondent acknowledged Etehad's letter but did not account for or return any part of the $20,000. Respondent did not earn these funds. The record shows that respondent performed some work on behalf of Mara and Ismael. However, whatever worked performed on their behalf appears to have been of little or no value to his clients.

b. Legal Conclusions

(1) Count 23 – Not Maintaining Client Funds in Trust Account (Rule 4-100(A))

The court finds by clear and convincing evidence that respondent wilfully violated rule 4-100(A) by not maintaining $100,000 held on behalf of his clients in a trust account.

(2) Count 24 – Not Refunding Unearned Fees (Rule 3-700(D)(2))

The court finds by clear and convincing evidence that respondent wilfully violated rule 3-700(D)(2) by not returning $20,000 in unearned fees paid to represent Mara, Respondent is culpable of not promptly returning any part of fee paid in advance that has not been earned.

(3) Count 25 - Moral Turpitude (Section 6106)

The court finds by clear and convincing evidence that respondent wilfully violated section 6106 by misappropriating the $100,000 bond money. He did not return the funds even though no bond was posted. Accordingly, respondent is culpable of an act of moral turpitude.

10. Case No. 05-O-00037 - Count 27 (The Hernandez Matter)

a. Facts

On June 15, 2000, Modesto Hernandez employed respondent to represent Isidro Calderon Hernandez in a murder case. (*People v. Hernandez*, Orange County Superior Court case no, 99NF2320.) Modesto met with Oberhuber and paid $1,000 as advanced fees for respondent's services.

Respondent did not perform any services in the criminal matter, did not meet with Isidro to discuss the case or communicate with Modesto or Isidro. He did not make any appearances in the case.

Modesto sued respondent for a full refund of the $1,000 he paid Oberhuber to retain respondent's services. On July 26, 2000, a civil judgment was entered against respondent for $1,000 plus $20 in court costs. (*Hernadez v. Rodriguez*, Orange County Superior Court case no. 00CS004200.)

On September 19, 2000, respondent , as a judgment debtor, was ordered to appear in court on November 6, 2000, regarding enforcement of the judgment against him. Although he had been given timely notice of the November 6 examination, he did not appear.

Respondent did not pay the Hernandez judgment.

b. Legal Conclusions

(1) Count 27 – Not Refunding Unearned Fees (Rule 3-700(D)(2))

The parties stipulated that respondent is culpable of wilfully violating rule 3-700(D)(2) by not refunding $1,000 to Modesto Hernandez after respondent's employment was terminated.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

The record establishes one mitigating factor. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,[2] std. 1.2(e).) Respondent cooperated with local law enforcement authorities in the investigation and prosecution of Oberhuber.

B. Aggravation

The record establishes several factors in aggravation. (Std. 1.2(b).).

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

On March 24, 2005, the Supreme Court filed order no. S130487 (State Bar Court case nos. 02-O-10727; 02-O-10830; 02-O-12567; 03-O-01914; and 03-O-03701) imposing discipline of one year's stayed suspension and three years' probation on conditions, including 30 days' actual suspension. In five matters, respondent stipulated to wilfully violating rule 4-100(A) (two counts)[3]; section 6068, subdivision (o)(3); rule 3-110(A); rule 3-700(D)(2); and section 6068, subdivision (a). There were no aggravating factors. In mitigation, the parties stipulated that respondent had no prior disciplinary record and that he was candid, cooperative and remorseful.

On August 12, 2008, the Supreme Court filed order S130487 (State Bar Court case no. 07-PM-10444) imposing discipline consisting of one year's stayed suspension and three years' probation on conditions including six months' actual suspension for noncompliance with various probation violations, including not timely filing quarterly CPA reports regarding his trust account and commingling nonclient funds in his trust account. In aggravation, the court

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

[3] The court notes that one of these counts was for issuing a trust account check against insufficient funds. The other was for depositing client funds into Oberhuber's personal bank account in 2001. This is similar misconduct to that in the present case. As part of the probation conditions ordered in this case, respondent was required to complete the State Bar's Client Trust Accounting School and to submit a CPA report quarterly to the State Bar's Office of Probation regarding the state of his client trust account.

considered multiple acts of misconduct, one prior instance of discipline, the Office of Probation's repeated attempts to secure respondent's compliance with probation conditions and an uncharged violation of not maintaining accurate trust account records. This court agrees with respondent's contention that the effect of this case as an aggravating factor should be discounted since the misconduct in that case occurred subsequently to that in the instant case. Thus, the 2008 disciplinary matter did not serve to put respondent on notice that he should conform his behavior to meet ethical standards. (Cf. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal.State Bar Ct. Rptr. 602, 619.)

Respondent's multiple acts of misconduct are an aggravating factor. Further, a pattern of misconduct is established regarding respondent's lack of supervision of his employees and his office finances which resulted in many checks being issued without insufficient funds and with client funds being misappropriated, among other things. (Std. 1.2(b)(ii).)

Respondent's testimony in this matter was found to lack candor and he has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(iii), (v).) He blames others for his failure to supervise his employees and trust accounts. However, as the record clearly indicates, respondent abdicated his responsibility for the supervision of the Santa Ana office to Oberhuber, a person he described as a once-trusted employee and, later, as a criminal and liar. Moreover, at trial, respondent admitted that he never reviewed his Union Bank trust account records. Further, he stated that he purchased money orders with client funds and stored the money orders in client files on a shelf in his office. At minimum, respondent's lack of oversight of Oberhuber and his Santa Ana office constitutes acts of gross negligence.

Respondent was not candid in his testimony that he was not aware of Oberhuber's misconduct until October 12, 2004, when he received Blum's letter informing him that Blum's

client was owed $10,000. The record reveals, however, that respondent was put on notice that his "trusted employee," Oberhuber, was suspected of financial misconduct long before October 2004. As early as 2002, attorneys Mark Kim and Wayne Wilhelm, respondent's then-employees, spoke with respondent concerning their suspicions of Oberhuber's conduct. Respondent was warned again of problems concerning Oberhuber by Szalonek, who complained to respondent between May and October 2004 of bounced paychecks. In addition, Julio Reyes notified respondent in September or October 2004 of the missing $100,000 that was to be used for Mara Rodriguez's bond. Respondent's reaction to these allegations of misconduct against Oberhuber was consistent: he did nothing to investigate the allegations against her or to supervise her conduct. Respondent chose to ignore these warning signals and then professed ignorance to any problems concerning Oberhuber misconduct prior to Blum's letter.

Respondent's testimony that Oberhuber was a trusted employee and that he was not aware of her misconduct until October 2004 is also refuted by respondent's first disciplinary record in which respondent stipulated that in 2001 Marisela R., deposited advanced fees and costs directly into Oberhuber's personal checking account.

Respondent's claim that he acted responsibly in the supervision of the Santa Ana office because he hired attorneys to supervise the office is also rejected. Respondent employed recently-admitted members of the Bar to work in the Santa Ana office. The testimony of these attorneys establishes that they possessed little knowledge in how to supervise an office; had little authority over the daily operation of the office, especially in dealing with Oberhuber; and, when they approached respondent with their suspicions regarding Oberhuber's conduct, they were ignored. Respondent seeks to place the blame for the lack of supervision of Oberhuber on these inexperienced attorneys. However, the record clearly establishes that it was respondent who bore this responsibility and failed in his duty.

Respondent's misconduct harmed significantly a client, the public or the administration of justice. (Std. 1.2(b)(iv).) Due respondent's gross negligence in the supervision of his office staff and trust accounts, numerous clients were harmed. For example, many of the clients involved had to take steps to try to recuperate their funds. Modesto Hernandez had to sue to try to get his unearned fees back and then went through other proceedings to try to enforce the judgment. They all went without their funds for a period of time. Juan Mendoza also lost the use of a line of credit.

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.)

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).) Discipline is progressive. (Std. 1.7.)

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 one-year "minimum discipline" set forth in the standard "is not faithful to the teachings of [the Supreme] court's decisions" and "should be regarded as a guideline, not an inflexible mandate." (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

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.) Although 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 recommends disbarment. The court agrees. Pursuant to standard 2.2(a), disbarment is recommended because the amounts respondent misappropriated are hardly insignificantly small and mitigating circumstances do not clearly predominate. Further, the court is concerned about respondent's recidivism. Early stirrings of the present misconduct were found in his first disciplinary matter in which client funds were placed in Oberhuber's personal bank account. He was afforded the opportunity of preventing further misconduct by attending CTA school and by compliance with certain probation conditions relating to his CTA. He did not avail himself of the opportunity. Respondent continues to blame others for his misconduct. This increases the chances that he will continue to offend. Accordingly, the court cannot, in good conscience, recommend discipline other than disbarment.

The court also recommends that respondent be ordered to make restitution to those whose funds were misappropriated or whose unearned fees were not returned. "Restitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at p. 1093.)

Under rule 291 of the Rules of Procedure, effective January 1, 2007, (1) respondent must reimburse the Client Security Fund (CSF) to the extent that the misconduct found in the

proceeding results in the payment of funds pursuant to section 6140.5; and (2) unless otherwise ordered by the Supreme Court or unless relief has been granted under these rules, any reimbursement so ordered must be paid within 30 days following the effective date of the final disciplinary order or within 30 days following the CSF payment, whichever is later.

Therefore, the court recommends that respondent be ordered to make restitution as set forth below.

VI. Recommended Discipline

IT IS HEREBY RECOMMENDED that respondent **STEPHEN ALLAN RODRIGUEZ** be DISBARRED from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

It is recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291):

1. to Fernando Mendoza in the amount of $19,000 plus 10% interest per annum from July 9, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Fernando Mendoza, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. to Juan Mendoza in the amount of $3,000 plus 10% interest per annum from June 5, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Juan Mendoza, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
3. to Caroline Tomasino in the amount of $1,500 plus 10% interest per annum from July 15, 2004 (or to the Client Security Fund to the extent of any payment from

the fund to Caroline Tomasino, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

4. to Erika Castaneda Chaires in the amount of $100,000 plus 10% interest per annum from September 8, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Erika Castaneda Chaires, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

5. to Nelly Rodriguez in the amount of $20,000 plus 10% interest per annum from March 9, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Nelly Rodriguez, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

6. to Modesto Hernandez in the amount of $1,000 plus 10% interest per annum from June 15, 2000 (or to the Client Security Fund to the extent of any payment from the fund to Modesto Hernandez, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and

7. to Stanya Taylor in the amount of $500 plus 10% interest per annum from September 1, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Stanya Taylor, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

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

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in

paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

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.

VII. Order Regarding Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: April 30, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court