

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 04-H-11843; 04-O-14241
)	[04-O-14108; 04-O-15199;
GREGORY A. MORRIS,)	04-O-15642; 05-O-00021]
)	
Member No. 91425,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
)	

INTRODUCTION

The above-entitled consolidated matter was submitted for decision effective November 22, 2005, after the State Bar of California, Office of the Chief Trial Counsel (“OCTC”) waived the hearing in this matter and submitted a brief on the issues of culpability and discipline. At the time this matter was submitted for decision, OCTC was represented by Deputy Trial Counsel Manuel Jimenez. For the reasons set forth below, respondent Gregory A. Morris (“respondent”) had his default entered in both Case No. 04-H-11843 and Case No. 04-O-14241 which were later consolidated by the court.

In light of respondent’s culpability in this proceeding, and after considering any and all aggravating and mitigating circumstances surrounding respondent’s misconduct, the court recommends that respondent be disbarred from the practice of law and that his name be stricken from the roll of attorneys in this state. It is also recommended that respondent be ordered to comply with rule 955 of the California Rules of Court.

PERTINENT PROCEDURAL HISTORY

Case no. 04-H-11843

On May 28, 2004, OCTC filed and properly served a Notice of Disciplinary Charges (“NDC”) on respondent by certified mail, return receipt requested, at his official membership records address (official address) maintained by respondent pursuant to Business and Professions Code section 6002.1, subdivision (a).¹ The copy of the NDC was returned by the U.S. Postal Service bearing the stamp: “Return to Sender- Morris 8477 N. Del Mar Ave., Fresno, CA 93711-6020” (alternate address).² A courtesy copy of the NDC was sent to the alternate address on June 18, 2004, and was not returned as undeliverable or for any other reason.

On June 9, 2004, notice of a status conference scheduled for July 12, 2004, was properly served upon respondent by first-class mail, postage prepaid, at his official address. He did not appear at the status conference, however. On July 13, 2004, an order memorializing the status conference and indicating that the matter would proceed by default was filed and properly served upon respondent at his official address by first-class mail, postage prepaid.

Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)³

On July 8, 2004, a motion for entry of default was properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of actual suspension for one year and until he complied with standard

¹ Future references to section(s) are to the California Business and Professions Code.

² On May 3, 2004, a 20-day letter was mailed to respondent at his official address and was not returned as undeliverable or for any other reason.

³ Unless otherwise indicated, future references to rules are to the Rules of Procedure of the State Bar of California.

1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁴ would be sought if he was found culpable.

On July 13, 2004, a first amended motion for entry of default was properly served on respondent at his official address by certified mail, return receipt requested. A copy was also sent to his alternate address. The motion advised him that minimum discipline of actual suspension for one year and until he complied with standard 1.4(c)(ii) would be sought if he was found culpable.⁵ He did not respond to the motion. On July 29, 2004, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was properly served on him at his official address on that same date by certified mail, return receipt requested. The return receipt card indicated a delivery date of August 10, 2004, and bore the signature purportedly of "Sylvia Morris." Respondent's official address on the return receipt was marked out and the alternate address was inserted.

On August 18, 2004, OCTC filed a request for waiver of hearing and brief on culpability and discipline and properly served them on respondent at his official and alternate addresses.⁶

By order filed and properly served on September 15, 2004, respondent's motion to set aside the default, among other things, was granted and the inactive enrollment terminated. Respondent's proposed answer to the NDC was deemed filed on August 25, 2004, the date he filed the motion.

On September 16, 2004, the court issued an order denying respondent's motion to extend the time to comply with the conditions of his reproof. The order was properly served on him at his official address by first-class mail, postage prepaid, on September 16, 2004.

⁴Unless otherwise indicated, future references to standard or std. are to this source.

⁵ The court grants OCTC's request to judicially notice respondent's official addresses to the date of the filing of this decision. (Evidence Code section 452, subdivision (h).)

⁶Exhibit 1 attached to OCTC's brief is admitted into evidence.

On September 22, 2004, a notice of a status conference to be held on November 15, 2004, was properly served on respondent at his official address by first-class mail, postage prepaid.

Respondent did not appear at the November 15, 2004, status conference. The next day, he was properly served⁷ with a status conference order at his official address by first-class mail, postage prepaid. The order advised him that a further status conference was set for November 29, 2004. It also indicated that, if he did not file a response by November 28, 2004, his default would be entered.

At the November 29, 2004, status conference, a settlement conference was set for January 28, 2005, followed by a further status conference on January 31, 2005. Respondent was present at this status conference and he was properly served at his official address (incorrect zip code) with an order memorializing same.

Respondent participated at the January 28, 2005, settlement conference. A further settlement conference was set for March 18, 2005. He was properly served at his official address (incorrect zip code) with an order memorializing the settlement conference and also advising him to update his State Bar membership records information.

Respondent did not appear at the January 31, 2005, status conference. On that same day, he was properly served at his official address (incorrect zip code) with an order indicating that a status conference would be held on March 21, 2005.

On February 18, 2005, the court issued an order granting OCTC's unopposed motion to compel respondent to appear at his deposition. The court ordered respondent to appear at his deposition on February 25, 2005, and to produce for inspection and copying all documents and

⁷The declaration for service of this order and some other subsequent documents bore an incorrect zip code (93705 rather than 93703). The error is insignificant. Respondent appeared at the November 29 status conference and participated in other matters as well. Documents which contain this error will be indicated by the parenthetical notation (incorrect zip code).

things responsive to OCTC's request as set forth in the notice of deposition. Respondent was also warned that he would be subject to sanctions if he did not appear for his deposition. He was specifically advised that, if he did not appear for his deposition, the court would consider striking his answer to the complaint and proceeding by default. The order was properly served on respondent on February 18, 2005, at his official address (incorrect zip code).

On March 1, 2005, OCTC filed and properly served a motion for terminating sanctions for respondent's failure to appear for his deposition.⁸ It was served on respondent at his current official address and at his previous official address on E. Mariner's Circle in Fresno.⁹

Respondent appeared at the March 21, 2005, status conference. The next day, he was properly served with an order at his official address (incorrect zip code) by first-class mail, postage prepaid. The order advised him that a status conference had been scheduled for April 4, 2005, and further noted that his attorney must be in court on April 4 or the court would file an order of terminating sanctions. The order was not returned as undeliverable.

Respondent did not appear at the April 4, 2005, status conference but counsel Carole Langford ("Langford") did. Langford and other counsel, Thomas R. Jones ("Jones"), were served with the post-status conference order. Another status conference was set for the next day, April 5, 2005, to determine whether respondent had an attorney who was willing to enter a general appearance, otherwise the court would issue an order of terminating sanctions.

At the April 5, 2005, status conference, respondent did not appear personally but counsel Jones did. Respondent was ordered to attend his deposition prior to the next settlement conference on May 2, 2005.

⁸On February 25, 2005, more than two hours after the deposition was scheduled to commence, respondent sent or caused to be sent correspondence via facsimile indicating that he was in the process of retaining counsel and that he would not be attending his deposition.

⁹Respondent's official address changed on November 15, 2004.

On May 2, 2005, OCTC filed a motion for terminating sanctions due to respondent's failure to comply with discovery orders by not attending his deposition.

Respondent appeared with Langford and Jones at a settlement conference held on May 4, 2005. Another settlement conference was scheduled for May 16, 2005. Respondent did not appear at the May 16, 2005, settlement conference.

On May 24, 2005, the court issued an order which was properly served on Jones and Langford setting a status conference for June 6, 2005, and otherwise memorializing the status conference held on May 23, 2005. Respondent did not appear at the May 23, 2005, status conference. The court's order noted that Jones would be filing a motion to withdraw as counsel and that the court would issue an order regarding terminating sanctions by June 8, 2005.

Respondent did not appear at the June 6, 2005, status conference. Jones did appear. On that same date, respondent was properly served with a status conference order at his official address by first-class mail, postage prepaid. The order indicated that Jones was relieved as counsel. It also advised respondent that an order to show cause (OSC) was set for June 13, 2005, due to his failure to appear at two settlement conferences and two status conferences. It also advised him that if he did not appear at the OSC, the court would strike his answer and proceed by default. The order was returned as undeliverable by the United States Postal Service. The envelope bore a sticker stating: "Return to sender. Moved left no address. Unable to forward. Return to sender."¹⁰

Respondent did not appear at the June 13 OSC. On June 14, 2005, he was properly served with a status conference order at his official address by first-class mail, postage prepaid,

¹⁰Future references to return sticker are to Postal Service stickers containing these same statements.

advising him that his answer had been stricken and that the matter would proceed by default. The order was returned as undeliverable and bore a return sticker.

On June 21, 2005, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was properly served on him at his official address on that same date by certified mail, return receipt requested. The order was returned as undeliverable and bore a return sticker.

On August 29, 2005, respondent filed a motion to abate and continue the case and vacate the default, among other things. Respondent used a Cedar Avenue address in Fresno as his address on the caption of the pleading. By order filed on October 4, 2005, the court denied this motion. Respondent was properly served with the order at his official address and the Cedar Avenue address by first-class mail, postage prepaid. Only the copy sent to Cedar Avenue was returned as undeliverable. That envelope bore a stamp stating "return to writer."

Case No. 04-O-14241

The NDC was filed and properly served on respondent on June 29, 2005, at his official address, by certified mail, return receipt requested.

On July 8, 2005, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on August 22, 2005. This correspondence was returned as undeliverable and bore a return sticker.

Respondent did not appear at the August 22 status conference. The next day, he was properly served with a status conference order at his official address by first-class mail, postage prepaid. The order advised him that the matter was to proceed by default. This correspondence was returned as undeliverable and bore a return sticker.

Respondent did not file a responsive pleading to the NDC. On August 25, 2005, a motion for entry of default was properly served on respondent at his official address by certified

mail, return receipt requested. It was filed on August 26, 2005. The motion advised him that minimum discipline of disbarment would be sought if he was found culpable. He did not respond to the motion.

On September 16, 2005, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was properly served on him at his official address on that same date by certified mail, return receipt requested, and a courtesy copy was also sent to the Cedar Avenue address. Only the copy sent to Cedar Avenue was returned as undeliverable. That envelope contained the handwritten notation: "This person does not live here."

Both Cases

On October 4, 2005, the court filed and properly served an order consolidating the two cases and submitting both cases for decision on October 6, 2005. The order was properly served on him at his official address on that same date by first-class mail, postage prepaid, and a courtesy copy was also sent to the Cedar Avenue address. Only the copy sent to the official address was returned as undeliverable and bore a return sticker.

On November 22, 2005, OCTC filed a request for a wavier of the hearing in the matter and brief on the issues of culpability and discipline.

On December 2, 2005, the court filed and properly served on respondent an order regarding the submission date. The order was properly served on him at his official and Cedar Avenue addresses on that same date by first-class mail, postage prepaid. Only the copy sent to the official address was returned as undeliverable and bore a return sticker.

The matter was submitted for decision without hearing on November 22, 2005.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 18, 1979, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Facts - Case No. 04-H-11843 – Count One - Failure to Comply with Repeal Conditions

On December 19, 2002, the State Bar Court filed the Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving Private Repeal in *In the Matter of Gregory A. Morris*, case number 02-O-10657 ("Stipulation"). The Stipulation ordered that respondent be privately repealed upon various conditions.

Among the conditions of repeal ordered by the Court were the following:

a. Respondent would attend Ethics School and provide proof of passage of the test given at the end of such session to the Probation Unit of the Office of the Chief Trial Counsel within one year of the effective date of the court's order; and

b. Respondent would submit written quarterly reports signed under penalty of perjury, to the Probation Unit on each January 10, April 10, July 10, and October 10 of the condition period attached to the repeal. If the first quarterly report would cover less than 30 days, that report was to be submitted on the next following quarter date and cover the extended period. In addition, a final report was due no earlier than 20 days before the last day of the condition period. The condition period of the repeal would be one year.

The repeal became effective January 9, 2003.

On or about December 19, 2002, a copy of the approved Stipulation was properly served upon respondent at his official State Bar membership address of record, by a case administrator of the State Bar Court, by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return this item as undeliverable or for any other reason.

On or about January 9, 2003, an employee of the Probation Unit sent respondent a letter outlining respondent's obligations pursuant to the Stipulation, along with a copy of the relevant

portions of the Stipulation. This letter was properly mailed to respondent at his official State Bar membership address of record by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return this item as undeliverable or for any other reason.

On or about November 12, 2003, an employee of the Probation Unit contacted respondent by telephone and advised respondent that his July 10 and October 10 quarterly reports were defective. On or about the same date, the Probation Unit employee faxed to respondent a copy of the appropriate quarterly report form and advised respondent to resubmit the quarterly reports.

To date, respondent has neither resubmitted the required written quarterly reports due July 10 and October 10, 2003, nor filed his final report which was due no later than January 9, 2004.

As of May 28, 2004, respondent had not filed a motion to extend the time to file the required quarterly reports.

As of May 28, 2004, respondent has not provided proof of attending Ethics School.

As of May 28, 2004, respondent has not filed a motion to extend time to attend Ethics School.

Conclusion of Law – Case No. 04-H-11843 - Count One - Rule 1-110 of the Rules of Professional Conduct¹¹

OCTC proved by the clear and convincing evidence that respondent wilfully violated rule 1-110. Rule 1-110 provides that an attorney must comply with conditions attached to reprovls. Respondent wilfully violated rule 1-110 by: (1) failing to resubmit the quarterly reports that were due July 10 and October 10, 2003; (2) failing to submit the final report due no later than January 9, 2004; and (3) failing to provide proof of his attendance at Ethics School.

¹¹Unless otherwise indicated, all further references to rules refer to the Rules of Professional Conduct of the State Bar of California.

Facts - Case No. 04-O-14241 – Count One - State Bar Investigation

At all times relevant to Count One of this Notice of Disciplinary Charges, respondent maintained client trust account 16646-03021 at Bank of America ("trust account").

Between April 2004 through October 2004, respondent issued checks from the trust account when he knew or reasonably should have known that there were insufficient funds in the account to allow the bank to honor the checks when presented for payment, inclusive of the following:

1. Respondent issued a counter check in the amount of \$60.00. The counter check was presented for payment on or about April 27, 2004, when the trust account balance was \$28.88.

2. Respondent issued a counter check in the amount of \$50.46. The counter check was presented for payment on or about April 29, 2004, when the trust account balance was \$14.88.

3. Respondent issued a counter check in the amount of \$60.00. The counter check was presented for payment on or about May 3, 2004, when the trust account balance was \$.88.

4. Respondent issued check number 1001 in the amount of \$230.00. Check number 1001 was presented for payment on May 18, 2004, when the trust account balance was \$86.42.

5. Respondent issued check number 2823 in the amount of \$65.00. Check number 2823 was presented for payment on May 18, 2004, when the trust account balance was \$56.42.

6. Respondent issued check number 2857 in the amount of \$250.00. Check number 2857 was presented for payment on June 24, 2004, when the trust account balance was \$50.84.

7. Respondent issued check number 2851 in the amount of \$400.00. Check number 2851 was presented for payment on June 30, 2004, when the trust account balance was

\$147.84. Check number 2851 was presented for payment a second time, on July 6, 2004, when the trust account balance was \$73.84.

8. Respondent issued check number 2859 in the amount of \$200.00. Check number 2859 was presented for payment on June 30, 2004, when the trust account balance was \$147.84. Check number 2859 was presented for payment a second time, on July 6, 2004, when the trust account balance was \$73.84.

9. Respondent issued check number 2883 in the amount of \$200.00. Check number 2883 was presented for payment on July 1, 2004, when the trust account balance was \$81.84. Check number 2883 was presented for payment a second time, on July 7, 2004, when the trust account balance was \$-12.16.

10. Respondent issued check number 2852 in the amount of \$100.00. Check number 2852 was presented for payment on July 8, 2004, when the trust account balance was \$-45.16.

11. Respondent issued check number 2913 in the amount of \$28.47. Check number 2913 was presented for payment on August 9, 2004, when the trust account balance was \$.10. Check number 2913 was presented for payment a second time on August 11, 2004, when the trust account balance was \$-65.90.

12. Respondent issued check number 2912 in the amount of \$42.36. Check number 2912 was presented for payment on August 10, 2004, when the trust account balance was \$-32.90. Check number 2912 was presented for payment a second time on August 12, 2004, when the trust account balance was \$-98.90.

Respondent also caused an electronic debit to occur on or about August 25, 2004, in the amount of \$100.00. When the electronic debit was presented for payment the trust account balance was \$100.10. The bank had placed a hold on the funds in the account which included \$7,123.00.

Respondent further caused an electronic debit to occur when he issued a counter check on October 21, 2004 in the amount of \$200.00. At the time respondent issued the counter check, there was a hold on his account which included a deposit of \$4,900.00.

Conclusion of Law - Case No. 04-O-14241 – Count One - Business and Professions Code Section 6106

OCTC proved by clear and convincing evidence that respondent wilfully violated Business and Professions Code section 6106. Section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption constitutes a cause for suspension or disbarment. By issuing checks and counter checks, and causing electronic debits from the trust account when he knew or reasonably should have known that there were insufficient funds in the account to allow the bank to honor the checks, counter checks and electronic debits when presented for payment, respondent committed acts involving moral turpitude, dishonesty or corruption in wilful violation of section 6106.¹²

Facts - Case No. 04-O-14241 – Count Two - State Bar Investigation

At all relevant times, respondent maintained client trust account 16646-03021 at Bank of America (“trust account”).

From April 2002 through December 2004, respondent caused 191 electronic debits/withdrawals totaling \$171,552.55 in cash to be issued from his client trust account for personal and non-client related business purposes.

From November 2003 through August 2004, respondent issued at least seven checks and payments from the trust account totaling \$2,114.61 for personal and non-client related business purposes.

Conclusion of Law - Case No. 04-O-14241 – Count Two - Rule 4-100(A)

OCTC proved by clear and convincing evidence that respondent wilfully violated rule 4-100(A). Rule 4-100(A) requires that all funds received or held for the benefit of clients, including advances for costs and expenses, must be deposited and maintained in an identifiable bank account which is properly labeled as a client trust account. With limited exceptions not applicable here, no funds belonging to the attorney can be deposited or commingled in a client trust account. Except for narrow exceptions set forth in rule 4-100(A), trust accounts are not to

¹²The court will not base culpability in this matter on the electronic debits as there is no clear and convincing evidence that respondent was aware of the hold on the account.

be used for personal purposes. (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54 [referring to rule 8-101(A), the precursor of rule 4-100(a)].) Respondent wilfully violated rule 4-100(A) by improperly withdrawing cash, issuing checks and making payments from the trust account for both his own personal and non-client related business purposes.

Facts - Case No. 04-O-14241 – Count Three - State Bar Investigation

At all relevant times, respondent maintained client trust account 16646-03021 at Bank of America (“trust account”).

From November 2002 through December 2004, respondent deposited or caused to be deposited his own personal funds totaling \$27,853.58 into the trust account as follows:

1. On or about November 18, 2002, respondent deposited the sum of \$4,000.00 from Matt Morris into his client trust account.
2. On or about December 27, 2002, respondent deposited the sum of \$100.00 from a transfer into his client trust account.
3. On or about December 30, 2002, respondent deposited the sum of \$125.00 in a currency deposit into his client trust account.
4. On or about February 20, 2003, respondent deposited the sum of \$200.00 in a currency deposit into his client trust account.
5. On or about June 27, 2003, respondent deposited the sum of \$4,000.00 from Matt Morris into his client trust account.
6. On or about October 30, 2003, respondent deposited the sum of \$108.00 in a currency deposit into his client trust account.
7. On or about January 6, 2004, respondent deposited the sum of \$6,000.00 in a currency deposit into his client trust account.
8. On or about April 19, 2004, respondent deposited the sum of \$892.86 from SCI Funeral Service into his client trust account.
9. On or about April 22, 2004, respondent deposited the sum of \$892.86 from SCI Funeral Service into his client trust account.

10. On or about May 28, 2004, respondent deposited the sum of \$9,100.00 in a currency deposit into his client trust account.
11. On or about July 2, 2004, respondent deposited the sum of \$842.00 from Matt Morris into his client trust account.
12. On or about August 16, 2004, respondent deposited the sum of \$500.00 in a currency deposit into his client trust account.
13. On or about November 10, 2004, respondent deposited the sum of \$100.00 in a currency deposit into his client trust account.
14. On or about December 20, 2004, respondent deposited the sum of \$100.00 in a currency deposit into his client trust account.
15. On or about December 23, 2004, respondent deposited the sum of \$892.86 from SCI Funeral Service into his client trust account.

Conclusion of Law - Case No. 04-O-14241 – Count Three - Rule 4-100(A)

OCTC failed to prove by clear and convincing evidence that respondent wilfully violated rule 4-100(A) by depositing a total of \$27,853.58 of his own personal funds into the trust account from November 2002 through December 2004. As discussed below, the record clearly establishes that during that same time period, respondent misappropriated at least \$161,863.92 from his client trust account. Even though respondent defaulted, the court must nonetheless resolve all reasonable doubts in favor of respondent. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367.) Accordingly, the court must presume that, when respondent deposited \$27,853.58 of his own funds into the trust account, he was making partial restoration of the more than \$161,000.00 he misappropriated. “An attorney’s restoration of funds wrongfully withdrawn from a trust account is not a further violation of the Rules of Professional Conduct as a prohibited ‘commingling’ of attorney and client funds.” (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 978-979.) Accordingly, count three is dismissed with prejudice.

Facts - Case No. 04-O-14241 – Counts Four and Five - State Bar Investigation

At all relevant times, respondent maintained client trust account 16646-03021 at Bank of America (“trust account”).

At all relevant times, respondent represented Emilia Rivera-Rodriguez (“Rivera-Rodriguez”) in an insurance claim matter.

On June 20, 2002, Clarendon National Insurance issued check number 00993123 in the amount of \$2,625.00 to Rivera-Rodriguez and respondent.

Prior to the deposit of Clarendon National Insurance check number 00993123, respondent's trust account balance was \$23,958.26.

On or about July 12, 2002, respondent deposited check number 00993123 from Clarendon National Insurance into his client trust account bringing the balance to \$26,583.26.

At all times from the time of the deposit on July 12, 2002, until respondent gave Rivera-Rodriguez her share of the settlement proceeds, respondent should have maintained the sum of \$1,750.00 (\$2,625.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Rivera-Rodriguez or to any other person or entity for her benefit.

On November 15, 2002, respondent's trust account balance fell to \$180.67.

Respondent misappropriated at least \$1,569.33 (\$1,750.00 - \$180.67) of Rivera-Rodriguez's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Dea Benson (“Benson”) in an insurance claim matter.

On August 19, 2002, Farmers Insurance issued check number 6056030167 in the amount of \$3,253.00 to Benson and respondent.

Prior to the deposit of Farmers Insurance check number 6056030167, respondent's trust account balance was \$14,430.12.

On or about August 27, 2002, respondent deposited check number 6056030167 from Farmers Insurance into his client trust account bringing the balance to \$17,683.12.

At all times from the time of the deposit on August 27, 2002, until respondent gave Benson her share of the settlement proceeds, respondent should have maintained the sum of \$2,168.78 (\$3,253.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Benson or to any other person or entity for her benefit.

On November 15, 2002, respondent's trust account balance fell to \$180.67.

Respondent misappropriated at least \$1,988.11 (\$2,168.78 - \$180.67) of Benson's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Carrier Hodgson ("Hodgson") in an insurance claim matter.

On September 24, 2002, Farmers Insurance issued check number 1056133274 in the amount of \$10,000 to Hodgson and respondent.

Prior to the deposit of Farmers Insurance check number 1056133274, respondent's trust account balance was \$12,271.93.

On or about September 25, 2002, respondent deposited check number 1056133274 from Farmers Insurance into his client trust account bringing the balance to \$22,271.93.

At all times from the time of the deposit on September 25, 2002, until respondent gave Hodgson his share of the settlement proceeds, respondent should have maintained the sum of \$6,667.00 (\$10,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Hodgson or to any other person or entity for his benefit.

On November 15, 2002, respondent's trust account balance fell to \$180.67.

Respondent misappropriated at least \$6,486.33 (\$6,667.00 - \$180.67) of Hodgson's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Jerrie Smithey ("Smithey") in an insurance claim matter.

On October 29, 2002, Allstate Insurance issued check number 90870977 in the amount of \$15,000.00 to Smithey and respondent.

Prior to the deposit of Allstate Insurance check number 90870977, respondent's trust account balance was \$9,419.08.

On or about November 22, 2002, respondent deposited check number 90870977 from Allstate Insurance into his client trust account bringing the balance to \$24,419.08.

At all times from the time of the deposit on November 22, 2002, until respondent gave Smithey his share of the settlement proceeds, respondent should have maintained the sum of \$10,000.00 (\$15,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Smithey or to any other person or entity for his benefit.

On December 26, 2002, respondent's trust account balance fell to \$1,599.04.

Respondent misappropriated at least \$8,400.96 (\$8,400.96- \$1,599.04) of Smithey's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Megan Morris ("Morris") in an insurance claim matter.

On March 3, 2003, First Colony Life Insurance issued check number 1201608184 in the amount of \$55,000.00 to Morris.

Prior to the deposit of First Colony Life Insurance check number 1201608184 respondent's trust account balance was \$8,700.51.

On or about March 7, 2003, respondent deposited check number 1201608184 from First Colony Life Insurance into his client trust account bringing the balance to \$63,700.51.

At all times from the time of the deposit on March 7, 2003, until respondent gave Morris her share of the settlement proceeds, respondent should have maintained the sum of \$36,668.50 (\$55,000 -33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Morris or to any other person or entity for her benefit.

On May 1, 2003, respondent's trust account balance fell to \$1,584.77.

Respondent misappropriated at least \$35,083.78 (\$36,668.50 -\$1,584.77) of Morris's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Alicia Juanita Barajas ("Barajas") in an insurance claim matter.

On June 6, 2003, Prudential Financial issued check number 13655112 in the amount of \$12,000.00 to Barajas and respondent.

Prior to the deposit of Prudential Financial's check number 13655112, respondent's trust account balance was \$7,185.51.

On or about June 13, 2003, respondent deposited check number 13655112 from Prudential Financial into his client trust account bringing the balance to \$19,185.51.

At all times from the time of the deposit on June 13, 2003, until respondent gave Barajas her share of the settlement proceeds, respondent should have maintained the sum of \$8,000.40 (\$12,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Barajas or to any other person or entity for her benefit.

On July 14, 2003, respondent's trust account balance fell to \$296.20.

Respondent misappropriated at least \$7,704.20 (\$8,000.40 - \$296.20) of Barajas's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Mark Butz ("Butz") in an insurance claim matter.

On July 14, 2003, Farmers Insurance issued check number 199212325 in the amount of \$8,000.00 to Butz and respondent.

Prior to the deposit of Farmers Insurance check number 199212325, respondent's trust account balance was \$296.20.

On or about July 15, 2003, respondent deposited check number 199212325 from Farmers Insurance into his client trust account bringing the balance to \$8,296.20.

At all times from the time of the deposit on July 15, 2003, until respondent gave Butz his share of the settlement proceeds, respondent should have maintained the sum of \$5,333.60 (\$8,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Butz or to any other person or entity for his benefit.

On August 4, 2003, respondent's trust account balance fell to \$915.20.

Respondent misappropriated at least \$4,418.40 (\$5,333.60 - \$915.20) of Butz's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented David and Bobbie Mawhorier (“the Mawhoriers”) in an insurance claim matter.

On July 30, 2003, Auto-Owners Insurance issued check number 1-21068991 in the amount of \$75,000.00 to the Mawhoriers and respondent.

Prior to the deposit of Auto-Owners Insurance check number 1-21068991, respondent's trust account balance was \$915.20.

On or about August 7, 2003, respondent deposited check number 1-21068991 from Auto-Owners Insurance into his client trust account bringing the balance to \$75,915.20.

At all times from the time of the deposit on August 7 2003, until respondent gave the Mawhoriers their share of the settlement proceeds, respondent should have maintained the sum of \$50,025.00 (\$75,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made one disbursement to the Mawhoriers on January 9, 2004, in the amount of \$3,000.00; thereafter respondent made no further payments to the Mawhoriers or to any person or entity on their behalf.

On January 6, 2004, respondent's trust account balance fell to \$6,055.57.

Respondent misappropriated at least \$40,946.93 (\$50,025 - \$3,000.00 = \$47,002.50 - \$6,055.57) of the Mawhoriers' share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Darrell Ray Wandell (“Wandell”) in an insurance claim matter.

On August 5, 2003, Farmers Insurance issued check number 1335002186 in the amount of \$13,000.00 to Wandell and respondent.

Prior to the deposit of Farmers Insurance check number 1335002186, respondent's trust account balance was \$75,615.20.

On or about August 8, 2003, respondent deposited check number 1335002186 from Farmers Insurance into his client trust account bringing the balance to \$88,615.20.

At all times from the time of the deposit on August 8, 2003, until respondent gave Wandell his share of the settlement proceeds, respondent should have maintained the sum of \$8,667.10 (\$13,000.00 -33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Wandell or to any other person or entity for his benefit.

On January 9, 2004, respondent's trust account balance fell to \$3,055.57.

Respondent misappropriated at least \$5,611.53 (\$8,667.10 - \$3,055.57) of Wandell's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Ernesto Espinoza, Jr. ("Espinoza") in an insurance claim matter.

On August 26, 2003, Interinsurance Exchange issued check number 6616883 in the amount of \$31,500.00 to Espinoza and respondent.

Prior to the deposit of Interinsurance Exchange's check number 6616883, respondent's trust account balance was \$60,395.20.

On or about September 24, 2003, respondent deposited check number 6616883 from Interinsurance Exchange into his client trust account bringing the balance to \$91,895.20.

At all times from the time of the deposit on September 24, 2003, until respondent gave Espinoza his share of the settlement proceeds, respondent should have maintained the sum of \$21,001.25 (\$31,500.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Espinoza or to any other person or entity for his benefit.

On January 9, 2004, respondent's trust account balance fell to \$3,055.57.

Respondent misappropriated at least \$17,945.68 (\$21,001.25 - \$3,055.57) of Espinoza's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Loretta Battle ("Battle") in an insurance claim matter.

On September 10, 2003, the City of Fresno issued check number 444067 in the amount of \$16,000.00 to Battle and respondent.

Prior to the deposit of City of Fresno check number 444067, respondent's trust account balance was \$ 91,895.20.

On or about September 24, 2003, respondent deposited check number 444067 from the City of Fresno into his client trust account bringing the balance to \$107,895.20.

At all times from the time of the deposit on September 24, 2003, until respondent gave Battle her share of the settlement proceeds, respondent should have maintained the sum of \$10,667.20 (\$16,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made two disbursements on behalf of Battle. The first was on November 7, 2003, to Valley Care Physical Therapy in the amount of \$1,300.00; the second was on November 14, 2003, to Alliance Surgery Center in the amount of \$2,104.73. Thereafter, respondent made no further disbursements to Battle or to any person or entity for Battle's benefit.

On January 9, 2004, respondent's trust account balance fell to \$3,055.57.

Respondent misappropriated at least \$4,206.90 (\$10,667.20 - \$1,300.00 = \$9,367.20 - \$2,104.73 = \$7,262.47- \$3,055.57) of Battle's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Josephine Newchurch ("Newchurch") in an insurance claim matter.

On May 30, 2003, Farmers Insurance issued check number 8198106273 in the amount of \$2,250.00 to Newchurch and respondent.

Prior to the deposit of Farmers Insurance check number 8198106273, respondent's trust account balance was \$69,512.20.

On or about October 3, 2003, respondent deposited check number 8198106273 from Farmers Insurance into his client trust account bringing the balance to \$71,762.20.

At all times from the time of the deposit on October 3, 2003, until respondent gave Newchurch her share of the settlement proceeds, respondent should have maintained the sum of \$1,500.08 (\$2,250.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Newchurch or to any other person or entity for her benefit.

On April 15, 2004, respondent's trust account balance fell to \$88.16.

Respondent misappropriated at least \$1,411.92 (\$1,500.08 - \$88.16) of Newchurch's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Stefon Sykes (“Sykes”) in an insurance claim matter.

On September 5, 2003, Farmers Insurance issued check number 1199213862 in the amount of \$4,000.00 to Sykes and respondent.

Prior to the deposit of Farmers Insurance check number 1199213862, respondent's trust account balance was \$71,762.20.

On or about October 3, 2003, respondent deposited check number 1199213862 from Farmers Insurance into his client trust account bringing the balance to \$75,762.20.

At all times from the time of the deposit on October 03, 2003, until respondent gave Sykes his share of the settlement proceeds, respondent should have maintained the sum of \$2,666.80 (\$4,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Sykes or to any other person or entity for his benefit.

On April 15 2004, respondent's trust account balance fell to \$88.16.

Respondent misappropriated at least \$2,578.64 (\$2,666.80 - \$88.16) of Sykes' share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Jamie Campos (“Campos”) in an insurance claim matter.

On September 8, 2003, Western United Insurance issued check number 377204 in the amount of \$7,000.00 to Campos and respondent.

Prior to the deposit of Western United Insurance check number 377204, respondent's trust account balance was \$70,412.20.

On or about October 14, 2003, respondent deposited check number 377204 from Western United Insurance into his client trust account bringing the balance to \$77,412.20.

At all times from the time of the deposit on October 14, 2003, until respondent gave Campos his share of the settlement proceeds, respondent should have maintained the sum of \$4,666.90 (\$7,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Campos or to any other person or entity for his benefit.

On February 23, 2004, respondent's trust account balance fell to \$108.57.

Respondent misappropriated at least \$4,558.33 (\$4,666.90 - \$108.57) of Campos's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Shelton Wriley ("Wriley") in an insurance claim matter.

On October 22, 2003, Safeco Insurance issued check number 92300011 in the amount of \$5,000.00 to Wriley and respondent.

Prior to the deposit of Safeco Insurance check number 92300011, respondent's trust account balance was \$16,973.09.

On or about November 7, 2003, respondent deposited check number 92300011 from Safeco Insurance into his client trust account bringing the balance to \$21,973.09.

At all times from the time of the deposit on November 7, 2003, until respondent gave Wriley his share of the settlement proceeds, respondent should have maintained the sum of \$3,333.50 (\$5,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Wriley or to any other person or entity for his benefit.

On February 23, 2004, respondent's trust account balance fell to \$108.57.

Respondent misappropriated at least \$3,224.93 (\$3,333.50 - \$108.57) of Wriley's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented the Estate of Glen Morgan ("Morgan") in an insurance claim matter.

On September 8, 2003, RWIC Claims issued check number 222360 in the amount of \$4,000.00 to Morgan and respondent.

Prior to the deposit of RWIC Claims check number 222360, respondent's trust account balance was \$17,947.16.

On or about November 19, 2003, respondent deposited check number 222360 from RWIC Claims into his client trust account bringing the balance to \$21,947.16.

At all times from the time of the deposit on November 19, 2003, until respondent gave Morgan his share of the settlement proceeds, respondent should have maintained the sum of \$2,666.80 (\$4,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Morgan or to any other person or entity for his benefit.

On February 23, 2004, respondent's trust account balance fell to \$108.57.

Respondent misappropriated at least \$2,558.23 (\$2,668.80 - \$108.57) of Morgan's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Brian Elam ("Elam") in an insurance claim matter.

On July 7, 2004, USAA issued check number 76911726 in the amount of \$7,000.00 to Elam and respondent.

Prior to the deposit of USSA's check number 76911726 respondent's trust account balance was \$-78.16.

On or about July 16, 2004, respondent deposited check number 76911726 from USAA into his client trust account bringing the balance to \$6,921.84.

At all times from the time of the deposit on July 16, 2004, until respondent gave Elam his share of the settlement proceeds, respondent should have maintained the sum of \$4,666.90 (\$7,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Elam or to any other person or entity for his benefit.

On July 20, 2004, respondent's trust account balance fell to \$6.84.

Respondent misappropriated at least \$4,660.06 (\$4,666.90 - \$6.84) of Elam's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Benny Hernandez (“Hernandez”) in an insurance claim matter.

Progressive West Insurance issued check number 436047927 in the amount of \$6,669.17 to Hernandez, Medicare and respondent.

Prior to the deposit of Progressive West Insurance's check number 436047927, respondent's trust account balance was \$39.75.

On or about October 15, 2004, respondent deposited check number 436047927 from Progressive West Insurance into his client trust account bringing the balance to \$6,708.92.

At all times from the time of the deposit on October 15, 2004, until respondent gave Hernandez his share of the settlement proceeds, respondent should have maintained the sum of \$4,446.34 (\$6,669.17 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Hernandez or to any other person or entity for his benefit.

On November 15, 2004, respondent's trust account balance fell to \$2.92.

Respondent misappropriated at least \$4,443.42 (\$4,446.34- \$2.92) of Hernandez's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Sheldon Scruggs (“Scruggs”) in an insurance claim matter.

On November 23, 2004, Granite State Insurance issued check number 02235148 in the amount of \$2,500.00 to Scruggs, Brian O'hara, Esq., and respondent.

Prior to the deposit of Granite State Insurance's check number 02235148 respondent's trust account balance was \$2.92.

On or about November 29, 2004, respondent deposited check number 02235148 from Granite State Insurance into his client trust account bringing the balance to \$2,502.92.

At all times from the time of the deposit on November 29, 2004, until respondent gave Scruggs his share of the settlement proceeds, respondent should have maintained the sum of \$1,666.75 (\$2,500.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Scruggs or to any other person or entity for his benefit.

On December 21, 2004, respondent's trust account balance fell to \$-22.08.

Respondent misappropriated at least \$1,688.83 (\$1,666.75 - \$(-)22.08) of Scruggs's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Margaret Scruggs ("M. Scruggs") in an insurance claim matter.

On November 23, 2004, Granite State Insurance issued check number 02235149 in the amount of \$2,500.00 to M. Scruggs, Brian O'hara, Esq., and respondent.

Prior to the deposit of Granite State Insurance's check number 02235149 respondent's trust account balance was \$2,502.92.

On or about November 29, 2004, respondent deposited check number 02235149 from Granite State Insurance into his client trust account bringing the balance to \$5,002.92.

At all times from the time of the deposit on November 29, 2004, until respondent gave M. Scruggs her share of the settlement proceeds, respondent should have maintained the sum of \$1,666.75 (\$2,500.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to M. Scruggs or to any other person or entity for her benefit.

On December 21, 2004, respondent's trust account balance fell to \$-22.08.

Respondent misappropriated at least \$1,688.83 (\$1,666.75 - \$(-) 22.08) of M. Scruggs's share of the proceeds of the settlement for his own use.

At all relevant times, respondent represented Margaret and Sheldon Scruggs ("the Scruggs") in an insurance claim matter.

On November 23, 2004, Granite State Insurance issued check number 02235150 in the amount of \$1,000.00 to the Scruggs', Brian O'hara, Esq., and respondent.

Prior to the deposit of Granite State Insurance's check number 02235150 respondent's trust account balance was \$5,002.92.

On or about November 29, 2004, respondent deposited check number 02235150 from Granite State Insurance into his client trust account bringing the balance to \$6,002.92.

At all times from the time of the deposit on November 29, 2004, until respondent gave the Scruggs their share of the settlement proceeds, respondent should have maintained the sum of \$666.70 (\$1,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to the Scruggs or to any other person or entity for their benefit.

On December 21, 2004, respondent's trust account balance fell to \$-22.08.

Respondent misappropriated at least \$688.78 (\$1,000.00 - \$(-) 22.08) of the Scruggs' share of the proceeds of the settlement for his own use.

Conclusion of Law - Case No. 04-O-14241 – Count Four - Section 6106

OCTC proved by clear and convincing evidence that respondent willfully violated section 6106. By misappropriating a total of at least \$161,863.92 in settlement proceeds from clients Emilia Rivera-Rodriguez, Dea Benson, Carrier Hodgson, Jerrie Smithey, Megan Morris, Alicia Barajas, Mark Butz, David and Bobbie Mawhoriers, Darrell Ray Wandell, Ernesto Espinoza, Jr., Loretta Battle, Josephine Newchurch, Stefon Sykes, Jamie Campos, Shelton Wriley, the Estate of Glen Morgan, Brian Elam, Benny Hernandez, and Sheldon and Margaret Scruggs between November 2002 and December 2004, respondent committed an act of moral turpitude, dishonesty or corruption in willful violation of section 6106.

Conclusion of Law - Case No. 04-O-14241 – Count Five - Rule 4-100(A)

OCTC also proved by clear and convincing evidence that respondent willfully violated rule 4-100(A). By failing to maintain in his client trust account at least \$161,863.92 in settlement funds for his clients Emilia Rivera-Rodriguez, Dea Benson, Carrier Hodgson, Jerrie Smithey, Megan Morris, Alicia Barajas, Mark Butz, David and Bobbie Mawhoriers, Darrell Ray Wandell, Ernesto Espinoza, Jr., Loretta Battle, Josephine Newchurch, Stefon Sykes, Jamie Campos, Shelton Wriley, the Estate of Glen Morgan, Brian Elam, Benny Hernandez, Sheldon Scruggs and Margaret Scruggs, until he paid out the appropriate sums to each client, respondent failed to maintain client funds after deposit in his client trust account in willful violation of rule

4-100(A). It is not duplicative to find that respondent's failure to maintain this \$161,863.92 in settlement proceeds in the trust account is both a violation of rule 4-100(A) and section 6106 misappropriation. (See, e.g., *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 169 [attorney misappropriation of \$929 violated both trust account rule and section 6106]; see also *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 520.)

Facts - Case No. 04-O-14241 – Count Six - State Bar Investigation

On or about September 9, 2004, the State Bar opened a formal investigation and assigned it case number 04-O-14241, based on the allegations raised by a Bank of America reportable actions inquiry.

On or about October 19, 2004, State Bar Investigator Michael Maacks ("Maacks") wrote to respondent with respect to the allegations raised in case no. 04-O-14241. Maacks specifically requested that respondent provide the State Bar with all client trust account ledger cards and records which related to the allegations raised in case no. 04-O-14241 and maintained pursuant to rule 4-100(C). Maacks requested that respondent respond to the allegations by November 2, 2004. Maacks placed the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The U.S. Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

On or about November 3, 2004, a second notice of allegations contained in case no. 04-O-14241 was sent to respondent. The letter was placed in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The response to the letter was indicated to be due no later than November 17, 2004. The U.S. Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

To date, respondent has failed to provide the client trust account ledger cards and records maintained pursuant to rule 4-100(C) to the State Bar as requested by State Bar Investigator Maacks. Respondent has not provided an explanation for his failure to provide the ledger cards and records that he should maintain pursuant to rule 4-100(C).

Conclusion of Law - Case No. 04-O-14241 – Count Six - Rule 4-100(B)(3)

OCTC failed to prove by clear and convincing evidence that respondent willfully violated rule 4-100(B)(3). Rule 4-100(B)(3) provides that an attorney must maintain complete records of all securities, funds, and other properties of a client coming into the attorney's or law firm's possession and render appropriate accounts to the client regarding them. The rule also provides that an attorney must preserve such records for five years after final distribution of the properties or funds; and an attorney must comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar. Although respondent did not comply with the requests of Investigator Maacks to provide the ledger cards and records, there is no clear and convincing evidence that respondent did not maintain or preserve such records. Accordingly, the court does not find respondent culpable of willfully violating rule 4-100(B)(3), and this count is dismissed with prejudice.

Facts - Case No. 04-O-15199 - Counts Seven, Eight, Nine and Eleven - The Willis Matter

On or about August 9, 2003, Richard Willis ("Willis") retained respondent to represent him in a personal injury matter.

At all relevant times, respondent maintained client trust account 16646-03021 at Bank of America ("trust account").

On or about May 11, 2004, Willis's matter settled and Farmer's Insurance issued check number 1199219636 in the amount of \$1,000.00 to Willis and respondent.

Prior to the deposit of Farmer's Insurance's check number 1199219636, respondent's trust account balance was \$36.42

On or about May 12, 2004, respondent deposited Farmer's Insurance check number 1199219636 into his client trust account, bringing his trust account balance to \$1,036.42.

At all times from the time of the deposit on May 12, 2004, until respondent gave Willis his share of the settlement proceeds, respondent should have maintained the sum of \$666.70 (\$1,000.00 - 33.33%) of the proceeds of the settlement in the client trust account.

Respondent made no disbursements to Willis or to any other person or entity for his benefit.

On May 18, 2004, respondent's trust account balance fell to \$56.42.

Respondent misappropriated at least \$610.28 (\$666.70 - \$56.42) of Willis's share of the proceeds of the settlement for his own use.

Respondent/respondent's agent caused the signature of Richard Willis to be placed on the insurance release for Farmer's Insurance, without Richard Willis's knowledge or authority and submitted it to Farmer's Insurance.

Respondent/respondent's agent caused the signature of Richard Willis to be placed on check number 1199219636 in the amount of \$1,000.00 without Richard Willis's knowledge or authority in order to deposit said check into respondent's trust account.

On or about January 15, 2005, after receiving notification that Willis had filed a State Bar complaint, respondent met with Willis at respondent's office. Respondent agreed to pay Willis the sum of \$1,500.00 in cash.

On or about January 15, 2005, respondent paid Willis the sum of \$1,500.00 in cash.

On or about January 15, 2005, respondent showed Willis a power of attorney that respondent claimed Willis had signed. Willis examined the power of attorney and informed respondent that the signature on the document was not his. Respondent then informed Willis that he would pay Willis an additional \$500.00 for the mistake that the "girl" who witnessed the settlement release in May 2004 had made.

On or about January 15, 2005, respondent provided a handwritten note to Willis indicating that he owed Willis the sum of \$500.00.

On or about January 15, 2005, respondent dictated a letter to Willis's son's girlfriend, Sherrie Smith, for Willis to sign requesting that his State Bar complaint be closed.

On or about January 24, 2005, Maria Madrid, respondent's agent/associate faxed to State Bar Investigator Michael Maacks a letter signed by respondent in which respondent stated that he had met with Willis, re-established communication and that Mr. Willis was now pleased with the manner in which his case was handled and would be dismissing the complaint.

Conclusion of Law - Case No. 04-O-15199 – Count Seven - Section 6106

OCTC proved by clear and convincing evidence that respondent willfully violated section 6106. By misappropriating at least \$610.28 of Willis's settlement proceeds, respondent committed an act of moral turpitude, dishonesty or corruption in willful violation of section 6106.

Conclusion of Law - Case No. 04-O-15199 – Count Eight - Rule 4-100(A)

OCTC proved by clear and convincing evidence that respondent willfully violated rule 4-100(A). By failing to maintain the full amount of Willis's settlement funds in his client trust account until he paid out the appropriate sum to Willis, respondent failed to maintain client funds after deposit in his client trust account in willful violation of rule 4-100(A).

Conclusion of Law - Case No. 04-O-15199 – Count Nine - Section 6106

OCTC proved by clear and convincing evidence that respondent willfully violated section 6106. By causing Willis's signature to be affixed to the settlement check without the client's knowledge or permission, respondent committed an act(s) involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Conclusion of Law - Case No. 04-O-15199 – Count Eleven - Section 6090.5,

Subdivision (a)(2)

OCTC proved by clear and convincing evidence that respondent willfully violated section 6090.5, subdivision (a)(2). By inducing Willis to seek closure of his state bar complaint by: (1) agreeing and paying Willis the sum of \$1,500.00; (2) further agreeing to pay Willis the additional sum of \$500.00; and (3) dictating a letter for Willis stating that he wished to have his State Bar complaint closed, respondent willfully violated section 6090.5, subdivision (a)(2) by seeking agreement that Willis would withdraw his disciplinary complaint or would not cooperate with the investigation or prosecution conducted by the State Bar.

Facts - Case No. 04-O-15199 – Count Ten - The Willis Matter

At all relevant times, respondent maintained client trust account 16646-03021 at Bank of America ("trust account").

On or about May 11, 2004, Farmer's Insurance company settled the Willis matter with respondent.

On or about May 12, 2004, respondent received the settlement check in the Willis matter from Farmer's Insurance.

Between May 12, 2004 to January 15, 2005, respondent did not inform Willis that he had received the settlement funds.

On or about January 15, 2005, respondent informed Willis that his case had settled.

Conclusion of Law - Case No. 04-O-15199 – Count Ten - Rule 4-100(B)(1)

OCTC failed to prove by clear and convincing evidence that respondent wilfully violated rule 4-100(B)(1). Rule 4-100(B)(1) provides that an attorney must promptly notify a client of the receipt of the client's securities, funds or other properties. Count Ten fails to incorporate the foundational facts set forth in count seven which would establish that Willis was respondent's client. Thus, there are insufficient facts for the court to find that respondent failed to promptly notify his client of the receipt of his client's funds. The court therefore does not find respondent culpable of willfully violating rule 4-100(B)(1), and this count is dismissed with prejudice.

Facts - Case No. 04-O-15642 - Counts Twelve, Thirteen and Sixteen - The James Matter

In or about July 2000, respondent was retained by Ezzard and Patricia James to represent them in a personal injury matter.

On or about September 28, 2000, Mr. James wrote to respondent and requested that he contact Riggs Ambulance Service ("Riggs") and address the issue of an outstanding bill.

Respondent received Mr. James' September 28, 2000, letter but did not respond or take any action.

On or about October 4, 2000, Mr. James wrote to respondent and indicated that he had previously made a request that respondent contact Riggs Ambulance Service and address the issue of the outstanding bill.

Respondent received Mr. James' October 4, 2000, letter but did not respond or take any action.

On or about March 2, 2001, Mr. James wrote to respondent requesting a status update on his case.

Respondent received Mr. James' March 2, 2001, letter but did not respond to Mr. James' request for a status update.

On or about May 21, 2001, Mr. James wrote to respondent and indicated that he had been placing phone calls to respondent's office for two weeks (May 7th through May 11th and May 14th through May 18th), for the purpose of having the claim settled as he and his wife had been released from their medical treatment.

Respondent did not return any of Mr. James' phone calls placed between May 7th through May 11th and May 14th through May 18th).

On or about October 21, 2001, Mr. James wrote to respondent and requested that respondent address an outstanding bill with Sutter Medical ("Sutter").

Respondent received Mr. James' October 21, 2001, letter but did not respond or take any action.

On or about March 1, 2002, Mr. James wrote to respondent and requested that respondent assist him with the lawsuit filed by a law firm seeking to collect the outstanding balance due to Riggs and Sutter.

Respondent received Mr. James' March 1, 2002, letter but did not respond or take any action.

On or about March 17, 2002, Mr. James wrote to respondent and listed several questions he had with respect to the lawsuit filed for the collection of the outstanding medical bills. Mr. James requested that respondent call him with the answers.

Respondent received Mr. James' March 17, 2002, letter but did not respond or take any action.

At all times relevant herein, respondent maintained client trust account 16646-03021 at Bank of America ("trust account").

On or about June 24, 2002, the James' matter settled and Allstate Insurance issued check number 90706415 in the amount of \$7,500.00 to Ezzard James and respondent and check number 90706416 in the amount of \$7,500.00 to Patricia James and respondent.

Prior to the deposit of Allstate check number 90706415 and check number 90706416, respondent's trust account balance was \$32,169.89.

On or about July 19, 2002, respondent deposited Allstate Insurance check numbers 90706415 and 90706416 into his client trust account, bringing his trust account balance to \$47,169.89.

At all times from the time of the deposit on July 19, 2002, until respondent gave the James' their share of the settlement proceeds, respondent should have maintained the sum of \$9,000.00 (\$15,000.00 - 40%) of the proceeds of the settlement in the client trust account.

On or about August 6, 2002, Ezzard James wrote to respondent and disputed the amount of the proceeds that Mr. James was to receive, which according to the respondent was the sum of \$38.00. Mr. James requested that respondent be fair.

Mr. James placed a telephone call to respondent near or about August 6, 2002, and requested an accounting of the settlement proceeds.

Between July 30, 2002 and December 13, 2002, respondent made seven disbursements for the benefit of the James' as follows:

- (1) On July 30, 2002, to respondent in the sum of \$117.50.
- (2) On July 31, 2002, to the Noble Group in the sum of \$124.00.
- (3) On August 1, 2002, to James Jorgensen, CPA, in the sum of \$40.00.
- (4) On August 2, 2002, to Sutter Merced in the sum of \$1,000.00.
- (5) On August 5, 2002, to Bruce Atkinson in the sum of \$2,981.25 for Mr. James' treatment.
- (6) On August 19, 2002, to Ezzard James in the sum of \$38.50.
- (7) On December 13, 2002, to Fresno Legal Services in the sum of \$198.75.

After the aforementioned disbursements respondent should have maintained the sum of \$4,500.00 (\$9,000.00 - \$4,500.00)¹³ in his trust account for the benefit of the James'.

On or about August 19, 2002, respondent paid out to Ezzard James the sum of \$38.50, representing to Mr. James that the \$38.50 was his share of the settlement proceeds.

Respondent did not make any disbursements to Patricia James from the settlement proceeds.

On November 15, 2002, respondent's trust account balance fell to \$180.67.

Respondent misappropriated at least \$4,319.33 (\$4,500.00 - \$180.67) of the James' share of the proceeds of the settlement for his own use.

Conclusion of Law - Case No. 04-O-15642 – Count Twelve - Section 6106

OCTC proved by clear and convincing evidence that respondent willfully violated section 6106. By misappropriating at least \$4,319.33 of the James' settlement proceeds, respondent committed an act of moral turpitude, dishonesty or corruption in willful violation of section 6106.

Conclusion of Law - Case No. 04-O-15642 – Count Thirteen - Rule 4-100(A)

OCTC proved by clear and convincing evidence that respondent willfully violated rule 4-100(A). By failing to maintain at least \$4,319.33 of the James' settlement funds in his client trust account until he paid out the appropriate sum(s) to or on behalf of Mr. and Mrs. James, respondent failed to maintain client funds after deposit in his client trust account in willful violation of rule 4-100(A).

Conclusion of Law - Case No. 04-O-15642 – Count Sixteen - Rule 3-110(A)

OCTC proved by clear and convincing evidence that respondent wilfully violated rule 3-110(A). Rule 3-110(A) provides that “[a] member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.” By failing to respond to James's letters requesting that he take action with respect to the outstanding medical bills or to take any action with respect to the medical bills, thereby allowing the bills to go to collection, respondent

¹³This is the total amount of the disbursements set forth above.

intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Facts - Case No. 04-O-15642 - Count Fourteen - The James Matter

On or about June 24, 2002, Allstate Insurance notified the James' that their matter had settled and that it was sending two settlement drafts to respondent each in the amount of \$7,500.00.

On or about July 19, 2002 respondent deposited the settlement drafts into his client trust account.

Respondent did not promptly inform the James' that their settlement funds had been received.

On or about August 19, 2002, respondent paid out to Ezzard James the sum of \$38.50, representing to Mr. James that the \$38.50 was his share of the settlement proceeds.

Conclusion of Law - Case No. 04-O-15642 – Count Fourteen - Rule 4-100(B)(1)

OCTC failed to prove by clear and convincing evidence that respondent wilfully violated rule 4-100(B)(1). Count Fourteen fails to incorporate the foundational facts set forth in count twelve which would establish that the James' were respondent's clients. Thus, there are insufficient facts for the court to find that respondent failed to promptly notify his clients of the receipt of his clients' funds. The court therefore does not find respondent culpable of willfully violating rule 4-100(B)(1), and this count is dismissed with prejudice.

Facts - Case No. 04-O-15642 – Count Fifteen - The James Matter

On or about October 11, 2000, respondent signed a medical lien with Dr. Bruce Atkinson for Patricia James' medical treatment, agreeing to "withhold such sums from any settlement, judgment or verdict, as my (sic) be necessary to adequately protect said doctor above-named and to issue such sums withheld to the above named doctor."

On or about October 26, 2000, Patricia James' medical treatment ceased with Dr. Bruce Atkinson. His office sent respondent a bill in the sum of \$1,162.00.

On or about May 30, 2002, Dr. Atkinson's office provided the Superior Court with all of Patricia James' medical records pursuant to a civil subpoena issued by the respondent.

On or about June 25, 2002, respondent received a settlement check from Allstate insurance company check number 90706416 in the sum of \$7,500.00 for the benefit of Patricia James.

Respondent deposited check number 90706416 into his client trust account on July 19, 2002.

Thereafter, respondent failed to pay out any sums to Patricia James or to Dr. Atkinson's office on the outstanding medical lien.

As of July 2002, respondent never paid the medical lien, despite having knowledge of the lien amount due since October 26, 2000.

Between July 2002 and November 2004, Dr. Atkinson's office was unable to locate respondent and as such could not make any demands for payment.

On or about November 5, 2004, Merced Spine and Sports Rehab Center sent Patricia James a bill indicating that she had an outstanding balance of \$1,162.00.

Conclusion of Law - Case No. 04-O-15642 – Count Fifteen - Rule 4-100(B)(4)

OCTC proved by clear and convincing evidence that respondent willfully violated rule 4-100(B)(4). Rule 4-100(B)(4) provides that an attorney must promptly pay or deliver, as requested by a client, the funds, securities or other properties in the attorney's possession which a client is entitled to receive. Respondent willfully violated rule 4-100(B)(4) by failing to pay Dr. Atkinson's office the outstanding bill in the sum of \$1,162.00 for Patricia James after signing a medical lien with Dr. Bruce Atkinson for Patricia James' medical treatment, agreeing to "withhold such sums from any settlement, judgment or verdict, as my (sic) be necessary to adequately protect said doctor above-named and to issue such sums withheld to the above named doctor."

Facts - Case No. 04-O-15642 – Count Seventeen - The James Matter

On or about November 5, 2004, Dr. Bruce Atkinson filed a formal complaint against respondent for failing to pay a medical lien.

On or about November 8, 2004, the State Bar opened case number 04-O-15784 pursuant to the complaint made by Dr. Atkinson.

On or about November 24, 2004, Mr. and Mrs. James filed a formal complaint with the State Bar.

On or about December 3, 2004, the State Bar opened case number 04-O-15642 pursuant to a complaint made Mr. and Mrs. James.

In or about January 2005, the State Bar consolidated the complaints made by Dr. Atkinson and Mr. and Mrs. James into case no. 04-O-15642.

On or about January 4, 2005, State Bar Investigator Michael Maacks ("Maacks") wrote to respondent regarding the James and Atkinson matter. Maacks's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the James and Atkinson matter, by January 18, 2005. Maacks's letter was placed in a sealed envelope correctly addressed to respondent at his official membership records address. The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return Maacks's letter as undeliverable or for any other reason.

On January 31, 2005, Maacks met with respondent and presented him with a copy of Maacks's January 4, 2005 letter. Respondent was attending a settlement conference on another matter in State Bar Court. Respondent agreed to respond to the allegations in the James and Atkinson matter by March 14, 2005.

Respondent never responded to the allegations in the James and Atkinson matter.

Conclusion of Law - Case No. 04-O-15642 – Count Seventeen – Section 6068.

Subdivision (i)

OCTC proved by clear and convincing evidence that respondent willfully violated section 6068, subdivision (i). Section 6068, subdivision (i) requires an attorney to cooperate with and participate in a State Bar disciplinary investigation or proceeding. Respondent wilfully violated section 6068, subdivision (i) by failing to respond to the allegations in Investigator Maacks's January 4, 2005, letter regarding the James and Atkinson matter.

Facts - Case No. 04-O-14108 and Case No. 05-O-00021 - Counts Eighteen and Nineteen - State Bar Investigation

On July 29, 2004, the State Bar Court issued an Order of Entry of Default (Rule 200-Failure to File Timely Response), Order Enrolling Inactive and Further Orders. The July 29, 2004, order placed respondent on involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e)(1), thereby prohibiting respondent from practicing law.

The State Bar Court's July 29, 2004, Order of Involuntary Inactive Enrollment became effective three days from the date of issuance.

Respondent was served with the State Bar Court's July 29, 2004, Order placing him on involuntary inactive status at his official membership records address.

On or about August 1, 2004, respondent was placed on involuntary inactive status.

On or about August 5, 2004, respondent held himself out as a licensed attorney, when he was not entitled to practice law, by placing his name and the word "attorney" next to his name and filing a motion, declaration, and interrogatories in the Superior Court of Fresno, case no. 03CEG06176. Respondent's pleading papers identified him as an attorney and he provided his California State Bar number on the pleadings.

On or about August 5, 2004, respondent held himself out as a licensed attorney when he appeared before Judge Chittick in the Superior Court of Fresno in case no. 03CEG06176 in a law and motion matter.

On or about September 7, 2004, respondent agreed to represent Daniel Davies in a criminal matter. Respondent received the sum of \$2,000.00 from Davies's family.

On or about September 8, 2004, respondent spoke with Peter Pacheco, Deputy Public Defender for the County of Fresno and confirmed that Mr. Davies had retained Mr. Morris as his counsel. Mr. Davies's matter was calendered for set/dispo hearing on September 9, 2004.

On September 9, 2004, respondent did not participate in the set/dispo proceeding, but had been seen in the courtroom earlier during the court's session. The Court was forced to put the matter over, given Mr. Davies's representations that respondent was his attorney and the

conversation that Mr. Pacheco relayed to the court regarding respondent's representations that he was in fact representing Mr. Davies in the criminal matter set for September 9, 2004.

Respondent's involuntary inactive status remained in effect until September 15, 2004, when the State Bar Court set aside respondent's default and terminated his involuntary inactive status.

Respondent received the State Bar Court Order placing him on involuntary inactive status.

Respondent was fully aware of his involuntary inactive status when he appeared and filed his motion papers in August 5, 2004.

Respondent was fully aware of his involuntary inactive status when he undertook the representation of Mr. Davies on September 7, 2004.

Conclusion of Law - Case No. 04-O-14108 and Case No. 05-O-00021 – Count Eighteen - Section 6068, Subdivision (a)

By holding himself out as an attorney authorized to practice law in the State of California when he was not entitled to practice law in this state, respondent willfully engaged in the unauthorized practice of law in wilful violation of sections 6125 and 6126, and therefore failed to support the laws of California in willful violation of section 6068, subdivision (a).

Conclusion of Law - Case No. 04-O-14108 and Case No. 05-O-00021 – Count Nineteen - Section 6103

OCTC proved by clear and convincing evidence that respondent wilfully violated section 6103. Section 6103 provides, in pertinent part, that the willful violation or disobedience of a court order which requires an attorney to do or forbear an act connected with or in the course of his profession, which the attorney ought in good faith to do or forbear constitute cause for suspension or disbarment. By failing to cease practicing law pursuant to the State Bar Court's July 29, 2004 Order, respondent wilfully violated an order of the court requiring him to do an act connected with respondent's profession which he ought in good faith to do in willful violation of section 6103.

Facts - Case No. 05-O-00021 – Count Twenty - State Bar Investigation

On or about October 27, 2004, the State Bar received a formal complaint from a Judge Kapetan, Superior Court Judge in Fresno County alleging that respondent had engaged in the unauthorized practice of law.

On or about November 1, 2004, the State Bar opened case number 05-0-00021 pursuant to the complaint made by Superior Court Judge Kapetan.

On or about March 17, 2005, State Bar Investigator Michael Maacks ("Maacks") wrote to respondent regarding the state bar investigation with respect to the allegations raised by Judge Kapetan. Maacks's letter requested that respondent respond in writing by March 31, 2005, to specified allegations of misconduct being investigated. Maacks's letter was placed in a sealed envelope correctly addressed to respondent at his official membership records address. The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return Maacks's letter as undeliverable or for any other reason.

On or about April 18, 2005, Maacks wrote to respondent's counsel Thomas Jones indicating that no response had been received from respondent with respect to case no. 05-O-00021, and requested that Attorney Jones respond to the inquiry no later than May 2, 2005. Maacks' letter was placed in a sealed envelope correctly addressed to respondent's counsel at his official membership records address. The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return Maacks's letter as undeliverable or for any other reason.

No response was received to Maacks's letters of March 17, 2005 and April 18, 2005.

Conclusion of Law - Case No. 05-O-00021 – Count Twenty – Section 6068, Subdivision i)

OCTC proved by clear and convincing evidence that respondent willfully violated section 6068, subdivision (i). Respondent wilfully violated section 6068, subdivision (i) by failing to respond in writing to the allegations in Investigator Maacks's March 17, 2005, letter. The court does not base culpability in this matter on respondent's failure to respond to the April 18, 2005,

letter, sent to Attorney Jones, as there is no clear and convincing evidence that Attorney Jones, who represented respondent for a period of time in Case No. 04-H-11843, ever represented respondent in Case No. 05-O-00021.

MITIGATING/AGGRAVATING CIRCUMSTANCES

As respondent's default was entered in this matter, respondent did not have an opportunity to introduce any mitigating evidence on his behalf. Nevertheless, the court notes in mitigation that during the period of time respondent was misappropriating funds from his trust account, respondent did put a total of \$27,853.58 of his own personal fund back into his trust account, well before the initiation of these disciplinary proceedings. (Standard 1.2(e)(vii).)

In aggravation, respondent has a prior record of discipline. (Standard 1.2(b)(i).)¹⁴ In January 2003, respondent was privately reprimanded by the State Bar Court with conditions for one year for violating rule 4-100(A) by depositing a judgment award check in May 2001 in a personal account rather than a client trust account and for violating rule 4-100(B)(3) by not providing his client in May 2001 with an opportunity to review a written accounting before he paid himself and by not promptly providing his client with a written accounting upon her request in late 2001 or early 2002.

Respondent engaged in a pattern of wrongdoing involving the misappropriation of over \$165,000 in client funds and other improper conduct involving his trust account for more than two and one-half years. (Standard 1.2(b)(ii).)

Respondent's misappropriation of client funds significantly harmed many clients who did not receive their settlement funds. Respondent's failure to perform legal services with competence significantly harmed Mr. James as it resulted in a lawsuit being filed for collection of the outstanding medical bills. (Standard 1.2(e)(iv).)

¹⁴Pursuant to Evidence Code section 452(d), the court takes judicial notice of respondent's prior record of discipline in Case No. 02-O-10657. A NDC was filed in Case No. 02-O-10657 on October 10, 2002. Respondent and OCTC entered into a Stipulation Re Facts, Conclusions of Law and Disposition which was filed on December 19, 2002.

Respondent's failure to participate in Case No. 04-O-14241 prior to the entry of his default is a further aggravating circumstance. (Standard 1.2(b)(vi).)

DISCUSSION

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) As the Review Department of the State Bar Court noted more than 14 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not to do so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

In this case, the standards provide for the imposition of sanctions ranging from reproof to disbarment. (See standards 2.2(a), 2.3, 2.4(b), 2.6 and 2.9.) In addition, standard 1.6(a) states, in pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding; and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions." The more 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.

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.) The court also looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

In this matter, respondent has been found culpable of engaging in very serious misconduct from 2000-2005, including the following acts of moral turpitude, dishonesty or corruption: (1) the misappropriation of at least \$166,793.53 in client funds; (2) causing a client’s signature to be affixed to a settlement check without the client’s knowledge or permission; and (3) issuing checks and counter checks and caused electronic debits from the trust account when he knew or reasonably should have known that there were insufficient funds in the account to allow the bank to honor the checks, counter checks and electronic debits when presented for payment.

Respondent also improperly withdrew cash, issued checks and made payments from the trust account for both his own personal and non-client related business totaling at least \$173,667.16 and failed to maintain client funds in his trust account. He also failed to promptly pay a medical bill after signing a medical lien.

In addition, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence, failed to cooperate with and participate in a disciplinary investigation, engaged in the unauthorized practice of law, violated an order of the State Bar Court, sought an agreement from his client that the client would withdraw a disciplinary complaint or would not

cooperate with the investigation or prosecution conducted by the State Bar, and failed to comply with conditions attached to an earlier private reproof.

In aggravation, respondent has a prior record of discipline involving a private reproof. Although the acts which led to this earlier discipline occurred during the time period of the misconduct in this matter, the aggravating circumstance of respondent's prior discipline is not diminished but is rather magnified because respondent committed much of the misconduct found in the present proceeding while, in accordance with the terms of his private reproof in January 2003, he was under the disciplinary supervision of the State Bar. (Cf. *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 438.) As additional aggravating circumstances, the court notes that Respondent engaged in a pattern of wrongdoing, involving the misappropriation of over \$165,000 in client funds and other improper conduct involving his trust account for more than two and one-half years; the misconduct significantly harmed many clients; and he failed to cooperate in the disciplinary proceeding in Case No. 04-O-14241 prior to the entry of his default.

In mitigation, the court notes that during the period of time respondent was misappropriating funds from his trust account, respondent put a total of \$27,853.58 of his own personal funds back into his trust account, well before the initiation of these disciplinary proceedings. However, such action does little to mitigate his misappropriation of at least \$166,793.53 in client funds.

OCTC recommends that respondent be disbarred as a result of his misconduct in this matter. The court concurs with OCTC's discipline recommendation. In the present proceeding, there is no compelling reason for the court to depart from recommending respondent's disbarment as provided by standard 2.2(a). (*In re Silverton, supra*, 36 Cal.4th at p. 91; *Aronin v. State Bar, supra*, 52 Cal.3d at p. 291.) Standard 2.2(a) calls for disbarment for willful misappropriation of entrusted funds, unless the misappropriation is "insignificantly small" or the "most compelling mitigating circumstances clearly predominate." Here, neither exception applies. Moreover, respondent's misappropriations, which totaled at least \$166,793.53 occurred

over a longer period of time and were accompanied by his repeated, if not consistent, misuse of his trust account in wilful violation of rule 4-100.

Relevant Supreme Court opinions also strongly support disbarment. “Misappropriation is more than a grievous reach of professional ethics. It violates basic notions of honesty and endangers public confidence in the legal profession. ([Citations omitted].)” (*Grim v. State Bar* (1991) 53 Cal.3d 21, 29. “[M]isappropriation generally warrants disbarment unless “clearly extenuating circumstances” are present,. (*Waysman v. State Bar* (1986) 41 Cal.3d 452, 457 [224 Cal.Rptr. 101, 714 P.2d 1239].)” (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) When the circumstances of the misappropriation have been sufficiently serious, the Supreme Court has disbarred the attorney even if the attorney had no prior record of discipline. (See, e.g., *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [misappropriation of \$29,000 of law firm funds in numerous transactions resulted in disbarment notwithstanding lack of prior record, favorable good character testimony, and personal stress and family illness]; *Chang v. State Bar* (1989) 49 Cal.3d 114 [disbarment ordered for misappropriation of over \$7,000 of trust funds in an apparently isolated transaction notwithstanding lack of prior record where attorney never acknowledged misconduct or made restitution]; *Grim v. State Bar, supra*, 53 Cal.3d 21.)

In addition, the court is particularly troubled by the conduct which led the court to strike respondent’s answer and enter his default in Case No. 04-H-11843, as well as his failure to participate in Case No. 04-O-14241, resulting in the entry of his default in that matter as well. Respondent’s failure to participate in this proceeding leaves the court without any understanding as to the underlying cause or causes for respondent’s misconduct or from learning of any mitigating circumstances which would justify this court’s departure from the discipline recommended by the standards.

Thus, despite the limited mitigating circumstance, the seriousness and nature of respondent’s misconduct and the extent of the aggravating circumstances found in this matter compel this court to find that need to protect the public and the legal profession warrants the recommendation that respondent be disbarred for his misconduct in this matter.

RECOMMENDED DISCIPLINE

Based on the foregoing, it is hereby recommended that respondent Gregory A. Morris be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

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

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Said inactive enrollment will be effective three days after this order is served by mail, and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, as provided for by rule 490(b) of the Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

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: February 17, 2006

PAT McELROY
Judge of the State Bar Court