

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 05-O-00079-RMT
)	05-O-00732
GEORGE PARKER MILLS,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND ORDER OF
Member No. 81041,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this disciplinary matter, Joseph R. Carlucci appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent George Parker Mills did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on October 27, 2005, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section¹ 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

On November 4, 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 December 12, 2005.

¹Future references to section are to the Business and Professions Code.

Respondent did not file a responsive pleading to the NDC. On December 6, 2005, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of disbarment would be sought if he was found culpable. He did not respond to the motion.

On December 13, 2005, a supplemental exhibit in support for the motion for entry of default was filed and served on respondent at his official address by first-class mail, postage prepaid.

Respondent did not appear at the December 12, 2005, status conference. On December 14, 2005, he was properly served with a status conference order at his official address by first-class mail, postage prepaid.

On January 11, 2006, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested. The return receipt was signed by "Wende Smith."

The State Bar's efforts to contact respondent were fruitless.

The matter was submitted for decision without hearing after the State Bar filed a brief on January 24, 2006.

On February 24 and 28, 2006, respondent attempted to file requests to set aside the default. Both documents were returned to him unfiled as neither contained a proof of service as required by rules 61 and 62 of the Rules of Procedure of the State Bar² and by rule 1112 of the Rules of Practice of the State Bar Court.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

It is the prosecution's burden to establish culpability of the charges by clear and

²Future references to the Rules of Procedure are to this source.

convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 29, 1978, and has been a member of the State Bar at all times since.

B. Case no. 05-O-00079 (The Moreno Matter)

1. Facts

On November 10, 2003, Sandra Moreno retained respondent to represent her in dissolution of marriage proceedings. (*Moreno v. Moreno*, San Diego Superior Court case no. DN 127408.)

On December 10, 2003, respondent and Attorney Kelly Shaffer, who represented Moreno's estranged husband, signed a stipulation regarding the disbursement of net proceeds from the sale of the Morenos' former family residence. The stipulation provided, among other things, that the balance of funds received from the sale of the residence would be deposited into a trust account maintained by respondent and that no funds would be disbursed without a court order. The court approved this stipulation on December 11, 2003.

On January 14, 2004, respondent opened U.S. Bank account no. 153492509903 in the name of "Sandra Moreno, George P. Mills, Agent" (trust account). On that date, he deposited \$64,668.05 of the Morenos' funds in the trust account.

Between May 7 and July 7, 2004, respondent paid himself a total of \$17,000 in attorney fees from the trust account either by making a withdrawal from the counter at the bank or by writing himself a check from the trust account. He did this without having or attempting to obtain a court order. The dates and amounts of the withdrawals were:

<u>Date</u>	<u>Amount</u>
May 7	\$2,000
May 12	\$2,000
June 4	\$2,000
June 11	\$2,000
June 18	\$3,000
June 22	\$2,000
June 28	\$2,000

July 7

\$2,000

On February 11, 2004, with court approval, respondent wrote a trust account check to Moreno in the amount of \$1,067.02, which represented two payments on Moreno's automobile. On March 15, 2004, with court approval, respondent made a counter withdrawal from the trust account in the amount of \$18,480.57 to pay off the loan on the automobile.

On June 14, 2004, with court approval, respondent sent Attorney Shaffer two trust account checks. One check was payable to Moreno's estranged husband in the sum of \$2,350, representing \$2,000 in discovery sanctions awarded to him and \$350 in spousal support owed to him. The second check, in the amount of \$20,934.62, was payable to Attorney Shaffer's trust account and purported to represent half of the funds that respondent held in trust for the Morenos.

On June 17, 2004, Attorney Shaffer wrote respondent a letter asking for bank statements to verify that the second check represented half of the entrusted funds.

On June 18, 2004, Respondent wrote to Attorney Shaffer indicating that she was "well-aware of the disbursements from said trust account." He included his own accounting of the disbursements from the trust account but did not account for the attorney fees that he withdrew without court authorization. Further, respondent enclosed the bank statement through January 27, 2004, which, he wrote, "confirms that the opening balance was \$64,668.05 and that the accrued interest was \$25.61."

On July 15, 2004, Attorney Shaffer wrote respondent another letter noting certain errors in his accounting. She asked respondent to send her the May 2004 trust account bank statement. He never did so.

At the time respondent sent the June 18, 2004, letter, he knew that Attorney Shaffer was only aware of the court-approved disbursements and that she had never seen any of the trust account's bank statements. He knew that she could not have been "well-aware" of the disbursements, including his unauthorized withdrawal of attorney fees, from the trust account. Respondent also knew that the bank statement he provided (through January 27, 2004) was not responsive to Attorney Shaffer's request since it did not reflect the funds held in the trust account

just prior to the final disbursement.

On August 27, 2004, the California Supreme Court entered order no. S126962 (order) suspending respondent from the practice of law for not paying his State Bar of California annual membership fees. The order was properly served on that same date at respondent's official address by first-class mail, postage prepaid. The order was not returned as undeliverable. Respondent received it.³

Respondent was actually suspended from September 16 through December 10, 2004. During this time, respondent wrote numerous letters to Moreno and to opposing counsel, Kelly Shaffer, on his law office letterhead and signed his name to them including the designation "attorney at law."

On October 5 and November 2, 2004, while actually suspended from the practice of law, respondent appeared in court as Moreno's counsel of record.

On November 21, 2004, respondent sent Moreno an invoice for legal services he performed on September 23, 2004, while he was suspended from law practice. Respondent was legally precluded from earning any fees for legal services rendered while he was suspended from the practice of law.

2. Conclusions of Law

a. Count One - Section 6068(a) (Engaging in the Unauthorized Practice of Law)

Section 6068, subdivision (a) requires an attorney to support the Constitution as well as

³No proof was offered to establish that respondent had notice of the order. However, the Clerk of the Supreme Court was required to promptly send a copy of the order to respondent once it was filed. (Cal. Rules of Court, rule 29.4(a).) Also, except with respect to arrests, it is presumed that official duties have been regularly performed unless the party against whom the presumption operates *proves* otherwise. (Evid. Code, §§ 606, 660, 664; *In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Thus, because respondent has not proved otherwise, the court must find the Supreme Court Clerk properly sent respondent a copy of the order promptly after it was filed. (*Ibid.*) Also, as there is no evidence in the record that would support a finding to the contrary, the court finds that respondent actually received that copy of the order. (Cf. Evid. Code, §§ 604, 630, 641 [correctly addressed and properly mailed letter is presumed to have been received in the ordinary course of mail].)

state and federal laws.

Section 6125 requires an individual to be a member of the State Bar in order to practice law in California.

In relevant part, section 6126, subdivision (b) makes a person who has been suspended from membership in the State Bar and practices or attempts to practice, to advertise or to hold him- or herself out as practicing or entitled to practice law guilty of a crime punishable by imprisonment in the state prison or county jail.

By appearing in court and by corresponding with his client and with opposing counsel between September 16 and December 10, 2004, respondent held himself out as entitled to practice law and actually practiced law when he was not so entitled. In so doing, he violated sections 6125 and 6126, subdivision (b) and failed to support the laws of this State in wilful violation of section 6068, subdivision (a).

b. Count Two - Section 6106 (Moral Turpitude)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by deliberately and repeatedly engaging in the unauthorized practice of law in this client matter.

c. Count Three - Rule of Professional Conduct⁴ 4-200 (Illegal Fee)

Rule 4-200(A) of the Rules of Professional Conduct prohibits an attorney from entering into an agreement for, charging or collecting an illegal or unconscionable fee.

By billing Moreno for services rendered while he was suspended from law practice, respondent wilfully violated rule 4-200(A) by charging an illegal fee.

d. Count Four -Section 6106 (Moral Turpitude)

There is clear and convincing evidence that respondent violated section 6106. He took \$17,000 in entrusted funds as attorney fees without the court's permission. Accordingly, he

⁴Future references to rule are to this source.

committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

e. Count Five - Rule 4-100(A)(Failure to Maintain Client Funds in Trust Account)

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

There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) by not maintaining \$17,000 of the Morenos' funds in the trust account.

f. Count Six - Section 6106 (Moral Turpitude)

There is clear and convincing evidence that respondent violated section 6106. He provided Attorney Shaffer with an incomplete and inaccurate accounting of trust account disbursements; did not give her the May 2004 trust account bank statement and only gave her one that did not accurately reflect the funds held in the account prior to the final disbursement. In so doing, he attempted to conceal his improper taking of fees from the trust account. Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

B. Case no. 05-O-00732 (The Branch Matter)

1. Facts

On March 8, 2004, Rob Branch retained respondent to represent him with regard to a property dispute he had with his former spouse, Carol. Branch paid respondent \$2,500.

On August 19, 2004, respondent filed an order to show cause (OSC) in the Branch case. (*Branch v. Branch*, San Diego Superior Court case no. D466261.)

As previously set forth, on August 27, 2004, the California Supreme Court entered an order suspending respondent from the practice of law for nonpayment of his annual State Bar membership fees. Respondent received the properly-served order.⁵

Respondent was actually suspended from the practice of law from September 16 through December 10, 2004. On October 14, 2004, he filed a declaration in support of the OSC which

⁵See footnote 3, *ante*.

stated that he was the attorney for Branch and also identified him as a certified family law specialist. On November 8, 2004, respondent appeared at the OSC as Branch's counsel of record.

On November 21, 2004, respondent sent Branch an invoice for legal services he performed on September 16 and October 12, 2004, while he was suspended from law practice. Similarly, on January 19, 2005, he sent Branch an invoice for legal services he performed on November 3 and 8, 2004, while he was suspended from law practice. Respondent was legally precluded from earning any fees for legal services rendered while he was suspended from the practice of law.

2. Conclusions of Law

a. Count Seven - Section 6068(a) (Engaging in the Unauthorized Practice of Law)

By filing a declaration in support of the OSC and by appearing at the OSC hearing in the Branch matter, respondent held himself out as entitled to practice law and actually practiced law when he was not so entitled. In so doing, he violated sections 6125 and 6126, subdivision (b) and failed to support the laws of this State in wilful violation of section 6068, subdivision (a).

b. Count Eight - Section 6106 (Moral Turpitude)

There is clear and convincing evidence that respondent violated section 6106 by deliberately and repeatedly engaging in the unauthorized practice of law in this client matter.

c. Count Nine - Rule of Professional Conduct 4-200 (Illegal Fee)

By billing Moreno for services rendered while he was suspended from law practice, respondent wilfully violated rule 4-200(A) by charging an illegal fee.

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof.

Misconduct⁶, std. 1.2(b).)

Respondent has two prior instances of discipline. (Std. 1.2(b)(i).) In State Bar Court case no. 00-O-15418, a private reproof was imposed effective November 2, 2001, for violations of rules 3-100(A), 3-700(A)(2) and 3-700(D)(2) and section 6068, subdivisions (i) and (m) in one client matter. The parties stipulated that there were no aggravating circumstances and, in mitigation, that respondent had no prior discipline.

In State Bar Court case no. 03-H-00641, a public reproof was imposed effective August 14, 2003, for violation of rule 1-110 (not complying with conditions of a reproof). Conditions to be completed within one year were also imposed.⁷ The parties stipulated that respondent did not timely file three quarterly reports and did not timely complete MCLE requirements or submit proof thereof. There were no mitigating circumstances. The prior instance of discipline was the only aggravating factor.

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

In relevant part, standard 1.2(b)(iii) makes consideration as an aggravating circumstance whether respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward trust funds or trust property. In the instant case, however, respondent's refusal to properly account for entrusted funds has been included in the finding a violation of section 6106 in the Moreno matter and, therefore, will not be considered as an aggravating factor. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 132-133 [inappropriate to use the same conduct supporting a section 6106 violation as a finding in aggravation of the same charge.])

Standard 1.2(b)(iii) also makes consideration as an aggravating circumstance whether respondent's misconduct was surrounded or followed by bad faith, dishonesty, concealment,

⁶Future references to standard or std. are to this source.

⁷The court notes that some of the misconduct found in the instant case occurred during this one-year period in which respondent was to be complying with conditions imposed as part of his prior discipline. Accordingly, the court believes that the prior instances of discipline have not served to rehabilitate respondent or to deter him from further misconduct.

overreaching or other violations of the State Bar Act or Rules of Professional Conduct. In the instant case, respondent acted in bad faith by putting his self-interest before that of his client, the opposing party as well as the superior court's order and the legal process required to access the Morenos' entrusted funds. He took care of his own financial interest while disregarding the court's order and the interest of others to whom he owed a fiduciary duty. This is a facet of the misconduct used to support the finding of a violation of section 6106 and, as was previously noted, will not be considered as an aggravating circumstance.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

B. Mitigating Circumstances

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

C. Discussion

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

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

Standards 2.2(b), 2.3, 2.6 and 2.7 apply in this matter. The most severe sanction is found at standard 2.7 which recommends a minimum six-month actual suspension irrespective of

mitigating circumstances for culpability of violating rule 4-200.

Standard 1.7(b) also applies. It provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

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

Respondent has been found culpable, in two client matters, of two counts each of practicing law while suspended, engaging in acts of moral turpitude and charging illegal fees and one count of not maintaining entrusted funds in a trust account. The aggravating factors found were two prior instances of discipline; multiple acts of misconduct; and not cooperating during disciplinary proceedings. There were no mitigating factors to consider.

The State Bar recommends disbarment. The court agrees.

The court found *Chang v. State Bar* (1989) 49 Cal.3d 114; *Kelly v. State Bar* (1988) 45 Cal.3d 649; and *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456 instructive.

In *Hertz*, the attorney was actually suspended for two years and until he complied with standard 1.4(c)(ii) for violating sections 6106 and 6068, subdivision (d) and former rules 8-101 and 7-105. Respondent Hertz held \$15,000 in trust in a family law matter in which he represented the husband. Without the knowledge or consent of the opposing party or her counsel, he released \$10,000 of the entrusted funds to his client to pay community debts. He also took the \$5,000 balance as attorney fees but later replaced it. During and after these transactions, respondent Hertz deceived opposing counsel, the superior and appellate courts and a State Bar investigator as to the whereabouts of the entrusted funds. In aggravation, the court considered his pattern of nine acts of deceit and his taking extraordinary measures over five years to cover

up the misconduct. His deception resulted in civil proceedings that burdened the administration of justice and exposed himself and his client to perjury charges. In mitigation, the court considered the attorney's remorse, good character evidence from highly-reputable sources, substantial community and pro bono service and cooperation during the proceedings by stipulating to all of the charges at the outset of the disciplinary hearing. No mitigating weight was afforded to respondent Hertz's four years of blemish-free conduct prior to the start of the misconduct.

Hertz presents somewhat comparable misconduct to the case at hand as well as substantial mitigation, a difference which accounts for the lesser degree of discipline imposed in *Hertz* than what is recommended herein.

In *Kelly*, the attorney was disbarred for wilfully misappropriating \$19,597.05 in client trust funds over a five-month period. He also failed to account to the clients; communicated with them after they became adverse parties to him and were represented by counsel;⁸ and engaged in acts of moral turpitude and dishonesty. His partial repayment of the misappropriated funds was not a mitigating factor because it occurred after a client told him that she would complain to the State Bar. His seven and one-half years of practice without prior discipline was not a mitigating factor. Lesser discipline than disbarment was not warranted because extenuating circumstances did not show that the misappropriation was an isolated event. The absence of an acceptable explanation for the misconduct along with the self-interest underlying his actions suggest that he is capable of future wrongdoing.

In *Chang*, the attorney was disbarred for misappropriating over \$7,000.00 by secretly opening a trust account in his own name while employed by a law firm, depositing his clients' funds in the trust account, later taking the funds, failing to comply with the client's request for copies of bank records, and refusing to pay the client the funds owed. The attorney was also found to have failed to cooperate in the disciplinary investigation by making misrepresentations

⁸The communications occurred without their attorney's knowledge or consent and were about the disputed matter (the misappropriated funds).

to a State Bar investigator. The attorney offered no evidence in mitigation, but it was noted that he had no prior record of discipline. In ordering disbarment, however, the Supreme Court noted that it had several reasons to doubt that the attorney would conform his conduct in the future to the professional standards required of attorneys in California. In particular, the Supreme Court noted that the attorney had never acknowledged the impropriety of his actions, he had made no effort at reimbursing the client, and displayed a lack of candor to the State Bar.

Kelly and *Chang* contain some elements in common with the present case, such as misappropriation (or taking) of funds; not accounting for the funds; other deceit or concealment; and little or no mitigating factors.

As in *Kelly* and *Chang*, lesser discipline than disbarment is not warranted because there are no extenuating circumstances that clearly predominate in this case. (Std. 1.7(b).) The serious and unexplained nature of the misconduct, the lack of participation in these proceedings as well as the self-interest underlying respondent's actions suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Moreover, it is evident that the prior instances of discipline have not served to rehabilitate respondent or to deter him from further misconduct. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent GEORGE PARKER MILLS be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

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

VI. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. ORDER REGARDING INACTIVE ENROLLMENT

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

Dated: April ___, 2006

ROBERT M. TALCOTT
Judge of the State Bar Court