

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 05-O-00861-RAH
)	(05-O-04178; 06-O-11024)
KARL BLOOMFIELD)	
)	DECISION INCLUDING DISBARMENT
Member No. 79790)	RECOMMENDATION AND
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT ORDER
)	

I. INTRODUCTION AND PROCEDURAL HISTORY

In this original proceeding, the Office of the Chief Trial Counsel of the State Bar of California was represented by Suzan J. Anderson and Nathan A. Reiersen. Respondent Karl Bloomfield represented himself.

The Notice of Disciplinary Charges (NDC) was filed on September 29, 2006. A response was filed on November 8, 2006. After evaluation for the State Bar Court’s Alternative Discipline Program, the matter was returned to standard proceedings in this court. Respondent Karl Bloomfield failed to file a pretrial statement, and evidentiary sanctions were imposed, precluding him from offering documentary or testimonial evidence (other than his own testimony, and other than for impeachment or rebuttal) during the culpability phase of the trial.

On May 12, 2008, the parties filed a stipulation as to facts and admission of documents.

Trial commenced on May 12, 2008. After briefing by the parties, the matter was submitted for decision on July 23, 2008.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 23, 1978 and since that time has been an attorney at law and a member of the State Bar of California.

B. Case No. 06-O-11024 – Liberty Mutual

Respondent began representing Pedro Dalumay Suyo in a personal injury matter against United Parcel Service (UPS) in January 1999. A settlement was reached on September 28, 2000 with UPS agreeing to pay Suyo \$65,000. On September 28, 2000, the carrier for UPS, Liberty Mutual Insurance Company issued a check in that amount, payable to respondent, Walter Pinkerton and Suyo, in settlement of the matter. Respondent promptly deposited that check into his client trust account. Shortly after issuing that check, Liberty Mutual realized that the check that was issued did not contain all the required payees, in that the company had neglected to include U.C.S.D. Medical Center. Therefore, on October 17, 2000, defendant's and Liberty Mutual's counsel, Paul A. Elkort, sent a replacement check in the same amount, and sought to stop payment on the first check. The replacement check was also deposited in respondent's client trust account. On November 17, 2000, respondent sent Mr. Elkort a letter informing him that the first check may have cleared before the stop payment order had been received. Respondent requested that Mr. Elkort advise him if the check cleared or if payment had been stopped. Respondent disbursed \$65,000 to the appropriate parties, and paid himself the attorney's fees he was owed. After these disbursements, \$65,000 remained in his client trust account, because the stop payment order had not been timely and was therefore, unsuccessful.

Respondent received no immediate response to his November 17, 2000 letter. In fact, it was not until the fall of 2003 that he was again contacted by Mr. Elkort regarding the remaining \$65,000. When questioned by Mr. Elkort regarding the status of the funds, respondent acknowledged that he had spent the money. In fact, he had spent the money far earlier – in or around December 2001. On October 8, 2003, respondent signed a declaration written by Mr. Elkort, agreeing to repay the \$65,000 and waiving any defense to such repayment, including laches and the statute of limitations. Respondent sent two checks payable to Liberty Mutual for approximately \$10,000 and \$11,000, but neither of those checks was negotiated.

Respondent again heard from Liberty Mutual in 2005, when he was contacted by their new counsel, Charles Longo. As a result of that contact, respondent offered to pay one-half of the \$65,000 by mid-February 2005, but he could not estimate when he would be able to pay the remaining \$32,500. The offer was accepted on February 11, 2005, and an agreement was reached that payment would be made within 30 days of that date. Respondent wrote a check from his general account for \$32,500 and sent it to Mr. Longo. Respondent thought he had sufficient funds in his account to cover this check, but he did not, and it was returned for non-sufficient funds on March 10, 2005. On April 15, 2005, respondent replaced that NSF check with a cashier's check drawn on good funds. This check was sent to Mr. Longo and received by Liberty Mutual.

When respondent did not timely pay the balance of the funds owed (i.e., the final \$32,500), in December 2004, Liberty Mutual filed suit to collect the remaining funds plus interest. An amended complaint was filed in January 2006. After respondent paid approximately \$11,000-12,000, the parties reached a compromise settlement, and on June 26, 2007, Mr. Longo signed an acknowledgment of full satisfaction of judgment.

In March 2006, the State Bar of California opened an investigation after the complaint from Mr. Longo was submitted. On April 12, 2006, a State Bar investigator, Joy Nunley, sent respondent a letter requesting information regarding the above facts. Respondent received this letter but did not respond. On May 2, 2006, Ms. Nunley sent a second letter requesting similar information. Respondent received this letter, but did not respond to it either.

1. Count One – 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.

The Office of the Chief Trial Counsel alleges in its NDC that (1) by depositing both settlement checks from Liberty Mutual into his client trust account, (2) sending Liberty Mutual a check drawn against insufficient funds (NSF check), and (3) failing to pay the remaining \$32,500 due Liberty, respondent committed acts of moral turpitude in violation of section 6106 of the Business and Professions Code.¹

The evidence produced at trial revealed no moral turpitude in respondent's deposit of both checks. In fact, respondent innocently deposited the first, thinking it was proper. When he received the second check, it was attached to a cover letter that explained that the carrier was attempting to stop payment on the first check because of the error in omitting a payee. Further, respondent wrote Liberty Mutual's counsel a letter asking him to let him know whether the first check cleared or was stopped. Clearly, respondent had no intention to commit conduct contrary to justice, honesty or morality at that point involving the *deposit* of the two checks.

Similarly, there was no evidence that the NSF check from respondent's general account was anything other than an inadvertent mistake. Such isolated mistakes typically do not form the

¹ Future references to section are to this source.

basis for a finding of moral turpitude. (Cf. *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 11.]

However, respondent did commit moral turpitude in failing to return and subsequently spending the proceeds of the second check. At this point, his letter to opposing counsel works against him. While initially showing his honest intentions, the letter of November 17, 2000 becomes important evidence that respondent knew that the check was not his to keep. Nevertheless, respondent soon began treating the money as his own, and before long, had spent it all.

Respondent has only paid a portion of the amount he took from Liberty Mutual. After paying one-half of the amount due soon after a demand was made, respondent negotiated a settlement agreement with respect to the payment of a portion of the remaining \$32,500, and the settlement amount was not paid until mid-2007 – almost seven years after the check was initially deposited.²

Respondent asserted that since the second check was the one he distributed, the first check was sent to him by mistake, and therefore, did not represent client funds. Given that it was not client funds, respondent argues, the failure to return the funds was simply a civil collection matter, and does not present as a case of moral turpitude. The court disagrees. First, respondent's argument assumes that he is able to compartmentalize the funds deriving from the first versus the second payment. Second, regardless of the characterization of the funds as client funds or simply funds to be held in trust pending return to their rightful owner, respondent owed

² In his post-trial brief, respondent argues that this delay works in his favor, in that the statute of limitations ran pursuant to rule 51 of the Rules of Procedure of the State Bar of California. This argument fails, and the motion to dismiss on that ground is denied, because he had a continuing duty, commencing immediately upon his receipt of the funds, to return them to their owner. The act of moral turpitude was that, after his initial letter requesting instructions from Liberty Mutual, he concealed the fact of his *retention* of those funds. Under rule 51(c)(4), therefore, the statute was tolled well before the five-year period would have run.

a fiduciary duty with respect to them.³ These were funds he received in his role as an attorney. His required conduct is not simply governed by the rules of the marketplace, as respondent would have us believe. He could not unlawfully retain the funds and, certainly, could not dishonestly spend the money as though it was his own without committing moral turpitude. The Supreme Court has noted that, “[w]hen an attorney receives money on behalf of a third party who is not his client, he nevertheless is a fiduciary as to such third party. Thus the funds in his possession are impressed with a trust, and his conversion of such funds is a breach of the trust.” (*Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156.) Further, an attorney may be disciplined when he or she assumes and violates a fiduciary relationship in a manner that would justify disciplinary action if there had been an attorney-client relationship. (*Clark v. State Bar* (1952) 39 Cal.2d 161, 166.) (See also, *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 373-376.) Accordingly, the court finds that respondent wilfully violated section 6106 by converting the funds he received from Liberty Mutual.

2. Count Two – Section 6068, subd. (i) [Failure to Cooperate]

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

Respondent admitted and offered no excuse for failing to contact Investigator Nunley, after she contacted him twice about allegations of misconduct. As such, respondent violated section 6068, subdivision (i) by not participating in a disciplinary investigation.

³ In addition, respondent may have been a constructive trustee of the funds he received by mistake, with the duty to transfer them to their owner. (See Witkin, *Summary of California Law*, 10th Ed., “Trusts”, §319, et seq.)

B. Case No. 05-O-00861 – Adams

On January 15, 2002, respondent was employed by Bobby Adams to represent him in a medical malpractice lawsuit on a contingency fee basis.⁴ Adams had been injured as a result of an allegedly negligently-performed surgery done to reduce swelling in his spinal cord. At the time respondent was retained, Adams was a quadriplegic and, according to respondent, “clinging to life.” Respondent was required to deal primarily with Adams’ wife, because Adams was unable to effectively communicate.⁵ Adams signed a retainer agreement employing respondent and another firm, Pinkerton and Doppelt, LLP.

An action was filed on June 26, 2002 in San Diego Superior Court entitled *Bobby Adams v. Regents of the University of California*, et al., case no. GIC791282. At a case management conference on May 16, 2003, the matter was set for trial for January 16, 2004. Respondent timely notified Adams of the trial date. As of the date of the case management conference, respondent had not yet hired any of the experts that would be required in order to properly present the case. He had, however, consulted with experts, including a board-certified neurosurgeon.⁶

In preparing for the trial, respondent recognized that the surgical procedure Adams had was very risky. Respondent concluded shortly before trial that it was unlikely he would be successful in proving that the doctors had done anything wrong in the surgical procedure. He advised the Adams of this fact at least twice.

On or about November 18, 2003, respondent filed a motion to be relieved as counsel for Adams. In his motion, respondent noted that he and Adams had “reached an impasse with regard

⁴ Adams had attempted to find another attorney to represent him prior to reaching respondent, but he had not been successful.

⁵ The Adams were married in the Critical Care Unit at U.C.S.D. Medical Center at the time of the surgery.

⁶ He had consulted with TASA, an expert witness company, in order to obtain a board-certified neurosurgeon.

to the further handling of the within matter,” and, as a result, respondent did not feel it was possible to continue to represent Adams. Respondent also advised the court that Adams “who is a quadriplegic, and who suffers from recurrent bouts of respiratory (sic) distress, cannot be reasonably expected to represent himself in this action. Plaintiff has not obtained counsel to replace your declarant.”

Respondent, had, however, attempted to retain other counsel to handle the trial. He had several contacts with Ronald R. Gilbert, an attorney in Michigan. On December 4, 2003, the month before the trial, Gilbert wrote to respondent, requesting more information about the case. Specifically, Gilbert requested the medical records from the surgery and also requested that respondent obtain a continuance of the trial. On December 9, 2003, the court denied respondent’s motion to be relieved as counsel.

On December 17, 2003, Gilbert wrote to respondent, informing him of the deficiencies in the medical and other records he had received from respondent. He informed respondent that, based on what he knew of San Diego Superior Court practice, he felt it was highly unlikely that the court would allow his expert to come into the case at that late date. Also on December 17, 2003, Gilbert sent another letter, this one to Mr. and Mrs. Adams. He reiterated his statement that it was unlikely that the San Diego court would allow his expert. In the letter, he stated: “Realistically I do not see how anyone could help you in pursuing the medical malpractice case at this point in time.”

The trial was trailed briefly from mid-January to the end of January. It was again continued in order to allow time to obtain experts, and actually commenced on March 22, 2004, and ended on April 12, 2004. Respondent did retain three experts who testified at the trial.⁷ The

⁷ Respondent retained a medical expert, a life care expert, and a forensic economist. Respondent stated at trial in this proceeding that he was pleased with the testimony of the

jury returned a defense verdict, and the motion for a new trial was filed, but taken off calendar. Also, the defendant in the case sought costs in an amount in excess of \$100,000. In response, a motion to tax costs was filed by respondent. Respondent informed Adams that the defendant in the case had offered in writing to waive costs in exchange for an agreement not to proceed with the appeal. Adams' wife admitted that this offer was passed on to her, but neither she nor Adams ever responded to this offer. The costs were reduced by the court to approximately \$80,000. A notice of appeal was filed on behalf of Adams, but Adams did not pay any fees for the appeal despite a request by respondent, so the appeal was dismissed.⁸ Adams' wife testified that she knew that if she did not pay the costs, the appeal would not go forward.

On November 18, 2004, Adams sent a letter to respondent demanding that respondent provide Adams his entire case file. Respondent did not timely respond to this letter. In fact, as of the trial in this matter, he still had not sent the file to Adams.

After Adams complained to the State Bar, Investigator Joy Nunley sent respondent a letter on March 18, 2005, requesting information regarding the case and respondent's relationship with the Adams and other counsel. Respondent did not respond to this letter. Investigator Nunley again wrote to respondent on April 12, 2005, requesting a response to the previous letter. Respondent did not respond to this letter.

1. Count Three – Rule 3-110(A) [Failure to Perform with Competence.]

Rule 3-110(A) of the Rules of Professional Conduct⁹ prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

experts. No contrary evidence indicating the experts did not properly testify was offered by the Office of the Chief Trial Counsel.

⁸ The retainer agreement noted that it only covered trial, and that a separate agreement was required for any appeal. Further, it specified that the client was responsible for payment of all court costs.

⁹ Future references to rule are to this source.

The Office of the Chief Trial Counsel alleges that respondent violated rule 3-110(A) by failing to cooperate with his client and Gilbert in attempting to find a new attorney, by failing to adequately prepare for trial, by failing to pursue the motion for new trial, and by failing to pursue the appeal. As set forth below, the Office of the Chief Trial Counsel has failed to sustain its burden by clear and convincing evidence.

The Adams case was a sad one, to be sure. By respondent's own account, Adams was a "fine gentleman" in a "tragic" situation. Respondent initially thought the case had value when he originally agreed to represent Adams. However, after discussing the matter with experts and other attorneys, it became clearer to him that the case was difficult to win. Respondent arguably did not properly prepare the case in a timely fashion, given that he was still looking for expert witnesses and trial counsel one month before trial. However, in the end, the trial went forward with the experts providing competent testimony. Plaintiff simply did not prevail, and there was no evidence that this result was respondent's fault. This result was consistent with the warning in respondent's retainer agreement, wherein the client acknowledged that respondent made no guarantee regarding the outcome of the case. At best, the Adams could have brought a professional negligence action against respondent, but his actions do not support a violation of rule 3-110(A). As such, count three is dismissed with prejudice.

2. Count Four – Rule 3-700(A)(2) [Withdrawal from Employment]

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

The Office of the Chief Trial Counsel alleges that by failing to pay the filing fees on Adams' appeal, and failing to pursue the appeal, respondent effectively withdrew from the

representation of Adams. This allegation could have merit if respondent were under an obligation to conduct the appeal. However, his retainer agreement specifically excluded appeals, and he was under no obligation to file and prosecute the appeal (although he apparently voluntarily preserved the appeal rights by filing a notice of appeal.) Further, his retainer agreement also required Adams to advance any costs, something he did not do.

Because he had completely performed all he was required to do under his retainer agreement, respondent did not withdraw from the case, “effectively” or otherwise. The Office of the Chief Trial Counsel has failed to sustain its burden of proof of an improper withdrawal by clear and convincing evidence, and therefore, count four is dismissed with prejudice.

3. Count Five – Rule 3-700(D)(1) [Failure to Release File]

Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

Despite a formal written demand by Adams to release the file in his case, respondent did not do so. Further, he had not done so even at the time of trial, and he has offered no reasonable excuse for his failure in this regard. Therefore, the Office of the Chief Trial Counsel has proved by clear and convincing evidence a violation of rule 3-700(D)(1).

4. Count Six – Section 6068, subd. (i) [Failure to Cooperate]

Respondent admitted and offered no excuse for failing to contact Investigator Nunley, after she contacted him twice about allegations of misconduct. As such, respondent violated section 6068, subdivision (i) by not participating in a disciplinary investigation.

C. Case No. 05-O-04178 – Galin

On July 2, 2002, Margot D. Galin retained respondent to represent her in a personal injury matter on a contingency basis, and a retainer agreement was signed on that day. She gave him \$1,000 to cover costs involved in the action. Galin’s claim arose from inappropriate physical contact by a therapist named Dr. Raul Romero-Romero, who was employed by the County of San Diego. Specifically, Galin claimed that Dr. Romero repeatedly raped her over a four-month period while he was ostensibly treating her for mental and emotional health problems.¹⁰ Galin’s testimony was not always credible, given her apparent difficulty or inability to recall as a result of a previous trauma she suffered.¹¹

On July 12, 2002, respondent filed a claim against the County of San Diego and Dr. Romero, pursuant to the Tort Claims Act. On July 22 and November 21, 2002, the Office of County Counsel sent respondent letters rejecting the claim on behalf of the County. Respondent received these letters. The July 22 letter explained that a portion of the claim was being denied because it was not filed within six months after the event complained of. At the bottom of the letter, the Office of County Counsel advised respondent that he may apply “without delay” to the

¹⁰ From the beginning, the case suffered from problems, since Galin had undergone the abuse from Dr. Romero for several months, raising a serious statute of limitations defense. In fact, Galin came to respondent more than six months after she had informed the county of Romero’s conduct, which first occurred in November 2001. She had also filed a criminal and administrative complaint against Romero more than six months prior. Further, the first forcible rape occurred more than a year before Galin met respondent. Finally, there was a problem involving whether an employer is vicariously liable for the sexual misconduct of an employee. Early on in their relationship, respondent advised Galin of all of these problems. Respondent maintained a thin hope against the county, hinging on an argument that a county publication as to the statute of limitations may have misled Galin into deferring her claim.

¹¹ There was no direct evidence of any psychological impairment suffered by Galin. Galin admitted to suffering from a “disability,” but felt that she was able to handle her own affairs. However, the court was able to readily observe a clear difficulty in recalling and articulating her testimony. Often, Galin became confused and was unable to respond to straightforward questions. Also, she testified that she did not write the letters she sent to respondent, relying on a friend to do so. The court has no concern as to her candor, however, when she was able to recall and articulate her answer.

Board of Supervisors for permission to file a late claim. The November 21, 2002 letter denied the balance of the timely filed portion of the claim. At the bottom of that letter, the Office of County Counsel published a “Warning” that stated:

“Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on those causes of action recognized under the California Tort Claims Act. See Government Code Section 945.6.”

Respondent did not file a lawsuit within the time required by law, nor did he seek permission to file a late claim. On July 15, 2003, respondent filed a lawsuit entitled *Margo G. v. H. Raul Romero-Romero and County of San Diego*, case number GIC814399, in San Diego Superior Court on behalf of Galin. The county filed a demurrer on August 15, 2003, arguing that the action was not filed within the time limits set forth in the Government Code. Respondent timely opposed the demurrer. On December 3, 2003, the court sustained the demurrer in a telephonic ruling, and ordered the case dismissed with prejudice as untimely filed. Respondent timely requested oral argument and, after argument, on December 12, 2003, the superior court affirmed the prior ruling sustaining the demurrer without leave to amend. The county was dismissed from the case on or about January 14, 2004.

As of January 2004, Dr. Romero had not yet appeared in the case. Respondent located an address for Dr. Romero and served him with the complaint. After he failed to respond, on March 2, 2004, respondent filed a request to enter default against him and his default was entered by the court. Respondent delayed proving up the default matter for approximately one year.¹² At that point, he contacted Galin and tried to arrange a date for her to testify, but she refused to set a date on account of her emotional state. In July 2005, she terminated the services of respondent.

¹² This had the effect of limiting the ability of Romero to seek relief from the default. See, Code of Civil Procedure, section 473.

On March 15, 2004, respondent filed a notice of appeal with regard to the dismissal of the county. Thereafter, he filed various documents in support of the appeal, including the notice to prepare clerk's and reporter's transcript, civil case information statement, and the clerk's transcript. Respondent advised Galin that he was preparing the appellate brief and that she needed to pay an additional \$278.31 to cover the costs set forth in his letter. She paid this amount approximately three months later. On July 22, 2004, respondent filed a request for an extension of time to file the opening brief in the appeal. A 30-day extension was granted on November 5, 2004, and on the order it was written: "last extension." Respondent failed to file his brief within the deadline, as extended, and the Court of Appeal dismissed his appeal on December 10, 2004. As she had done since 2002, Galin repeatedly attempted to contact respondent at his office, but no calls were returned.¹³ On May 13, 2005, Galin sent respondent a letter, which respondent received, requesting the status of her case, and an accounting.¹⁴ He did not respond to this request.

Respondent did not inform Galin of the dismissal, and did nothing to attempt to revive the appeal. In fact, respondent actually had not begun preparing the brief, despite telling Galin that he had. Galin fired respondent by another letter sent on July 25, 2005 and received by respondent. In her July letter, Galin demanded the return of all the documents being held by respondent. He did not return her file until September 2006. Respondent waited until he was fired by Galin to tell her that he had failed to file the opening brief and that the appeal had been dismissed.

On September 28, 2005, and again on October 20, 2005, State Bar Investigator Joy Nunley wrote respondent letters requesting an explanation of the charges. While he did not

¹³ Galin acknowledged that she was out of the state on several occasions from 2004 to 2005. In fact, she put her local home on the market in 2004 and thereafter moved to Portland, Oregon.

¹⁴ Galin admitted that she did not write this letter. It was written by a friend.

formally respond to either of these letters, he did have conversations with Investigator Nunley in November or December 2005 concerning the case and various related issues.

1. Count Seven – Rule 3-110(A) [Failure to Perform with Competence.]

The Office of the Chief Trial Counsel alleges that respondent violated rule 3-110(A) by failing to file the tort claim against the county in a timely fashion; failing to file appellant's opening brief, causing the appeal to be dismissed; and failing to proceed on the default entered against Romero.

The tort claim and the opening brief. It is unclear whether respondent's performance of these acts would have resulted in Galin prevailing on the underlying claim. However, he undertook this representation, and she was entitled to her day in court, or at least an explanation as to why she should not proceed. By his inaction, respondent denied Galin the right to have her matter properly heard. As such, the court finds that respondent recklessly and repeatedly failed to perform the services for which he was hired and which he agreed to perform. The Office of the Chief Trial Counsel has satisfied its burden of proof by clear and convincing evidence as to these allegations in this count.

The failure to proceed on the default. The proof on respondent's failure to proceed on the default of Romero is less compelling. He did obtain the default, and waited for over six months before proving it up. Respondent attempted to arrange a prove-up hearing, but Galin was unable to attend because of her emotional condition. A few months later, Galin terminated respondent. Nothing in the record indicates that she is currently precluded from enforcing the default judgment. As such, the Office of the Chief Trial Counsel has failed to satisfy its burden of proof as to this allegation in this count.

2. Count Eight – Rule 3-700(A)(2) [Withdrawal from Employment]

The Office of the Chief Trial Counsel alleges that by failing to pursue the default against Romero and proceed with Galin’s appeal, causing it to be dismissed, respondent *effectively* withdrew from representing Galin. As noted above, respondent was terminated before he was able to pursue the default against Romero. Further, the allegations of misconduct substantially overlap the more appropriate allegations in count seven. It is generally inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct. “There is ‘little, if any, purpose served by duplicative allegations of misconduct.’” (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) As such, the Office of the Chief Trial Counsel has failed to meet its burden as to a violation of rule 3-700(A)(2) with respect to this allegation in this count, and it is dismissed with prejudice.

3. Count Nine – Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

Count nine alleges that by failing to contact Galin when she called his office, and failing to respond to her letters, respondent failed to respond to reasonable inquiries of his client. The origin of this allegation is the failure of respondent to respond to a single letter which requested an accounting, as well as her “inability to reach him by telephone.” In the letter, dated May 13, 2005, Galin advised respondent that she had attempted to talk to him six times, but had only been successful once. The letter also requests “a COMPLETE, chronological report” outlining his activities as her lawyer since his retention. (Emphasis in original.) She also requested that he

“set forth the amount of money” she had paid his firm. She set a deadline for his response of June 1, 2005. He did not respond. The next letter, dated July 25, 2005, terminated his services.

Despite Galin’s assertions of little or no contact, the record reflects regular contact until almost the very end of the relationship. Further, Galin admitted that respondent took one of her “six” calls near the end of his representation. As noted above, the testimony of Galin was rather confused, with frequent instances of an inability to recall specific dates and events. Her responses to questions were frequently substantially delayed by her apparent inability to process the nature of the question or her answer. To be clear, this is not a case of a lack of candor on the part of Galin. Rather, she has evidently suffered from previous trauma that may have impacted her ability to quickly and accurately recall facts. While she appeared to be candid with the court, she lacked some credibility as a result of this disability.

Given all of the above, the Office of the Chief Trial Counsel has failed to sustain its burden with respect to count nine. It is, therefore, dismissed with prejudice.

4. Count Ten – Rule 3-700(D)(1) [Failure to Release File]

Respondent acknowledges that Galin requested her file in her July 25, 2005 letter. He disputes, however, that a single request that is not complied with is sufficient to constitute a violation of rule 3-700(D)(1). However, the rule does not allow an attorney to ignore the first request of a client, as respondent did, for over a year. Particularly, as here, where portions of the case were pending, respondent had an unequivocal duty to promptly return the file to allow her to find other counsel to handle the matter. This he did not do, and his failure represents a violation of rule 3-700(D)(1).

5. Count Eleven – Section 6068, subd. (i) [Failure to Cooperate]

Respondent admitted he failed to write to Investigator Nunley, after she attempted to contact him through two letters on September 28, 2005, and again on October 20, 2005.

However, he was in contact with Investigator Nunley in November or December 2005 regarding various matters involving this case. The contact the parties make during an investigation is not limited to a written response. It appears that respondent at least attempted to respond telephonically to the State Bar's inquiry. As such, the court cannot conclude by clear and convincing evidence that respondent violated section 6068(i) as alleged in this count. The count is dismissed with prejudice.

III. LEVEL OF DISCIPLINE

A. Factors in Aggravation

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. Misconduct¹⁵, std. 1.2(b).)

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) The court notes that he has been engaged in a continuous course of misconduct from approximately the end of 2000 until the time of trial herein.¹⁶

Respondent's misconduct significantly harmed a client, the public and the administration of justice. (Std. 1.2(b)(iv).) Galin's case was dismissed. Liberty Mutual waited years before being partially reimbursed by respondent and, eventually, settled with respondent for \$20,000 less than the default judgment entered against him.

In relevant part, standard 1.2(b)(iii) permits consideration as an aggravating circumstance whether respondent's misconduct was surrounded or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional

¹⁵ Future references to standard or std. are to this source.

¹⁶ Adams' file had not yet been returned at that time.

Conduct. In the instant case, respondent misrepresented to Galin that he was working on her appellate brief. That misrepresentation constitutes a violation of section 6106.

B. Factors in Mitigation

The absence of a prior record of discipline over many years of practice prior to the commencement of the misconduct (approximately 22 years) is a mitigating factor. (Std. 1.2(e)(i).)

Extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the misconduct may be mitigating factors. (Std. 1.2(e)(iv).) While there was no expert testimony to establish his medical problems, respondent suffered from various personal and family health and emotional problems, much of which was during the period of the misconduct. Specifically, he had surgery for prostate cancer in August 1998. He also had surgery for a double hernia in September 2004. He was diagnosed with glaucoma in his left eye in July 2004 and began treatment in November 2004. He had primary responsibility to care for his wife who had severe medical problems, including high blood pressure, surgery for diabetic retinopathy in 2004, knee surgery in November 2003, cardiac arrhythmia in August 2004, a serious ankle injury in January 2005, and a fractured hand in February 2006.

Respondent has participated in LAP since November 2006 and remains in compliance.

Objective steps promptly taken by the attorney spontaneously demonstrating remorse, recognition of the wrongdoing found or acknowledged and designed to timely atone for any consequences of the misconduct are a mitigating factor. (Std. 1.2(e)(vii).) With respect to the Liberty Mutual matter, the court will give respondent some mitigation credit because respondent cooperated with Liberty Mutual by agreeing to extend the statute of limitations to allow time to repay the debt, repaying a substantial part of the debt and with the balance, agreeing to have

judgment entered against him without litigation, and eventually paying much of the total amount taken from Liberty Mutual in exchange for a full satisfaction of judgment.

IV. 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).) a prior record of discipline is not required to recommend disbarment. (Std. 1.7(c).)

Standards 2.2(a), 2.3, 2.4(b), 2.6 and 2.10 apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for wilful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate.

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 only be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar recommends disbarment. The court agrees.

The court found instructive *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583. In *Kueker*, the attorney was disbarred for misappropriating \$66,000 of entrusted funds. His misconduct was surrounded by deceit in that he wrote letters to his client's agent for 18 months covering up his theft. He was not forthcoming during the State Bar's investigation. Respondent Kueker had 14 years of discipline-free conduct at the time.

In this case, the amount misappropriated is far from being insignificantly small and the mitigating circumstances, though considerable, do not clearly predominate. Respondent has been found culpable of committing acts of moral turpitude. Aggravating factors include multiple acts of misconduct as well as significant harm to the public and the administration of justice. The actions of respondent go to the fundamental foundation of the role of an attorney – honesty. Respondent's failure to return the Liberty Mutual Funds, followed by actually spending them, substantially weakened the reputation of the profession in the eyes of the public. His actions were not a mistake. After he realized that payment of the first check had not been stopped, he sent a letter to opposing counsel acknowledging the fund belonged to the insurance company and asking for instructions. When he did not receive any response, he began treating the funds as if they were his to keep and did so for an extended period of time.

Accordingly, respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his blatant act of dishonesty.

V. RECOMMENDED DISCIPLINE

It is hereby recommended that respondent KARL BLOOMFIELD 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 9.20(a) of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in rule 9.20(c) within 40 days of the effective date of the order showing his compliance with said order.

VI. COSTS

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

VII. ORDER REGARDING INACTIVE ENROLLMENT

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

Dated: November _____, 2008

RICHARD A. HONN
Judge of the State Bar Court