

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: 05-O-01352 (05-O-02269;
	)	05-O-02559; 05-O-03476;
	)	05-O-04328); 06-O-11822
	)	(06-O-12246); 06-O-12322;
VON WALLACE ROBINSON,	)	06-O-14223 (06-O-14450;
	)	06-O-14489; 06-O-14712);
	)	06-O-15282 (06-O-15378);
	)	08-C-12067; 10-O-00280
	)	(Cons.)
Member No. 176184,	)	
	)	DECISION INCLUDING DISBARMENT
	)	RECOMMENDATION AND
	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT ORDER
<u>A Member of the State Bar.</u>	)	

INTRODUCTION

Respondent Von Robinson (Respondent) is charged here with more than 30 counts of misconduct, involving ten different clients. The counts include allegations that Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct<sup>1</sup> (failure to perform with competence); rule 3-310(C)(2) (representing multiple clients with actual conflict); rule 3-510 (failure to communicate settlement offer); rule 3-700(D)(2) (failure to refund unearned fees); rule 4-100(A) (commingling); rule 4-100(A) (failure to maintain client funds in trust account); rule

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<sup>1</sup> Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

4-100(B)(1) (failure to notify client of receipt of client funds); rule 4-100(B)(3) (failure to render accounts of client funds); rule 4-100(B)(4) (failure to pay client funds promptly); rule 4-200 (unconscionable/illegal fee); section 6068, subdivision (i) of the Business and Professions Code<sup>2</sup> (failure to cooperate in State Bar investigation); section 6068, subdivision (m) (failure to inform client of significant developments); section 6106 (moral turpitude - misappropriation); section 6106 (moral turpitude – misuse of client trust account); section 6106 (moral turpitude – knowing unlawful practice of law); section 6106 (moral turpitude - NSF checks); and sections 6068(a), 6125, and 6126 (failure to support laws/unauthorized practice of law). In addition, Respondent's misdemeanor conviction of violating Penal Code section 1054.2(a)(1) was referred by the Review Department to this court for a determination of whether the circumstances surrounding that conviction involved moral turpitude or other misconduct warranting discipline. The court finds culpability as set forth below and recommends that Respondent be disbarred and that he be ordered to make restitution as specified.

### **PERTINENT PROCEDURAL HISTORY**

The first Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on August 31, 2006, in case nos. 05-O-01352, 05-O-02269, 05-O-02559, 05-O-03476, 05-O-03828, and 05-O-04328. The cases at that time were assigned to Judge Richard Honn.

On September 27, 2006, the State Bar filed a NDC in case nos. 06-O-11822 and 06-O-12246. On October 26, 2006, all of the above cases were consolidated.

Four days later, on October 30, 2006, the State Bar filed a NDC in another matter (case no. 06-O-12322).

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<sup>2</sup> Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

On February 27, 2007, the State Bar filed a NDC in case nos. 06-O-14223, 06-O-14450, 06-O-14489, and 06-O-14712.

On March 28, 2007, Judge Honn issued a trial-setting order, scheduling the cases for trial on September 10, 2007. As part of that order, all of the pending cases were consolidated. One week later, Judge Honn assigned the cases to the undersigned.

On April 26, 2007, the State Bar filed yet another NDC, in case nos. 06-O-15282 and 06-O-15378.

A status conference was held on June 6, 2007. At that time, Respondent requested that the cases be referred to a program judge for possible inclusion in the Alternative Discipline Program (ADP). On June 14, 2007, this court issued an order referring the matters to Judge Richard Platel as program judge. The order consolidated all of the then-filed cases and stated that the cases remained scheduled to commence trial on September 10, 2007.

An initial ADP status conference was held by Judge Platel on June 21, 2007. Respondent did not appear. By order dated June 21, 2007, a new status conference was scheduled for July 25, 2007.

On July 25, 2007, the status conference was held before Judge Platel as program judge. Respondent appeared and was ordered to provide the required nexus information by September 10, 2007. A follow-up status conference in the ADP evaluation process was ordered for September 13, 2007. In that same order, Judge Platel vacated the scheduled trial date.

On September 13, 2007, Respondent did not appear for the scheduled status conference in the ADP evaluation proceeding. In an order issued by Judge Platel on that same date, Respondent was warned that, if he failed to appear at the next status conference, his cases would be returned to standard proceedings.

On October 11, 2007, Respondent failed to appear for the next scheduled conference. On that same date, Judge Platel issued an order, finding that Respondent was not eligible for the ADP and returning the cases to standard proceedings with the undersigned.

A status conference was held before the undersigned on November 13, 2007. At that time, the cases were given a new trial date of May 15, 2008, with a trial estimate of six days.

On the eve of the scheduled trial, Respondent tendered a resignation from the Bar with charges pending (dated May 17, 2008) and submitted a partial stipulation as to facts consisting of 133 paragraphs. At that time, he was enrolled ineligible to practice law as a result of his resignation request, effective May 21, 2008.<sup>3</sup> With the agreement of the parties, the consolidated cases were then ordered abated by the undersigned while Respondent's resignation was under submission.

Respondent's resignation was thereafter approved by the State Bar Board of Governors in November 2008, and was in the process of being forwarded to the California Supreme Court when Respondent notified the State Bar Court's staff that he was withdrawing the resignation. The State Bar then filed with this court an opposition to Respondent's ability to withdraw his resignation at such a late date. In an order dated July 21, 2009, this court disallowed Respondent's effort to withdraw his resignation, finding that any effort by him to withdraw the resignation needed to be directed to either the Supreme Court or the State Bar Board of Governors.

Respondent's resignation then went back to the Board of Governors, which, in May 2010, issued a "Decline to Accept" recommendation.

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<sup>3</sup> Respondent had previously been enrolled involuntarily ineligible to practice on May 5, 2008, due to his failure to pass the MPRE. He has remained ineligible to practice at all times from that date to the present.

While the resignation was still pending with the State Bar Board of Governors, a conviction referral matter (case no. 08-C-12067) was filed with the Review Department on March 30, 2010. On April 23, 2010, the criminal conviction case was referred by the Review Department to the Hearing Department for handling. After being assigned to the undersigned, an order was issued on April 28, 2010, scheduling an initial status conference in the matter for June 7, 2010.

The status conference was called by the court on June 7, 2010, as previously ordered. Neither the State Bar nor Respondent appeared. An order was issued on that same date, ordering to parties to appear on July 12, 2010, in all pending matters.

On June 25, 2010, the State Bar filed a NDC in case no. 10-O-280. On July 1, 2010, this court issued an order requiring the parties to appear at the scheduled July 12, 2010, status conference.

The scheduled status conference took place on July 12, 2010. Both sides were present. At that time, the court unabated the previously-abated cases, consolidated all cases, and scheduled the cases to start trial on December 14, 2010, with a five-day trial estimate. A trial-setting order was issued by the court on July 14, 2010. As part of the trial setting order, the parties were ordered to file pretrial conference statements and comply with rules 1220-1225 of the Rules of Practice.

At the July 12, 2010, status conference, Respondent made an oral request to again be referred to ADP for evaluation. A status conference was held on that request on July 27, 2010. On that same date, this court signed an order denying Respondent's ADP request.

Trial was commenced on December 14, 2010, and completed on December 16, 2010. The State Bar was represented at trial by Deputy Trial Counsel Ashod Mooradian. Respondent

acted as counsel for himself. At the outset of the trial, this court issued an order precluding Respondent from offering any documents or calling any witnesses other than himself, based on his failures to file a pretrial conference statement and to otherwise comply with the pretrial disclosure requirements, violations of both this court's trial-setting order and the Rules of Practice. During the trial, the parties met and reached an extensive stipulation of facts and conclusions of law, resolving most of the counts pending against Respondent. That stipulation is set forth in greater detail below.

On January 12, 2011, while this matter has been submitted for decision, the Supreme Court issued an order declining to accept Respondent's resignation with charges pending. The order stated that Respondent was to remain on inactive status unless and until restored to active status by this court after successful motion by Respondent.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The following findings of fact are based on Respondent's responses to the NDCs, the extensive stipulation of undisputed facts and conclusions of law previously filed by the parties, and the documentary and testimonial evidence admitted at trial.

#### **Jurisdiction**

Respondent was admitted to the practice of law in the State of California on June 1, 1995, and since that time has been a member of the State Bar of California.

#### **Case No. 05-O-01352 (Cynthia Martinez Matter)**

The parties stipulated to the following facts:

Between April 23, 2004 and March 31, 2005, Respondent maintained a client trust account at Inland Community Bank, designated account number xxxx090 (the "Inland CTA").

Between April 1, 2005 and November 30, 2005, Respondent maintained a client trust account at Washington Mutual Bank, designated account number xxx-xxxx639 (the “Washington Mutual CTA”).

In May 2003, Cynthia E. Martinez (“Martinez”) employed Respondent to represent her in a personal injury matter (the “Martinez matter”) that arose on May 3, 2003.

In the retainer agreement between Respondent and Martinez, Respondent’s attorney fees would be  $33\frac{1}{3}$  percent of the amount recovered, if any.

On May 20, 2003, Respondent signed a medical lien in favor of Dr. Marvin Phillips, D.C., who rendered medical treatments to Martinez between May 14, 2003 and June 18, 2004.

On June 26, 2004, Dr. Marvin Phillips, D.C., or an authorized member of his staff (collectively “Phillips Chiropractic, Inc.”), sent Respondent an itemized statement of services rendered to Martinez totaling \$8,873.

Respondent received Phillips Chiropractic, Inc.’s itemized statement of services rendered to Martinez totaling \$8,873 sent on June 26, 2004.

On July 2, 2004, Phillips Chiropractic, Inc., sent Respondent a follow-up itemized statement of services rendered to Martinez totaling \$8,873.

Respondent received Phillips Chiropractic, Inc.’s itemized statement of services rendered to Martinez totaling \$8,873 sent on July 2, 2004.

On July 21, 2004, Respondent sent Wawanesa Insurance a demand letter and a Personal Injury Damage Package on behalf of Martinez claiming \$8,873 in medical expenses.

On July 28, 2004, Wawanesa Insurance acknowledged receipt of Respondent’s July 21, 2004 demand letter and a Personal Injury Damage Package on behalf of Martinez claiming \$8,873 in medical expenses.

In December 2004, Respondent settled the Martinez's personal injury claim for \$12,000.

On December 28, 2004, Wawanesa Insurance sent Respondent a check in the amount of \$12,000 as settlement of Martinez's personal injury claim.

On January 5, 2005, Respondent deposited the \$12,000 Martinez settlement check into his Inland CTA.

On January 7, 2005, Respondent sent Martinez a check from the Inland CTA in the amount of \$4,000 as her share of the settlement proceeds.

On January 7, 2005, Respondent did not provide Martinez a settlement breakdown with the settlement check or at any other time pertinent to these charges.

On January 7, 2005, Respondent issued himself a check from the Inland CTA in the amount of \$6,500, for attorney fees.

On January 7, 2005, the remaining amount of the Martinez settlement funds in the Inland CTA equaled \$1,500.

Respondent did not claim any costs in the Martinez matter.

In early March 2005, Martinez called Respondent, requesting that he pay Phillips Chiropractic, Inc., \$8,873.

Respondent failed to respond to Martinez's request for payment.

On March 12, 2005, Phillips Chiropractic, Inc., sent Respondent a letter requesting payment of the \$8,873 for medical services rendered to Martinez. Respondent failed to respond to Phillips Chiropractic, Inc.'s March 12, 2005 request for payment. To date, Respondent has not paid Phillips Chiropractic, Inc., for the medical services rendered to Martinez.

Respondent failed to maintain the balance of funds received for the benefit of Martinez in the Inland CTA.



On January 10, 2005, the balance of funds received for the benefit of Martinez in the Inland CTA dropped to \$271.18.

On January 10, 2005, Respondent failed to maintain in the Inland CTA \$1,228.82 of the funds received for the benefit of Martinez.

Subsequently, Respondent failed to maintain the entire \$1,500 balance of funds received for the benefit of Martinez.

On the date of loss, May 3, 2003, Martinez was a passenger in a vehicle belonging to Priscilla Carrillo ("Carrillo"), the party insured by Wawanesa Insurance.

At the time of the accident, Carrillo's vehicle was driven by Carrillo's brother, Darryl Smith ("Smith") who was Martinez's boyfriend.

Smith was alleged to have failed to maintain a safe distance behind another vehicle and consequently rear-ended a car in front of Carrillo's vehicle, causing a multiple vehicle accident.

Respondent represented driver Smith at the same time he represented passenger Martinez in the Martinez matter.

Prior to accepting the representation of both Martinez and Smith, Respondent did not advise Smith that his interests actually conflicted with Martinez and did not advise Martinez that her interests actually conflicted with Smith.

Prior to accepting the representation of both Martinez and Smith, Respondent did not obtain the written consent of Smith authorizing joint representation and did not obtain the written consent of Martinez authorizing joint representation.

In February 2005, Respondent called Wawanesa Insurance Claims Examiner Lisa Vick ("Vick") and requested compensatory damages on behalf of Smith under Carrillo's insurance policy.

On March 3, 2005, Vick sent Respondent a letter, denying his request for damages on behalf of Smith.

On December 17, 2004, Respondent issued check #2558 from the Inland CTA for \$125.00, made payable to Southern California Edison, to pay an expense of Respondent unrelated to any client matter.

On January 1, 2005, Respondent issued check #2573 from the Inland CTA for \$536, made payable to Metlife, to pay an expense of Respondent unrelated to any client matter.

On January 10, 2005, Respondent issued check #2567 from the Inland CTA for \$500, as a payroll check made payable to Wilbert Milo, an employee in Respondent's office, which was unrelated to any client matter.

On January 11, 2005, Respondent issued check #2568 from the Inland CTA for \$20.48, made payable to Sparkletts, to pay an expense of Respondent unrelated to any client matter.

On January 21, 2005, Respondent deposited \$3,000 of Respondent's earnings into the Inland CTA.

**Count 1 – Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]**

Rule 4-100(B)(4) of the Rules of Professional Conduct requires attorneys to “[p]romptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive.” This obligation includes the duty to pay valid medical liens where the attorney is holding client funds for that purpose. (See, e.g., *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 286; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 10.)

The parties stipulated as follows: By failing to pay his client's medical provider, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's

possession which the client is entitled to receive in violation of Rules of Professional Conduct, rule 4-100(B)(4). The court accordingly finds Respondent culpable of willfully violating rule 4-100(B)(4).

**Count 2 –Rule 4-200(A) [Unconscionable Fee]**

Rule 4-200(A) provides, “A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.”

The parties stipulated as follows: By paying himself more than 54% of the total settlement obtained on behalf of Martinez, Respondent entered into an agreement for, charged, or collected an unconscionable fee in violation of Rules of Professional Conduct, rule 4-200(A). The court accordingly finds Respondent culpable of willfully violating rule 4-200(A).

**Count 3 - Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]**

Rule 4-100(A) of the Rules of Professional Conduct requires that all funds received or held for the benefit of clients by an attorney or law firm, including advances for costs and expenses, must be deposited and maintained in a designated client trust account. This obligation includes funds held by the attorney for the purpose of paying medical liens. (*In the Matter of Dyson, supra*,<sup>1</sup> Cal. State Bar Ct. Rptr. at p. 286.)

By not maintaining in his CTA the entire \$1,500 that was left from the Martinez settlement funds, Respondent failed to maintain the balance of funds received for the benefit of clients and deposited in a client trust account in violation of Rules of Professional Conduct, rule 4-100(A).<sup>4</sup>

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<sup>4</sup> The conduct underlying this violation is essentially the same as that underlying the finding, below, that Respondent is culpable of the more serious misconduct of committing acts of moral turpitude (misappropriation) in willful violation of section 6106. Accordingly, the court finds no need to assess any additional discipline as a consequence of it. (See *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.)

**Count 4 – Rule 3-310(C)(2) [Actual Conflict – Representing Multiple Clients]**

Rule 3-310(C)(2) provides that an attorney shall not, without the informed written consent of each client, accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict.

The parties stipulated as follows: By representing one client in a claim for damages inflicted by the insured's vehicle and representing another client who was driving the insured's vehicle and, who moreover, caused the accident, Respondent accepted or continued representation of more than one client in a matter in which the interests of the clients actually conflicted without the informed written consent of each client in violation of Rules of Professional Conduct, rule 3-310(C)(2). The court accordingly finds Respondent culpable of willfully violating rule 3-310(C)(2).

**Count 5 –Rule 4-200(A) [Unconscionable Fee]**

The parties agreed that this count would be dismissed in the interest of justice. It is hereby dismissed with prejudice.

**Count 6 – Rule 4-100(A) [Commingling]**

Rule 4-100(A) prohibits attorneys from depositing personal funds into CTAs: "No funds belonging to the member or law firm shall be deposited therein or otherwise commingled . . . ." Further, "[t]he rule absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit." (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23; see also *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54 ["Trust accounts, open or closed, are never to be used for personal purposes"].)

The parties stipulated as follows: By issuing client trust account checks to pay expenses of Respondent unrelated to any client matter and by depositing his earnings into his CTA,

Respondent improperly used his client trust account as a personal business account and commingled funds belonging to Respondent in a client trust account in violation of Rules of Professional Conduct, rule 4-100(A). The court accordingly finds Respondent culpable of willfully violating rule 4-100(A).

**Count 7 – Section 6106 [Moral Turpitude – Misappropriation]**

At the time of the settlement, Respondent was aware of medical liens against the amount of the \$12,000 settlement in excess of \$4,000. He then distributed \$4,000 to his client, representing to her that there was an agreement whereby the doctor would receive \$4,000 and Respondent would keep the remaining \$4,000. After Respondent then distributed \$4,000 to his client, he never paid any portion of the remaining funds to the doctor or distributed any additional money to his client. Instead, he misappropriated the \$4,000 that had not been earned by Respondent as legal fees.

Respondent contends that he was entitled to keep \$2,500 of these funds because the doctor owed him that money as a result of a different matter. That testimony, suggesting a unilateral decision by Respondent to use money owed either to his client or Dr. Phillips to re-pay money owed by the doctor, was not credible. More significantly, it does not account for the additional \$1,500 that was also misappropriated by Respondent.

This willful misappropriation by Respondent of \$4,000 constituted an act of moral turpitude, in willful violation of section 6106.

**Case No. 05-O-02269 (Lane Matter)**

The parties stipulated to the following facts:

On October 4, 2004, Vita I. Lane (“Lane”) employed Respondent to represent her in a marital dissolution matter entitled *Delbert Lane, Sr. v. Vita I. Lane*, San Bernardino County Superior Court Case No. VFLVS030605.

Between October 6, 2004 and February 10, 2005, Lane paid Respondent advanced attorney’s fees totaling \$1,793.60.

On November 8, 2004, Respondent spoke with an employee in the office of opposing counsel John R. Reynen II (“Reynen”) and left a message informing Reynen that he would file a response on behalf of Lane.

On December 17, 2004, Reynen sent Respondent a letter informing him that he had not received Lane’s response to the petition and that he would proceed by default if no response to the petition was filed within ten days.

On December 20, 2004, Respondent sent Reynen a letter, indicating that a response to the petition would be filed “ASAP”.

On January 3, 2005, Reynen sent Respondent a letter, advising him that he would file a Request to Enter Default if no response to the petition was filed by January 7, 2005.

On January 14, 2005, Reynen filed a Request to Enter Default that was granted by the court on January 14, 2005.

On January 26, 2005, Respondent filed a Motion to Set Aside Default on behalf of Lane.

On February 16, 2005, the court scheduled a Motion re: Set Aside Default hearing for March 15, 2005.

On March 15, 2005, without prior notice to Lane, Respondent did not appear at the Motion re: Set Aside Default hearing on her behalf.

The court granted Lane's motion to set aside default because the petitioner had no opposition to the motion.

On April 2, 2005, dissatisfied with Respondent's failure to perform on her behalf, Lane sent Respondent a letter, terminating him and requesting that Respondent refund the unearned attorney's fees.

Respondent, at all times pertinent to these charges, did not respond to Lane's request for a refund.

To date, Respondent has not refunded any portion of the \$1,793.60 in advanced fees paid to him by Lane.

**Count 8 – Rule 3-110(A) [Failure to Perform with Competence]**

Rule 3-110(A) provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." (See, e.g., *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [attorney failed to perform competently by taking no action towards purpose client retained him to accomplish].)

The parties stipulated as follows: By failing to file a response to the petition and to appear at the March 15, 2005 hearing on behalf of Lane, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of Rules of Professional Conduct, rule 3-110(A). The court accordingly finds Respondent culpable of willfully violating rule 3-110(A).

**Count 9 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]**

Rule 3-700(D)(2) provides: "A member whose employment has terminated shall: [¶] . . . [¶] (2) Promptly refund any part of a fee paid in advance that has not been earned." (See, e.g., *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 424 [attorney may not

retain advanced fees if minimal services performed are of no value to client]; *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 332 [advanced fee not earned when paid but rather when contracted-for legal services are performed].)

The parties stipulated as follows: By failing to perform any service of value to Lane, and not refunding any part of the \$1,793.60 that had been advanced by Lane, upon termination of his employment and upon Lane's request, Respondent failed to refund any part of a fee paid in advance that was not earned in violation of Rules of Professional Conduct, rule 3-700(D)(2). The court accordingly finds Respondent culpable of willfully violating rule 3-700(D)(2).

**Case No. 05-O-02559 (Mermilliod Matter)**

The parties stipulated to the following facts:

Starting in early 2003, Respondent leased office space from Stephen Mermilliod for his business, the Law Offices of Von W. Robinson, in the City of Rialto.

In February 2004, Stephen Mermilliod ("Mermilliod") employed Respondent to represent him in a pending civil suit entitled *Stephen Mermilliod v. Bozena Janczar et al.*, San Bernardino County Superior Court Case No. SCVSS97833 (the *Mermilliod* matter).

On February 4, 2004, Mermilliod gave Respondent a copier, which they agreed would be valued at \$1,500, as advanced attorney's fees for retainer in the *Mermilliod* matter.

On February 4, 2004, Respondent executed a substitution of attorney to become Mermilliod's attorney in the *Mermilliod* matter.

On February 9, 2004, because he had not yet filed the substitution of attorney, Respondent made a special appearance at a case management conference in the *Mermilliod* matter. During the February 9, 2004 hearing, and in Respondent's presence, the court ordered Respondent to file his substitution of attorney on February 9, 2004, and further ordered that



private mediation, as elected by the parties, be completed by May 10, 2004. Finally, during the February 9, 2004 hearing, and in Respondent's presence, the court ordered an OSC re: Mediation Completion, set for hearing on June 8, 2004.

On May 19, 2004, opposing counsel Steven R. Weber (Weber) of Granowitz, White and Weber, sent Respondent a letter, informing Respondent that he had not received a conformed copy of the substitution of attorney indicating that Respondent represented Mermilliod.

On May 25, 2004, Respondent filed the substitution of attorney that he had previously signed on February 4, 2004.

On June 4, 2004, defendant's counsel Bradley White (White) of Granowitz, White and Weber, sent a letter to Respondent offering \$10,000 to resolve the *Mermilliod* matter.

Respondent subsequently received White's June 4, 2004, written offer of settlement.

Respondent did not communicate promptly to Mermilliod all amounts, terms, and conditions of White's June 4, 2004, written offer of settlement.

Respondent did not respond to White's June 4, 2004, written offer of settlement.

On June 8, 2004, Respondent failed to appear at the OSC re: Mediation Completion in the *Mermilliod* matter.

Respondent had earlier that same day called the court and requested that the hearing be placed on second call, which the court denied.

At the June 8, 2004 OSC, White informed the court that Respondent, as plaintiff counsel, had done nothing to proceed with mediation in the *Mermilliod* matter.

At the June 8, 2004 OSC, the court ordered an OSC re: Dismissal to be heard on June 22, 2004, and sent a notice to Respondent on June 8, 2004.

Respondent subsequently received the court's notice of the OSC re: Dismissal set to be heard on June 22, 2004, in the *Mermilliod* matter.

On June 22, 2004, Respondent failed to appear at the OSC re: Dismissal in the *Mermilliod* matter.

On June 22, 2004, at the OSC re: Dismissal in the *Mermilliod* matter, the court entered an order to dismiss without prejudice for lack of prosecution.

Later on June 22, 2004, Respondent appeared after calendar call was completed and was advised by the court that the complaint had been dismissed.

At all times pertinent to these charges, Respondent did not inform Mermilliod that the case was dismissed.

On December 4, 2004, Respondent issued a check from the Inland CTA for \$500.00, payable to Mermilliod, for the November 2004 lease payment.

On January 5, 2005, which was 31 days later, the \$500.00 check was rejected by the bank for non-sufficient funds in the Inland CTA.

On December 27, 2004, Respondent issued check #2560 from the Inland CTA for \$1,530.00, payable to Mermilliod for the December 2004 lease payment.

On January 5, 2005, check #2560 was rejected by the bank for non-sufficient funds in the Inland CTA.

On January 19, 2005, Respondent issued check #2572 from the Inland CTA for \$1,400.00, payable to Mermilliod for the January 2005 lease payment.

Mermilliod successfully negotiated check #2572 on January 20, 2005.

**Count 10 – Rule 3-110(A) [Failure to Perform with Competence]**

The parties stipulated as follows: By failing to timely file the substitution of attorney, to proceed with mediation, and to appear on behalf of Mermilliod at the OSC hearing scheduled by the court, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of Rules of Professional Conduct, rule 3-110(A). The court accordingly finds Respondent culpable of willfully violating rule 3-110(A).

**Count 11 – Rule 3-510 [Failure to Communicate a Settlement Offer]**

Rule 3-510 requires an attorney to promptly communicate to the attorney's client all amounts, terms, and conditions of any written offer of settlement made to the client in a non-criminal matter.

The parties stipulated as follows: By not relaying to Mermilliod the \$10,000 settlement offer made by opposing counsel in his letter dated June 4, 2004, Respondent failed to communicate promptly to a client all amounts, terms, and conditions of a written offer of settlement made to the client in a non-criminal matter in violation of Rules of Professional Conduct, rule 3-510. The court accordingly finds Respondent culpable of willfully violating rule 3-510.

**Count 12 – Rule 4-100(A) [Misuse of Client Trust Account]**

The parties stipulated as follows: By issuing client trust account checks to pay his personal business expenses, Respondent improperly used his client trust account as a personal business account and commingled funds belonging to Respondent in a client trust account in violation of Rules of Professional Conduct, rule 4-100(A).<sup>5</sup> The court accordingly finds Respondent culpable of willfully violating rule 4-100(A).

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<sup>5</sup> The court notes that the misconduct underlying this count is reflective of a pattern of mishandling by Respondent of his CTA. While this court finds culpability in each of the various counts alleging such misconduct, it consolidates these counts into a pattern of misconduct for

**Case No. 05-O-03476 (Huffman Matter)**

The parties stipulated to the following facts:

On October 12, 2003, Carl G. Huffman (“Huffman”) employed Respondent to represent him in a criminal matter.

Between October 2003 and January 2004, Huffman paid Respondent a total amount of \$5,000 in advanced attorney’s fees.

Between October 2003 and May 2004, Respondent made twelve court appearances on behalf of Huffman.

On December 18, 2004, Huffman sent Respondent a letter, requesting a full accounting of the fees that he had advanced to Respondent.

Respondent received Huffman’s December 18, 2004 letter requesting an accounting.

Respondent did not respond to Huffman’s December 18, 2004 letter requesting an accounting.

**Count 13 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]**

Rule 4-100(B)(3) requires a member to “maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them[.]” (See, e.g., *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952 [culpability established for failure to account despite lack of formal demand for accounting].)

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purposes of assessing the appropriate discipline. Moreover, to the extent that there are parallel allegations and findings of moral turpitude based on Respondent’s inappropriate misuse of his CTA, no additional weight is given to the essentially duplicative findings of rule 4-100(A) violations for purposes of assessing discipline. (See *In the Matter of Brimberry, supra*, 3 Cal. State Bar Ct. Rptr. at p. 403.)

The parties stipulated as follows: By not itemizing the services rendered to Huffman, Respondent failed to render appropriate accounts to a client regarding all funds of the client coming into Respondent's possession in violation of Rules of Professional Conduct, rule 4-100(B)(3). The court accordingly finds Respondent culpable of willfully violating rule 4-100(B)(3).

**Case No. 05-O-03828**

The parties agreed that this case, and its three counts<sup>6</sup>, would be dismissed with prejudice in the interests of justice. It is hereby dismissed with prejudice.

**Case No. 05-O-04328**

The parties stipulated to the following facts:

On May 2, 2005, Respondent authorized an electronic debit in the amount of \$4.07, payable to Kragen, drawn upon his Washington Mutual CTA.

On May 3, 2005, Respondent authorized an electronic debit in the amount of \$48.00, payable to Visa-Union, drawn upon his Washington Mutual CTA.

On May 9, 2005, Respondent authorized an electronic debit in the amount of \$24.95, payable to Visa-TWX\*AOL for Broadband, drawn upon his Washington Mutual CTA.

On May 10, 2005, Respondent authorized an electronic debit in the amount of \$44.69, payable to Walgreen, drawn upon his Washington Mutual CTA.

On May 10, 2005, Respondent authorized an electronic debit in the amount of \$14.86, payable to 7-Eleven, drawn upon his Washington Mutual CTA.

On June 25, 2005, Respondent issued check #1002 from the Washington Mutual CTA for \$175.00, payable to Capital One Auto Finance.

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<sup>6</sup> The NDC includes two separate counts designated "Count Fourteen."

On August 1, 2005, Respondent authorized an electronic debit in the amount of \$1,000.00, payable to Respondent, drawn upon his Washington Mutual CTA.

On August 3, 2005, Respondent authorized an electronic debit in the amount of \$800.00, payable to Respondent, drawn upon his Washington Mutual CTA.

On August 3, 2005, Respondent authorized an electronic debit in the amount of \$1,000.00, payable to Respondent, drawn upon his Washington Mutual CTA.

On August 9, 2005, Respondent authorized an electronic debit in the amount of \$2,500.00, payable to Respondent, drawn upon his Washington Mutual CTA.

On September 16, 2005, Respondent authorized an electronic debit in the amount of \$50.70, payable to Visa-Rialto Cleaners, drawn upon his Washington Mutual CTA.

On September 19, 2005, Respondent authorized an electronic debit in the amount of \$45.21, payable to Visa-Rite Aid, drawn upon his Washington Mutual CTA.

On September 19, 2005, Respondent authorized an electronic debit in the amount of \$71.57, payable to Visa-Rite Aid, drawn upon his Washington Mutual CTA.

On September 20, 2005, Respondent authorized an electronic debit in the amount of \$61.07, payable to Visa-Shell Oil, drawn upon his Washington Mutual CTA.

On September 29, 2005, Respondent authorized an electronic debit in the amount of \$77.73, payable to Big Lots, drawn upon his Washington Mutual CTA.

On September 29, 2005, Respondent authorized an electronic debit in the amount of \$439.67, payable to Visa-Office Depot, drawn upon his Washington Mutual CTA.

On October 11, 2005, Respondent authorized an electronic debit in the amount of \$101.19, payable to Visa-Radio Shack, drawn upon his Washington Mutual CTA.

On October 17, 2005, Respondent authorized an electronic debit in the amount of \$56.45, payable to Radio Shack, drawn upon his Washington Mutual CTA.

On October 25, 2005, Respondent authorized an electronic debit in the amount of \$354.35, payable to Rialto Smog and Muffler, drawn upon his Washington Mutual CTA.

On October 26, 2005, Respondent authorized an electronic debit in the amount of \$44.15, payable to Rite Aid, drawn upon his Washington Mutual CTA.

On October 27, 2005, Respondent authorized an electronic debit in the amount of \$45.80, payable to Visa-Union, drawn upon his Washington Mutual CTA.

On October 28, 2005, Respondent authorized an electronic debit in the amount of \$180.91, payable to Office Depot, drawn upon his Washington Mutual CTA.

On October 31, 2005, Respondent authorized an electronic debit in the amount of \$102.18, payable to Visa-SBC, drawn upon his Washington Mutual CTA.

**Count 16 – Rule 4-100(A) [Commingling]**

The parties stipulated as follows: By authorizing electronic debits from his client trust account and issuing a client trust account check to pay his personal business expenses, Respondent improperly used his client trust account as a personal business account and commingled funds belonging to Respondent in a client trust account in violation of Rules of Professional Conduct, rule 4-100(A).<sup>7</sup> The court accordingly finds Respondent culpable of willfully violating rule 4-100(A).

**Case No. 06-O-11822 (Williams Matter)**

The parties stipulated to the following facts:

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<sup>7</sup> See footnote 5, above.

In March 2003, Ahumad B. Williams (“Williams”) employed Respondent to represent him in a personal injury claim arising from a car collision that occurred on February 22, 2003.

On December 8, 2004, Respondent faxed to Allstate Insurance Company (Allstate”) a “damages package” on behalf of Williams.

On January 4, 2005, Respondent faxed Allstate an additional special damages request.

On February 16, 2005, Respondent filed a complaint on behalf of Williams with the Riverside County Superior Court.

The court rejected the February 16, 2005 complaint as incomplete because Respondent did not pay the required filing fee.

On March 16, 2005, Respondent re-filed the complaint on behalf of Williams in the case entitled *Ahumad Williams v. Arvilla Venneri*, Riverside Superior Court Case No. 427247 (the “Williams matter”).

On March 16, 2005, the court sent Respondent a Notice of Trial Department Assignment and Case Management Conference.

The March 16, 2005 notice requested that the plaintiff, Respondent’s client, serve the defendant.

Respondent received the Notice of Trial Department Assignment and Case Management Conference.

On June 16, 2005, the court set an order to show cause hearing (“OSC”) re: sanctions for failure to file proof of service of summons and complaint to be heard on August 29, 2005.

On June 16, 2005, the court clerk sent Respondent notice of the OSC to be heard on August 29, 2005.

Respondent received the notice of the OSC sent by the court clerk.



On August 29, 2005, Respondent did not appear on behalf of Williams at the OSC re: sanctions for failure to file proof of service of summons and complaint.

At the August 29, 2005 hearing, the court ordered sanctions in the amount of \$150.00 against Respondent.

At the August 29, 2005 hearing, the court also set an OSC hearing re: dismissal of the Williams complaint set for September 29, 2005.

Respondent received notice of the court's August 29, 2005 order for sanctions in the amount of \$150.00 against Respondent.

Respondent received notice of the court's August 29, 2005 order setting an OSC Re: dismissal of the Williams complaint.

On September 29, 2005, Respondent did not appear at the OSC Re: dismissal of the Williams complaint.

On September 29, 2005, the court dismissed Williams's complaint.

Respondent subsequently received the notice of the court's order of dismissal of the Williams complaint.

Respondent did not inform Williams that his personal injury claim was dismissed.

Williams first learned that the Williams matter had been dismissed in March 2006.

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

The parties stipulated as follows: By failing to serve the defendant in the Williams matter, by failing to appear at the June 16 and September 29, 2005 hearings, and by causing the Williams matter to be dismissed by his failure to file proof of service of summons and complaint, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with

competence in violation of Rules of Professional Conduct, rule 3-110(A). The court accordingly finds Respondent culpable of willfully violating rule 3-110(A).

**Count 2 –Section 6068(m) [Failure to Inform Client of Significant Developments]**

Section 6068, subdivision (m) obligates 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.”

The parties stipulated as follows: By failing to inform Williams that his personal injury claim was dismissed on September 29, 2005, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in violation of Business and Professions Code, section 6068(m). The court accordingly finds Respondent culpable of violating section 6068, subdivision (m).

**Case No. 06-O-12246 (Esperanza Martinez Matter)**

The parties stipulated to the following facts:

On or about April 18, 2003, Respondent substituted in place of attorney Will D. Johnson (“Johnson”) as the new attorney of record for plaintiffs, Ernest Lopez (“Lopez”) and Esperanza Martinez (“Martinez”), in a pending personal injury claim entitled Ernest Lopez, Esperanza Martinez v. Roberto Cardenas, San Bernardino Superior Court Case No. SCISS 096579.

In or about March 2004, Respondent settled the Martinez case.

On or about March 17, 2004, Mercury Insurance Group sent Respondent a settlement check payable to Martinez, Johnson, Martinez’s prior attorney, and Respondent, in the amount of \$12,000.

Respondent did not deposit the settlement funds belonging to Martinez in a bank account labeled “Trust Account,” “Client’s Funds Account” or words of similar import.

Subsequent to March 2004, Respondent did not pay any portion of the \$12,000 settlement funds to Johnson, Martinez's prior attorney.

Subsequent to March 2004, Respondent did not pay any portion of the \$12,000 settlement funds to Vineyard Medical, Martinez's medical provider.

In October 2004, Respondent settled the Lopez case.

On or about October 18, 2004, Mercury Insurance Group sent Respondent a settlement check payable to Lopez, Johnson, Lopez's prior attorney, and Respondent, in the amount of \$7,000.

On or about October 25, 2004, Respondent deposited the \$7,000 settlement check into the Inland CTA.

On October 25, 2004, Respondent issued check #2541 from the Inland CTA, in the amount of \$5,500, payable to Lopez as his share of the settlement proceeds.

On October 25, 2004, Respondent issued a check from the Inland CTA to himself in the amount of \$1,300.00 as attorney's fees in the Lopez matter.

On October 27, 2004, the balance of the Inland CTA dropped to a negative balance of [-\$2,298.12].

Subsequent to October 25, 2004, Respondent did not pay any portion of the \$7,000 Lopez settlement funds to Johnson, Lopez's prior attorney.

Subsequent to October 25, 2004, Respondent did not pay any portion of the \$7,000 Lopez settlement funds to Vineyard Medical, Lopez's medical provider.

In early 2006, Vineyard Medical assigned Robert Gonzalez ("Gonzalez") the task of collecting payment for the medical services rendered to Lopez and Martinez, which amounted to \$1,767.14 for each patient for a total of \$3,534.28.

On or about January 6, 2006, Gonzalez wrote to Respondent, requesting payment of the medical bills that totaled \$3,534.28.

On or about April 25, 2006, Gonzalez wrote to Respondent, requesting payment of the medical bills that totaled \$3,534.28.

Ultimately, Respondent offered to pay \$1,000 in full satisfaction of Vineyard Medical's medical services rendered to Lopez and Martinez.

On or about July 17, 2006, Respondent issued check number 1115, from his Washington Mutual CTA, in the amount of \$1,000, payable to Vineyard Medical.

On September 9, 2004, Respondent issued check number 2509 in the amount of \$400.00, payable to State Bar of California, drawn upon his Inland CTA.

On September 11, 2004, Respondent issued check number 2510 in the amount of \$100.00, payable to Marriott Renaissance Hotel, drawn upon his Inland CTA.

On September 13, 2004, Respondent issued check number 2515 in the amount of \$1,450.00, payable to Stephen Mermilliod re: Rent, drawn upon his Inland CTA.

On September 12, 2004, Respondent issued check number 2516 in the amount of \$250.00, payable to Respondent, drawn upon his Inland CTA.

On October 20, 2004, Respondent issued check number 2540 in the amount of \$1,530.00, payable to Stephen Mermilliod re: October Lease, drawn upon his Inland CTA.

On October 27, 2004, Respondent issued check number 2543 in the amount of \$150.00, payable to Pamela Polk, drawn upon his Inland CTA.

On October 5, 2004, Respondent authorized an electronic debit in the amount of \$1,380.00, payable to Nextel, drawn upon his Inland CTA.

On May 11, 2006, the State Bar opened an investigation, Case No. 06-O-12246, pursuant to a complaint filed by Robert Gonzalez on behalf of Vineyard Medical Center against Respondent (the “Vineyard Medical complaint”).

On June 1, 2006, a State Bar Investigator wrote to Respondent requesting a written response by July 6, 2006, to specified allegations of misconduct being investigated in the Vineyard Medical complaint.

Respondent received the investigator’s June 1, 2006 letter regarding the Vineyard Medical complaint.

Respondent did not respond to the investigator’s June 1, 2006 letter regarding the allegations in the Vineyard Medical complaint or otherwise communicate with the investigator.

On June 21, 2006, a State Bar Investigator wrote to Respondent requesting a written response to specified allegations of misconduct being investigated in the Vineyard Medical complaint by July 6, 2006.

Respondent received the investigator’s June 21, 2006 letter regarding the Vineyard Medical complaint.

Respondent did not respond to the investigator’s June 21, 2006 letter regarding the allegations in the Vineyard Medical complaint or otherwise communicate with the investigator.

**Count 3 - Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]**

At the conclusion of the trial, the parties agreed that this count should be dismissed in the interest of justice. It is hereby dismissed with prejudice.

**Count 4 - Rule 4-100(B)(1) [Failure to Notify of Receipt of Client Funds]**

At the conclusion of the trial, the parties agreed that this count should be dismissed in the interest of justice. It is hereby dismissed with prejudice.

**Count 5 - Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]**

In this count, the State Bar charges that Respondent failed to maintain in his client trust account \$200 of the \$7,000 settlement funds received on behalf of Respondent's client Lopez. The settlement was reached in October 2004; the settlement was funded by the defendant's carrier in the same month; the funds were deposited in Respondent's client trust account; and funds were then paid to the client and as attorneys' fees totaling \$6,800. The \$200 remaining of the settlement funds were then withdrawn from the account as earned fees and used by Respondent to pay operating expenses of the firm.

The State Bar's theory of culpability rests upon its contention that the settlement funds were subject to liens in favor of a medical provider and the prior attorney. The evidence, however, did not show that Respondent was ever made aware of any such lien. Under such circumstances, Respondent's decision to pay the money to his client does not constitute a willful violation by him of his duties under rule 4-100(A).

**Count 6 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]**

The parties agreed that this count should be dismissed in the interest of justice. It is hereby dismissed with prejudice.

**Count 7 – Rule 4-100(A) [Commingling]**

The parties stipulated as follows: By issuing client trust account checks and authorizing electronic debits to pay personal business expenses unrelated to any client matter, Respondent improperly used his client trust account as a personal business account and commingled funds belonging to Respondent in a client trust account in violation of Rules of Professional Conduct, rule 4-100(A).<sup>8</sup> The court accordingly finds Respondent culpable of willfully violating rule

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<sup>8</sup> See footnote 5, above.

4-100(A).

**Count 8 – Section 6106 [Moral Turpitude – Misappropriation]**

At the conclusion of the trial, the parties agreed that this count should be dismissed in the interest of justice. It is hereby dismissed with prejudice.

**Count 9 – Section 6106 [Moral Turpitude – Misuse of Client Trust Account]**

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or wilfulness, a finding of gross negligence will support such a charge where an attorney's fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

The parties stipulated as follows: By repeatedly using his Inland CTA as a personal business account and commingling funds belonging to Respondent in a client trust account, Respondent committed acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.<sup>9</sup> The court accordingly finds Respondent culpable of violating section 6106.

**Count 10 – Section 6068(i) [Failure to Cooperate in State Bar Investigation]**

Subject to constitutional and statutory privileges, section 6068, subdivision (i), requires attorneys to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against that attorney. (See, e.g., *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 644 [attorney may be found culpable of violating § 6068, subd. (i), for failing to respond to State Bar investigator's letter, even if attorney later appears and fully participates in formal disciplinary proceeding].)

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<sup>9</sup> See footnote 5, above.

The parties stipulated as follows: By failing to provide a written response to the investigator's letters of June 1, 2006 and June 21, 2006, concerning the Vineyard Medical complaint or to otherwise reply to the allegations in the investigation, Respondent failed to cooperate in a disciplinary investigation in violation of Business and Professions Code section 6068(i). The court accordingly finds Respondent culpable of violating section 6068, subdivision (i).

**Case No. 06-O-12322 (Kaples/Tatum Matter)**

The parties stipulated to the following facts:

In May 2005, DeShawn Tatum ("Tatum") employed Respondent to represent her boyfriend, Maurice Von Kaples ("Kaples"), for post-conviction relief.

On May 2, 2005, Respondent emailed Tatum a retainer agreement that provided that Respondent would file a petition for habeas corpus on behalf of Kaples.

On May 2, 2005, Respondent emailed Tatum and requested a \$2,500 retainer.

On May 5, 2005, Tatum deposited \$2,500 into Respondent's checking account held at Washington Mutual Bank, Account No. xxxxxx-x621 for the *Kaples* matter.

Subsequent to May 2005, Respondent did not interview or communicate in any way with Kaples.

Subsequent to May 2005, Respondent did not obtain the *Kaples* court file and his trial transcript.

Subsequent to May 2005, Respondent did not do any legal research on the law relevant to Kaples' situation.

In August 2005, Tatum spoke with Respondent on behalf of Kaples.



During this conversation, Respondent did not explain to Tatum why he had not visited Kaples or obtained his court file.

Thereafter, Tatum terminated Respondent's employment and requested a refund of the \$2,500.00 retainer.

Respondent did not respond to Tatum's request for a refund of the \$2,500.00 retainer.

In early September 2006, after being notified by the State Bar of Tatum's complaint, Respondent refunded \$2,500.00 to Tatum.

**Count 1 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]**

The parties stipulated as follows: By not refunding Tatum's advanced fee upon termination, although he had not earned any portion of such fee, and waiting more than a year to refund the unearned fee to Tatum, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in violation of Rules of Professional Conduct, rule 3-700(D)(2). The court accordingly finds Respondent culpable of willfully violating rule 3-700(D)(2).

**Case Nos. 06-O-14223, 06-O-14450, 06-O-14489, 06-O-14712**

The parties stipulated to the following facts:

On July 13, 2006, Respondent deposited into his Washington Mutual CTA, refund check #452425, issued by Southern California Edison, for \$11.25, made payable to Respondent.

On July 13, 2006, Respondent deposited into his Washington Mutual CTA, refund check #4542427, issued by Southern California Edison, for \$5.24, made payable to Respondent.

On July 13, 2006, Respondent deposited into his Washington Mutual CTA, refund check #4542428, issued by Southern California Edison, for \$290.43, made payable to Respondent.

On July 13, 2006, Respondent deposited into his Washington Mutual CTA, refund check #4542430, issued by Southern California Edison, for \$74.06, made payable to Respondent.

On September 18, 2006, Respondent deposited into his Washington Mutual CTA a check in the amount of \$2,000 issued by La Donna L. Miller, payable to Respondent and marked as a “loan.”

On July 10, 2006, Respondent authorized an electronic debit in the amount of \$9.96, payable to Visa-Carl’s Jr., drawn upon his Washington Mutual CTA.

On July 17, 2006, Respondent authorized an electronic debit in the amount of \$75.97, payable to Wal-Mart, drawn upon his Washington Mutual CTA.

On July 21, 2006, Respondent authorized an electronic debit in the amount of \$120.00, payable to MCI, drawn upon his Washington Mutual CTA.

On July 26, 2006, Respondent authorized an electronic debit in the amount of \$300.00, payable to Visa Cruise America Mesa AZ, drawn upon his Washington Mutual CTA.

On July 26, 2006, Respondent authorized an electronic debit in the amount of \$737.51, payable to Visa Cruise America DeaMesa AZ, drawn upon his Washington Mutual CTA.

On July 27, 2006, Respondent authorized an electronic debit in the amount of \$182.31, payable to Visa Cruise America Mesa AZ, drawn upon his Washington Mutual CTA.

On July 28, 2006, Respondent authorized an electronic debit in the amount of \$25.90, payable to Visa-TWX AOL Service, drawn upon his Washington Mutual CTA.

On August 3, 2006, Respondent authorized an electronic debit in the amount of \$80.98, payable to Walgreen, drawn upon his Washington Mutual CTA.

On August 14, 2006, Respondent authorized an electronic debit in the amount of \$33.49, payable to Visa-MCI Local Service, drawn upon his Washington Mutual CTA.

On August 28, 2006, Respondent authorized an electronic debit in the amount of \$25.90, payable to Visa-TWX AOL Service, drawn upon his Washington Mutual CTA.

On August 28, 2006, Respondent authorized an electronic debit in the amount of \$149.00, payable to Visa-API Aspen LoisLaw, drawn upon his Washington Mutual CTA.

On September 5, 2006, Respondent authorized an electronic debit in the amount of \$39.21, payable to Walgreen, drawn upon his Washington Mutual CTA.

On September 11, 2006, Respondent authorized an electronic debit in the amount of \$28.30, payable to Kragen, drawn upon his Washington Mutual CTA.

On September 12, 2006, Respondent authorized an electronic debit in the amount of \$89.78, payable to AT&T, drawn upon his Washington Mutual CTA.

On July 17, 2006, Respondent issued check number 1117 in the amount of \$540.00, payable to Met-Life, drawn upon his Washington Mutual CTA.

On July 26, 2006, Respondent issued check number 1036 in the amount of \$353.00, payable to Capital One (for car payment), drawn upon his Washington Mutual CTA.

On September 7, 2006, Respondent issued Washington Mutual CTA check #1057 in the amount of \$320, payable to the Superior Court of San Bernardino.

On September 11, 2006, Washington Mutual CTA check #1057 was returned for non-sufficient funds.

On September 12, 2006, Respondent issued CTA check #1075 in the amount of \$1,000, payable to Sharon Johnson. CTA check #1075 was presented for payment on September 15, 20, and 26, 2006, and returned each time for non-sufficient funds.

On October 6, 2006, Respondent issued CTA check #1056 in the amount of \$72, payable to Maria Olmos. CTA check # 1056 was presented for payment on October 16, 27, and 30, 2006, and returned each time for non-sufficient funds.

On September 22, 2006, Respondent issued CTA check #1052 in the amount of \$1,500, payable to Sharon Johnson. CTA check # 1052 was presented for payment on September 25, 26, and 29, 2006, and returned each time for non-sufficient funds.

**Counts 1 and 2 – Rule 4-100(A) [Misuse of Client Trust Account]**

The parties stipulated as follows:

By depositing personal business funds into his CTA, Respondent improperly used his client trust account as a personal business account and commingled funds belonging to Respondent in a client trust account in violation of Rules of Professional Conduct, rule 4-100(A).

By issuing client trust account checks, and authorizing electronic debits from his CTA to pay personal business expenses unrelated to any client matter, Respondent improperly used his client trust account as a personal business account and commingled funds belonging to Respondent in a client trust account in violation of Rules of Professional Conduct, rule 4-100(A).<sup>10</sup>

The court accordingly finds Respondent culpable of willfully violating rule 4-100(A), as set forth above.

**Count 3 – Section 6106 [Moral Turpitude – Misuse of Client Trust Account]**

The parties stipulated as follows: By repeatedly using his client trust account as a personal business account and for personal business expenses, Respondent committed acts involving moral turpitude with gross negligence in violation of Business and Professions Code section 6106.<sup>11</sup> The court accordingly finds Respondent culpable of violating section 6106.

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<sup>10</sup> See footnote 5, above.

<sup>11</sup> See footnote 5, above.

**Count 4 – Section 6106 [Moral Turpitude – NSF Checks]**

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

An attorney who issues checks knowing that they will not be honored acts dishonestly and with moral turpitude. (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 426.) This is true even though no client funds were involved. (*In the Matter of Heiser, supra*, 1 Cal. State Bar Ct. Rptr. at p. 54; see also *Rhodes v. State Bar* (1989) 49 Cal.3d 50, 58; *Bambic v. State Bar* (1985) 40 Cal.3d 314, 324; *In the Matter of Mapps, supra*, 1 Cal. State Bar Ct. Rptr. at p. 11, citing *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1088; *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 315.)

The parties stipulated as follows: By repeatedly issuing client trust account checks when he knew or should have known that there were insufficient funds in Respondent's CTA to pay them, Respondent committed acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106. The court accordingly finds Respondent culpable of violating section 6106.

**Case Nos. 06-O-15282, 06-O-15378**

The parties stipulated to the following facts:

On November 9, 2006, Respondent authorized an electronic debit in the amount of \$203.00, payable to The Gas Company, drawn upon his Washington Mutual CTA.

On November 9, 2006, Respondent authorized an electronic debit in the amount of \$183.15, payable to MCI, drawn upon his Washington Mutual CTA.

On November 9, 2006, Respondent authorized an electronic debit in the amount of \$256.00, payable to Speedpay CIG Financial, drawn upon his Washington Mutual CTA.

On November 30, 2006, Respondent authorized an electronic debit in the amount of \$300.00, payable to So Cal Edison Company, drawn upon his Washington Mutual CTA.

On November 17, 2006, Respondent authorized an electronic debit of \$248.81 from his Washington Mutual CTA.

On November 17, 2006, the \$248.81 debit was rejected for non-sufficient funds.

On November 24, 2006, Respondent again authorized an electronic debit of \$248.81 from his Washington Mutual CTA.

On November 24, 2006, the \$248.81 debit was again rejected for non-sufficient funds.

On November 30, 2006, the State Bar opened an investigation, case no. 06-O-15282, pursuant to a report made by Washington Mutual Bank, concerning an electronic debit rejected on November 17, 2006, for insufficient funds in Respondent's Washington Mutual CTA ("Washington Mutual's first report").

On December 5, 2006, a State Bar Investigator wrote to Respondent concerning specified allegations of misconduct being investigated by the State Bar in Washington Mutual's first report.

Respondent received the investigator's December 5, 2006 letter concerning Washington Mutual's first report.

Respondent did not respond to the investigator's December 5, 2006 letter regarding Washington Mutual's first report or otherwise communicate with the investigator.

On December 21, 2006, a State Bar Investigator wrote to Respondent concerning specified allegations of misconduct being investigated by the State Bar in Washington Mutual's first report.

Respondent received the investigator's December 21, 2006 letter concerning Washington Mutual's first report.

Respondent did not respond to the investigator's December 21, 2006 letter regarding Washington Mutual's first report or otherwise communicate with the investigator.

On December 7, 2006, the State Bar opened an investigation, case no. 06-O-15378, pursuant to a report made by Washington Mutual Bank, concerning an electronic debit rejected on November 24, 2006, for insufficient funds in Respondent's Washington Mutual CTA ("Washington Mutual's second report").

On December 13, 2006, a State Bar Investigator wrote to Respondent concerning specified allegations of misconduct being investigated by the State Bar in Washington Mutual's second report.

Respondent received the investigator's December 13, 2006 letter concerning Washington Mutual's second report.

Respondent did not respond to the investigator's December 13, 2006 letter regarding Washington Mutual's second report or otherwise communicate with the investigator.

On January 23, 2007, a State Bar Investigator wrote to Respondent concerning specified allegations of misconduct being investigated by the State Bar in Washington Mutual's second report.

Respondent received the investigator's January 23, 2007 letter concerning Washington Mutual's second report.

Respondent did not respond to the investigator's January 23, 2007 letter regarding Washington Mutual's second report or otherwise communicate with the investigator.

**Count 1– Rule 4-100(A) [Misuse of Client Trust Account]**

The parties stipulated as follows: By authorizing electronic debits from his CTA to pay personal business expenses unrelated to any client matter; and authorizing electronic debits against insufficient funds, Respondent improperly used his client trust account as a personal business account and commingled funds belonging to Respondent in a client trust account in violation of Rules of Professional Conduct, rule 4-100(A).<sup>12</sup> The court accordingly finds Respondent culpable of willfully violating rule 4-100(A).

**Count 10 – Section 6068(i) [Failure to Cooperate in State Bar Investigation]**

The parties stipulated as follows: By failing to provide a written response to the investigator’s letters of December 5 and 21, 2006, and December 13, 2006 and January 23, 2007, concerning the two Washington Mutual Bank reports, or to otherwise reply to the allegations in the investigations, Respondent failed to cooperate in disciplinary investigations in violation of Business and Professions Code section 6068(i). The court accordingly finds Respondent culpable of violating section 6068, subdivision (i).

**Case No. 08-C-12067 (Misdemeanor Conviction of Penal Code section 1054.2(a)(1))**

On March 11, 2009, Respondent was convicted in San Bernardino Superior Court of a misdemeanor violation of Penal Code section 1054.2(a)(1) [Case No. MUA 801426]. This Penal Code section provides, in pertinent part: “Except as provided in paragraph (2), no attorney may disclose or permit to be disclosed to a defendant, members of the defendant’s family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1, unless specifically permitted to do so by

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<sup>12</sup> See footnote 5, above.



the court after a hearing and a showing of good cause.” This conviction resulted from a plea of nolo contendere entered by Respondent on March 11, 2009.

The conviction arose from Respondent’s handling of a criminal defense matter in late 2007 and early 2008. His client had been charged with attempted murder, and the case involved circumstances suggestive of possible gang activity. According to the testimony of the prosecuting attorneys during the trial of the instant proceeding, the witnesses to the underlying events were extremely reluctant to cooperate with the prosecuting authorities because of their fear of gang retaliation. During the course of the pretrial handling of the case, the prosecutors had provided to Respondent a copy of the documents showing the names and certain identifying information regarding those witnesses.

Respondent’s criminal conviction arose from his turning over of that information to the girlfriend of his client and her father, without redacting from the materials the identifying information of the witnesses to the underlying crime. This misconduct came to light when Respondent became ineligible to practice law in January 2008 due to his failure to pass the MPRE. As a result, he was unable to attend certain scheduled events in the criminal case pending against his client and a public defender was assigned to take over the matter. When the prosecutors attempted to get the previously disclosed file materials back from Respondent in order to transmit them to the newly-assigned public defender, Respondent told them that he had turned them over to the defendant’s family. When the materials were then secured from the girlfriend, they were discovered to have been unredacted.

Respondent was then contacted by a police officer/investigator from the prosecutor’s office regarding his prior handling of the file. He initially said that the file had been redacted at the time that it was turned over to his client’s family, including the girlfriend. He later agreed

that the file had not been redacted because he had been in a rush to turn it over. However, he then contended that his conduct was not improper because he had intended to use the girlfriend's father as an expert witness on gang issues. As a result, he contended that his conduct would have been proper under paragraph (b) of section 1054.2.

During the course of the criminal action against him, Respondent initially failed to appear for his arraignment, resulting in a bench warrant being issued for his arrest. Thereafter, he failed to appear for a readiness hearing. As part of the criminal sentencing in March 2009, Respondent was placed on probation for one year and ordered to pay a \$350 fine. As of the date of the instant trial in December 2010, he was still on probation due to his continuing failure to pay the court-ordered fine and he was facing a revocation hearing.

In attorney disciplinary proceedings, “the record of [an attorney's] conviction [is] conclusive evidence of guilt of the crime of which he or she has been convicted.” (§ 6101, subd. (a); *In re Gross* (1983) 33 Cal.3d 561, 567.) Stated differently, an attorney's conviction is conclusive proof that the attorney committed all of the acts necessary to constitute the crime of which he or she was convicted. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110.) However, at least with respect to crimes that do not inherently involve moral turpitude, “Whether those acts amount to professional misconduct . . . is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction.” (*In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 589, fn. 6.) That is because it is the attorney's misconduct, not the conviction, which warrants discipline. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935; see also *In re Gross, supra*, 33 Cal.3d at p. 568.)

Moreover, in a conviction referral proceeding involving a crime that does not inherently involve moral turpitude, the State Bar has the burden to prove, by clear and convincing evidence, that the surrounding facts and circumstances involve either moral turpitude or other misconduct warranting discipline. (*In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756, 759-760, 764.) If the State Bar meets its burden and establishes that the surrounding facts and circumstances involve moral turpitude or other misconduct warranting discipline, the court must recommend an appropriate level of discipline “according to the gravity of the crime and the circumstances of the case. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510; *In the Matter of Oheb, supra*, 4 Cal. State Bar Ct. Rptr. at p. 926; *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679, 688-689, and cases there cited.) Of course, if the State Bar fails to meet its burden of proof, the court will dismiss the proceeding with prejudice. (*In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260, 264-265.)

This court concludes that the conviction here does not inherently involve moral turpitude. The court, however, concludes that Respondent’s conduct, in improperly giving the unredacted identifying witness information to his client’s girlfriend, represented a willful failure by him to support the laws (section 6068, subdivision (a)), posed a significant risk of harm to the witnesses and to the administration of justice, and constituted other misconduct warranting discipline. (Section 6068(a).)

**Case No. 10-O-00280**

Respondent has been ineligible to practice law since at least May 5, 2008. In mid-2009, Respondent was introduced to James Juneau (Juneau) by Charles Powell, a long-time friend of Respondent’s. Juneau was delinquent on his mortgage payments and was seeking assistance. He

had initially consulted with Powell, a non-attorney, about seeking a loan modification and/or bankruptcy but had come to the conclusion that he might need to file a bankruptcy petition. Powell initially indicated to Juneau that he could handle the bankruptcy, and Juneau paid Powell \$1,000 for that purpose. Juneau then discovered that Powell was not an attorney, at which time Powell told Juneau that Respondent would handle the filing.

Juneau then met with Respondent, who held himself as being an attorney. Juneau subsequently paid Respondent \$370 in cash, for which Respondent provided Juneau with a receipt. The receipt was drafted by Respondent and identified Respondent as being “Von W. Robinson, Esq.” Juneau subsequently made additional payments to Respondent of \$400 and \$80.<sup>13</sup>

Juneau subsequently discovered that Respondent was also not an attorney eligible to practice law. He initially indicated to Respondent that he still wanted the bankruptcy petition filed if Respondent could do it. However, if Respondent was unable to file the petition, Juneau told Respondent that he wanted his money back. When Respondent subsequently failed to pursue the bankruptcy, Juneau asked that Respondent refund the money that had been advanced. Juneau, now aware that Respondent was not eligible to practice law, and Respondent then agreed that Respondent would seek to obtain a loan modification, for which Respondent would be paid \$250. In September 2009, Respondent forwarded to Juneau’s mortgage company a loan modification request. In this correspondence, Respondent makes no representation that he is an attorney.

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<sup>13</sup> Although Juneau believed that Powell had given to Respondent some portion of the \$1,000 paid by Juneau to Powell, the evidence at trial fell short of being clear and convincing of that fact.

Because Juneau felt that he had paid for a bankruptcy petition to be filed, he asked that the additional fees be refunded by Respondent. No refund has been made by Respondent to date.

**Count 1 – Sections 6068(a), 6125, and 6126 [Failure to Support Laws/Unauthorized Practice of Law]**

Section 6068, subdivision (a), makes it the duty of an attorney “[t]o support the Constitution and laws of the United States and of this state.” Under section 6125, “No person shall practice law in California unless the person is an active member of the State Bar.” Section 6126, subdivision (b) states that “Any person who has been involuntarily enrolled as an inactive member of the State Bar, or has been suspended from membership from the State Bar, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or a county jail.”

Respondent held himself out to Juneau, both orally and in his written receipt, as being an attorney eligible to practice law. Such conduct by Respondent constituted a willful violation by him of section 6068, subdivision (a), as a result of his violation of sections 6125 and 6126.

**Count 2 - Section 6106 [Moral Turpitude – Knowing Unlawful Practice of Law]**

Respondent was aware in 2009 that he was not eligible to practice law. Nonetheless, he held himself out to Juneau as being eligible to do so and collected money for the purpose of preparing and filing a bankruptcy petition. That conduct by Respondent was knowingly dishonest and constituted an act of moral turpitude, in willful violation of section 6106.

**Count 3 –Rule 4-200(A) [Illegal Fee]**

Rule 4-200(A) provides, “A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.” Fees charged and collected for legal services by a

member who is not entitled to practice law are illegal under rule 4-200(A). (*Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 136-137; *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 904.)

Respondent collected a total of \$850 from Juneau as advance fees for filing a bankruptcy petition at a time when Respondent was not entitled to practice law. That conduct by him constituted a willful violation of rule 4-200(A).

### **Aggravating Circumstances**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)<sup>14</sup> The court finds the following with regard to aggravating factors.

#### **Prior Discipline**

Respondent has been formally disciplined on two prior occasions. Respondent's prior record of discipline is an aggravating circumstance. (Stds. 1.2(b)(i); 1.7(b).)

Respondent was privately reprovved in June 2005 for failing to comply with a court order (Section 6103) and failing to cooperate in a State Bar investigation (Section 6068(i). [Case No. 04-O-15063.]

On April 2006, the Supreme Court issued an order suspending Respondent for six months, stayed, and placing him on probation for one year. The misconduct in that matter included practicing law while Respondent was ineligible due to his failure to pay membership dues [Sections 6125, 6126, 6068(a)]; charging an illegal fee [rule 4-200(A)]; failing to return an unearned fee [rule 3-700(D)(2)]; acquiring an interest adverse to the client without complying with rule 3-300; and failing to cooperate with a State Bar investigation [section 6068(i)].

#### **Multiple Acts of Misconduct**

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

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<sup>14</sup> All further references to standard(s) or std. are to this source.

### **Significant Harm**

Respondent's lack of competence in handling the *Mermilliod* matter caused it to be dismissed by the court. His failure to advise his client of the \$10,000 settlement opportunity prevented the client from considering the possibility of settling the case.

Respondent continues to retain the funds he misappropriated from the settlement reached for his client Cynthia Martinez. His conduct deprived the doctor of the funds that should have been paid as a result of the doctor's prior lien and subjected this client to the emotional upset of being confronted by her creditor about the unpaid bill. It was not until the State Bar's Client Security Fund paid the \$4,000 that Respondent had misappropriated that Ms. Martinez was able to resolve the unpaid bill.

Respondent's misconduct in the Williams matter caused his client's action to be dismissed.

Respondent also continues to hold \$600 that he collected as an illegal fee from Juneau in 2009. He previously failed to refund unearned fees of \$1,793 to client Lane.

The harm caused by Respondent is a significant aggravating factor. (Std. 1.2(b)(iv).)

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with regard to mitigating factors.

#### **Cooperation**

Respondent entered into an extensive stipulation of facts and freely admitted certain of the violations in this case, for which conduct Respondent is entitled to significant mitigation. (Std. 1.2(e)(v); see also *In the Matter of Gadda, supra*, 4 Cal. State Bar Ct. Rptr. at p. 443; *In the*

*Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

### **Emotional Problems**

Extreme emotional difficulties may be considered mitigating where it is established by expert testimony that they were responsible for the attorney's misconduct. (Std. 1.2(e)(iv); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) Respondent testified that his wife was diagnosed with breast cancer in 2000; learned that her cancer had spread to other parts of her body in 2004; and died in late 2008. These problems unquestionably caused Respondent to suffer substantial emotional distress.

The evidence offered by Respondent regarding the emotional difficulties he had in the past did not provide clear and convincing evidence that his problems are a mitigating factor here. There was no expert testimony, or other convincing evidence, showing the required nexus between Respondent's claimed emotional problems and all of the instances of his misconduct. Nor was there sufficient evidence for this court to conclude that any emotional problems suffered by Respondent in the past have now been satisfactorily resolved.

### **Remorse**

At trial, Respondent expressed general feelings of remorse for certain aspects of his prior misconduct. While the court gives him some mitigation credit for such remorse, that credit is limited by the fact that his expressions of remorse have come primarily later during the instant disciplinary proceeding and the expressed remorse has not extended to all aspects of his misconduct. (*In the Matter of Kritenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 478 (and cases cited therein); *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708, 722.) As explained in *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar



Ct. Rptr. 511, 519): “As noted by the Supreme Court, ‘expressing remorse for one’s misconduct is an elementary moral precept which, standing alone, deserves no special consideration in determining the appropriate discipline.’ (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2.) Therefore, the weight we accord this evidence is reduced.”

## **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar, supra*, 49 Cal.3d at p. 111.) 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.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier, supra*, 1 Cal. State Bar Ct. Rptr. at p. 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb, supra*, 4 Cal. State Bar Ct. Rptr. at p. 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standards 1.7(b) and 2.2(a).

Standard 1.7(b) provides: "If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

Standard 2.2(a) provides: "Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances." The amount of money misappropriated by Respondent was not insignificant and the mitigating circumstances are not compelling in this matter.

It is the recommendation of this court that Respondent be disbarred. His history of non-compliance is most troubling. He was disciplined twice during a period of less than two years in 2005 and 2006. Nonetheless, he continued to disregard his professional obligations. Many of the violations in the instant proceeding reflect misconduct by Respondent occurring while he was still on probation as a result of the 2006 Supreme Court order. Especially troublesome is Respondent's continuing failures to respond to requests for information by State Bar investigators. Having been disciplined twice for such failures in 2005 and mid-2006, his failures

in June and December 2006, just a few months after the Supreme Court's order had issued and while he was on probation, to cooperate with new State Bar investigations make clear to this court that he either cannot or will not honor the duties and limitations placed upon him as an attorney. The evidence is clear, convincing, and compelling that Respondent's disbarment is both necessary and appropriate in order to protect the public, the courts, and the profession. (See *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646 [disbarment appropriate where prior suspension and probation proven inadequate against further misconduct]; *In the Matter of Sullivan* (Review Dept. 2010) \_\_\_\_ Cal. State Bar Ct. Rptr. \_\_\_\_\_.)

### **RECOMMENDED DISCIPLINE**

#### **Disbarment**

The court recommends that respondent **VON WALLACE ROBINSON**, Member No. 176184, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

#### **Restitution**

It is recommended that Respondent make restitution to James Juneau in the amount of \$600.00, plus 10% interest per year from October 8, 2008 (or to the Client Security Fund to the extent of any payment from the fund to James Juneau, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Restitution is to be made within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 5.136; see also former rule 291). Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### **Rule 9.20**

The court further recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **VON WALLACE ROBINSON**, Member No. 176184, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of

this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(d)(1).)<sup>15</sup>

Dated: April \_\_\_\_\_, 2011.

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**DONALD F. MILES**  
Judge of the State Bar Court

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<sup>15</sup> An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)