

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos. 05-O-02787-RAP;
)	07-O-10783 (Cons.)
DUANE D'ROY DADE,)	
)	DECISION
Member No. 140379,)	
)	
A Member of the State Bar.)	

I. INTRODUCTION

In this contested, original disciplinary proceeding, respondent **DUANE D'ROY DADE** is charged with 13 counts of misconduct in two client matters. The court finds respondent culpable of 12 counts of misconduct. Respondent was represented by attorney Theodore A. Cohen as co-counsel in this matter. The State Bar of California was represented by Deputy Trial Counsel Kimberly Anderson and Jean Cha.

Having considered the facts and the law, the court recommends, among other things, that respondent be suspended from the practice of law for three years, that execution of suspension be stayed, that he be placed on probation for three years and that he be suspended for a minimum of two years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law, pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

II. PROCEDURAL HISTORY

The State Bar of California initiated this proceeding by filing a notice of disciplinary charges (“NDC”) on February 23, 2006, in State Bar Court case No. 05-O-02787. The respondent filed a response on April 5, 2006.

On August 3, 2007, the State Bar filed a second NDC in case No. 07-O-10783. On November 19, 2007, the State Bar filed a First Amended NDC. Respondent filed a response.

On January 3, 2007, the court issued an order, to be effective February 13, 2007, that respondent be placed on inactive enrollment pursuant to Business and Professions Code section 6233, as a condition of respondent’s admission to the Alternative Discipline Program (“ADP”).¹

By order of the court dated September 21, 2007, respondent’s inactive enrollment was terminated.

By order of the court dated September 30, 2008, State Bar Court case No. 05-02787 was returned to standard discipline proceedings from the ADP.

The two cases (Nos. 05-O-02787 and 07-O-10783) were consolidated by order of the court dated December 8, 2008. Trial was held July 13 through July 17, 2009. After briefing, the matter was submitted for decision on October 2, 2009.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 6, 1989, and was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

¹ ADP is the State Bar Court’s program for respondents with substance abuse or mental health issues.

B. Credibility Determinations

With respect to the credibility of the witnesses, the court has carefully weighed and considered their demeanor while testifying; the manner in which they testified; their personal interest or lack thereof in the outcome of this proceeding; and their capacity to accurately perceive, recollect, and communicate the matters on which they testified. (See Evid. Code, § 780 [list of factors to consider in determining credibility].) Except as otherwise noted, the court finds the testimony of the witnesses to be credible. However, the court finds that the respondent's testimony, at times, lacked credibility.

C. Case No. 05-O-02787 (Hildreth Matter)

In June 2001 Cherrie Hildreth ("Hildreth") employed respondent to represent her in a personal injury matter. Hildreth was seeking damages for an automobile accident that occurred on June 1, 2001. The operator of the other vehicle was insured by Mercury Insurance Company ("Mercury").

On June 20, 2001, Hildreth and respondent executed a contingency fee attorney-client agreement. If the case settled before trial, respondent was to receive a third of the recovery. Hildreth spoke with Cynthia Dunning, Esq., and not respondent when she signed the agreement. Hildreth also signed a power of attorney form. No one explained to her the terms of the power of attorney. Hildreth believed that the power of attorney would be needed if she became incapacitated and for no other purpose.

In June 2001, Dr. Chirag N. Amin, who was treating Hildreth for injuries suffered in the auto accident, prescribed a muscle stimulator and interferential therapy unit for Hildreth. On June 27, 2001, Hildreth signed a RS Medical ("RS") purchase agreement regarding the muscle stimulator.

On August 22, 2001, RS contacted respondent's office by telephone and an employee of respondent verified that Hildreth was respondent's client and faxed a letter of protection to respondent's office. Subsequently, on August 23, 2001, RS sent a letter to Hildreth verifying that respondent represented her in the pending lawsuit and informing her that it would not seek payment for the muscle stimulator if it received a letter of protection from respondent. Otherwise, Hildreth would be responsible for the bill.

From August 23, 2001 through February 27, 2002, RS sent, and respondent received, 16 health insurance claim forms to respondent's office regarding the muscle stimulator being used by Hildreth.

On September 5, 2001, RS contacted respondent's office by telephone to request that respondent sign a lien with the company. An employee of respondent told RS that respondent would sign and return the lien to RS.

On September 12, 2001, Dr. Amin prescribed the muscle stimulator for indefinite use by Hildreth.

On October 18, 2001, Dr. Marcy Sagerman of Sagerman Chiropractic sent respondent a medical report; an itemized bill in the amount of \$2,588.20; and a copy of a doctor's lien, regarding his treatment of Hildreth for her injuries in the accident.

RS contacted respondent's office again on November 27, 2001, by telephone and was told by an employee of respondent that the Hildreth matter was still pending and she would fax the lien to RS.

In November 2001, Mercury mailed and respondent received a letter with an offer to settle the Hildreth matter for \$1,500.

On December 28, 2001, RS faxed and respondent received a copy of the lien to be completed by respondent. Again, on January 29, 2002, RS mailed a letter to respondent,

informing respondent that the unpaid balance of the muscle stimulator was \$2,842.56. On February 11, 2002, RS received a notice from respondent that the Hildreth matter was still pending. On March 29, 2002, RS called respondent's office and was told by respondent's employee that the Hildreth matter was still pending and that she would talk to respondent about the lien.

In May 2002, Mercury sent and respondent received a letter offering to settle the Hildreth matter for \$2,750.

On May 23, 2002, respondent filed a civil action in San Bernardino County Superior Court entitled, *Cherie Hildreth v. Paul Reynolds et al.*, case No. SCISS90366.

On October 7, 2002, RS received a notice from respondent's office that the Hildreth matter was still pending.

On November 22, 2002, an employee of respondent informed RS that Hildreth would return the muscle stimulator. No one from respondent's office ever contacted Hildreth between August 2001 through November 2002 about returning the stimulator or about the RS bill.

In January 21, 2003, RS mailed and respondent received a letter stating that RS would postpone the request of payment of its bill if respondent would sign a lien. In response to the letter, an employee of respondent contacted Hildreth and instructed her to return the stimulator. Hildreth sent the stimulator to respondent. Respondent returned the stimulator to RS on January 29, 2003.

Between June 22, 2003 and October 14, 2003, respondent's office mailed five letters to Hildreth notifying her of the dates that her matter was set for arbitration. The arbitration took place on October 22, 2003. Hildreth participated by telephone. During the discussions, the parties talked about a \$6,000 settlement in the matter. Hildreth never accepted that offer.

On September 19, 2003, RS received notice from respondent's office that Hildreth's matter was still pending.

On November 12, 2003, respondent mailed Hildreth a letter informing her of her trial date, December 15, 2003, and trial setting conference of December 11, 2003.

Respondent settled Hildreth's claim with Mercury for \$6,000. But respondent never contacted Hildreth to communicate the offer or obtain her approval for the settlement.

On December 2, 2003, respondent submitted an executed release to Mercury in the Hildreth matter. Hildreth did not sign the release. Instead, respondent signed Hildreth's name to the release.

On December 11, 2003, respondent filed a request for dismissal with prejudice on behalf of Hildreth in the San Bernadino Superior Court. Hildreth was not aware that respondent had settled her matter or had filed a request for dismissal with prejudice.

On December 18, 2003, respondent deposited the \$6,000 settlement check in his client trust account maintained at the Bank of America, account no. xxxxx-x2948 ("respondent's CTA"). The check was payable to respondent and Hildreth.

Respondent claims to have sent a letter to Hildreth on November 19, 2003, in which he advised her to accept the settlement offer of \$6,000. Hildreth never received the letter. On January 20, 2004, respondent resent the letter with a notation that it was resent on January 20, 2004. In his letter, respondent referred to a settlement disbursement sheet, which he failed to enclose. Hildreth did not receive the disbursement sheet until March 2004. Upon receipt, Hildreth rejected the settlement offer on the terms as proposed in the disbursement sheet.

The court finds Hildreth's testimony that she received respondent's letter supposedly dated November 19, 2003, on or about January 20, 2004, to be credible.

On January 26, 2004, Hildreth faxed and respondent received a message asking respondent to contact her. Hildreth also requested a copy of the proposed settlement disbursement sheet. Hildreth received the settlement disbursement sheet in March 2004.

The settlement disbursement sheet provided that Dr. Gregory Green's bill was reduced from \$1,480 to \$706, and the bill from Dr. Sagerman was reduced from \$4,068 to \$1,294. (Dr. Sagerman's original bill was for \$2,588.20 and not \$4,068.) Hildreth was to receive \$2,000. Hildreth objected to the settlement disbursement since it did not resolve the RS bill.

On February 22, 2004, respondent telephoned Hildreth and informed her that he was consulting another doctor and would notify her later of the status of her case.

On March 17, 2004, respondent wrote to Hildreth, asking her to sign the Authorization to Settle and Release of All Claims. The letter also included a copy of the settlement disbursement sheet that Hildreth had previously rejected.

On March 25, 2004, Hildreth left a voice message for respondent that she would not sign the authorization to settle until the muscle stimulator was included in her medical expenses.

On March 29, 2004, Hildreth faxed and respondent received a message regarding the muscle stimulator and the bill from RS.

On April 7, 2004, Hildreth left a voice message for respondent with his staff requesting a status update on her matter and that respondent contact her about the RS bill. Respondent did not respond.

On April 19, 2004, Hildreth faxed and respondent received a message regarding her RS medical bill. Respondent again did not respond.

On May 11, 2004, RS received a notice from respondent's office stating that Hildreth's matter was still pending.

On June 1, 2004, Hildreth faxed and respondent's office received, a message requesting that respondent call Hildreth. Respondent did not respond.

On June 17, 2004, Hildreth spoke by telephone with an employee of respondent. Hildreth informed the employee that she would seek other representation if respondent did not return her call. Respondent did not respond.

On July 16, 2004, respondent mailed a letter to Hildreth informing her that RS did not have a lien with his office; that she was responsible for the RS bill; and that she should contact RS and negotiate the bill.

On August 5, 2004, Hildreth faxed and respondent received a message expressing her dissatisfaction with respondent's performance and the settlement offer.

Between September 13 and September 16, 2004, Hildreth telephoned respondent's office numerous times but was unable to speak with respondent.

On September 16, 2004, Hildreth faxed and respondent received a message demanding that respondent respond by letter or telephone within 10 days and provide an update on her matter. Respondent did not respond.

On September 16, 2004, RS contacted respondent by telephone regarding its bill in the Hildreth matter. An employee of respondent told RS that respondent never knew about the RS bill and that Hildreth was responsible for the bill.

By December 31, 2003, the balance in respondent's CTA had dropped to \$358.24, well below the \$6,000 that he had deposited on December 18 and was holding in trust in the Hildreth matter. By January 5, 2004, the balance in respondent's CTA had fallen to \$138.24 and respondent had yet to pay any funds in the Hildreth matter.

In January 2005 Hildreth finally discovered that respondent had settled her matter and received a \$6,000 settlement check in December 2003. Hildreth obtained this information from Mercury, which was confirmed by a February 14, 2005, letter to Hildreth from Mercury.

On October 14, 2004, Hildreth filed a complaint with the State Bar against respondent.

On November 15, 2004, the State Bar contacted respondent by letter and requested a response in writing to the allegations in the Hildreth complaint.

On December 22, 2004, respondent sent a letter in response to the State Bar's request. In his response, respondent claimed, among other things, that:

- the release was forwarded to Hildreth which she executed and was forwarded to the insurance company;
- the first time he learned of the muscle stimulator form was following the negotiation of the case;
- the stimulation unit received by Hildreth was an agreement between her and RS. He was unaware she had the unit;
- he negotiated reductions concerning her medical bills from: Dr. Greene from \$1,480 to \$706; Dr. Sagerman from \$4,068 to \$1,294; and RS from \$3,092.56 to \$2,164.40; and
- following the disbursement, Hildreth had an outstanding balance with RS in the amount of \$64.40.

At the time respondent made these representations to the State Bar, he knew that they were untrue.

Respondent has since paid Hildreth and all medical providers, including RS, in the Hildreth matter.

Conclusions of Law

Count One – Business and Professions Code Section 6106 – Moral Turpitude

Business and Professions Code section 6106² prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

The commission of any act of dishonesty constitutes a violation of section 6106. (*In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 497.)

The court finds that there is clear and convincing evidence that respondent willfully committed an act or acts of moral turpitude, dishonesty or corruption, in violation of section 6106, by settling Hildreth's personal injury lawsuit without giving notice and without seeking Hildreth's approval; by signing the release of claims on Hildreth's behalf without Hildreth's knowledge or consent; by providing and misrepresenting to Mercury that the signed release was signed by Hildreth; and by filing the request for dismissal with prejudice without Hildreth's knowledge or consent.

Count Two – Business and Professions Code Section 6106 – Moral Turpitude

The court finds that there is clear and convincing evidence that respondent willfully committed an act or acts of moral turpitude, dishonesty or corruption, in violation of section 6106, by misappropriating \$5,861.76 (\$6,000 - \$138.24) of Hildreth's settlement funds.

Count Three – Rule 4-100(B)(1), Rules of Professional Conduct – Failure to Notify Client of Receipt of Client Funds

The court finds that there is clear and convincing evidence that respondent willfully failed to notify a client of receipt of client funds, in violation of rule 4-100(B)(1),³ by failing to notify Hildreth of his receipt of her settlement funds of \$6,000.

² All further references to "section/s" are to this source.

³ All further references to "rule/s" are to this source.

Count Four – Rule 4-100(B)(4), Rules of Professional Conduct – Failure to Pay Client Funds Promptly

The court finds that there is clear and convincing evidence that respondent willfully failed to pay client funds promptly, in violation of rule 4-100(B)(4), by failing to promptly disburse Hildreth's settlement funds.

Count Five – Business and Professions Code Section 6106 – Moral Turpitude

The court finds that there is clear and convincing evidence that respondent willfully committed an act or acts of moral turpitude, dishonesty or corruption, in violation of section 6106, by making repeated misrepresentations to Hildreth concerning the status of her case even after he settled the case without authority, denying knowledge of the RS bill, and representing to RS and Hildreth that Hildreth was solely responsible for the RS bill.

Count Six – Business and Professions Code Section 6106 – Moral Turpitude

The court finds that there is clear and convincing evidence that respondent willfully committed an act or acts of moral turpitude, dishonesty or corruption, in violation of section 6106, by making multiple misrepresentations in his December 22, 2004, letter to the State Bar regarding allegations of misconduct in the Hildreth matter.

Count Seven – Business and Professions Code Section 6068, Subdivision (m) – Failure to Respond to Client Inquiries

The court finds that there is clear and convincing evidence that respondent willfully failed to respond to client inquiries, in violation of section 6068, subdivision (m), by failing to respond to Hildreth's multiple requests for a status report regarding her matter.

D. Case No. 07-O-10783 (Weatherspoon Matter)

On or about October 11, 2006, Matthew Weatherspoon ("Weatherspoon") retained respondent to represent him in a criminal proceeding entitled, *People of the State of California v.*

Matthew Witherspoon, Los Angeles County Superior Court case No. KA076683 (“the Weatherspoon matter”).

By order filed on January 3, 2007, in State Bar Court case No. 05-O-02787, the State Bar Court ordered that respondent be enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6233, effective February 13, 2007, until further order of the State Bar Court (the “January 3, 2007 order”). Respondent was properly served with the order and was aware of the order.

On January 30, 2007, respondent and Weatherspoon appeared in Los Angeles County Superior Court before the Honorable Jack P. Hunt (“Judge Hunt”). At the appearance, the preliminary hearing was continued. Respondent suggested the dates of either February 7 or February 21, 2007, to hold the preliminary hearing. Judge Hunt continued the preliminary hearing to February 21, 2007, a date on which respondent would be ineligible to practice law. Respondent failed to notify the court or any party that he would not be able to appear on February 21.

On February 21, 2007, respondent returned to Judge Hunt’s courtroom for the Weatherspoon matter. Weatherspoon, his co-defendant, and co-defendant’s counsel, Michael McDonnell (“McDonnell”) were also present.

During the calendar call on February 21, 2007, Judge Hunt called the Weatherspoon and the co-defendant matter. Respondent announced ready for Weatherspoon. Respondent stated, “Mr. Weatherspoon is ready. We are talking disposition. Otherwise ready. Second call or ...”

Judge Hunt transferred the matter to another courtroom for the preliminary hearing.

When respondent announced that Mr. Weatherspoon was ready, he was not standing at defense table but in the spectator’s section of the courtroom. Respondent had asked another

attorney, Cynthia Dunning, to make the appearance and represent Mr. Weatherspoon. However, Dunning was late and missed the calendar call.

Even though he was aware that he was not entitled to practice law, respondent assumed that he was obligated to appear because at the January 30, 2007, appearance Judge Hunt ordered respondent to personally appear on February 21, 2007, in the Weatherspoon matter.

Additionally, respondent argues that Judge Hunt cut off respondent's answer to the calendar call before he could inform the court of his inactive status.

Respondent's assumption is based on a faulty premise. On January 30, 2007, the court set a new date for the preliminary hearing in the Weatherspoon matter to occur on February 21, 2007. Respondent was aware when this date was set that he would be ineligible to practice law effective February 13, but he did not inform the court. Judge Hunt was not aware of respondent's upcoming ineligible status when he ordered respondent to appear on February 21.

By withholding this information from the court, respondent cannot now argue that he was simply following a court order. Furthermore, even if respondent was obligated to attend the February 21 calendar call, his status of not eligible to practice law forbids him from making any type of representation to the court concerning the status of the Weatherspoon matter. Instead, respondent willfully appeared and informed the court that Weatherspoon was ready and talking disposition. Thus, respondent was practicing law when he was not an active member of the State Bar of California.

Shortly after the calendar call, Dunning appeared and represented Weatherspoon at the preliminary hearing. Dunning announced her appearance on behalf of the Law Office of Duane D. Dade. Dunning did not request to substitute in as new counsel for Weatherspoon nor did she inform the court, counsel, or Weatherspoon the reason for respondent not appearing. As a result, respondent remained as attorney of record for Weatherspoon in his matter.

At the conclusion of the preliminary hearing, the court held Weatherspoon to answer and ordered the parties to return for a felony arraignment on March 7, 2007. Respondent continued as attorney of record for Weatherspoon up to March 6, 2007.

On March 7, 2007, respondent did not appear for Weatherspoon's felony arraignment. Jeffrey Kent ("Kent") appeared for the co-defendant. Judge Hunt allowed Kent to contact respondent regarding his non-appearance. Kent telephoned respondent's law office and spoke with a woman who asked Kent to stand in for respondent and provided Kent with available future court dates for respondent. Kent agreed to stand in for respondent at the arraignment and informed Judge Hunt that he was making a special appearance on behalf of respondent. Judge Hunt informed Kent that respondent was not entitled to practice law. Judge Hunt removed respondent as counsel of record and continued the case so that Weatherspoon might retain new counsel. Respondent never informed the court, his client, McDonnell, or assigned deputy district attorney that he was not entitled to practice law.

Respondent was aware that he remained enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6233 from February 13, 2007 to September 21, 2007.

In the January 3, 2007 order, the State Bar Court ordered respondent to comply with rule 9.20 of the California Rules of Court, as modified by the State Bar Court. The order required respondent to file an affidavit with the Clerk of the State Bar Court, within 40 days of the effective date of his inactive enrollment, which declared respondent to be in full compliance with the order.

Respondent failed to file the affidavit within 40 days from the effective date of his inactive enrollment, which would have been March 25, 2007. Respondent filed the affidavit on September 24, 2007, almost six months late.

In the affidavit, respondent stated that before February 12, 2007, he had returned all files to clients and/or courts if they were criminal cases. Respondent also stated that as of February 12, 2007, he had no open files or clients and, therefore, no courts or opposing counsel to notify. Both statements were false. Respondent had not returned the Weatherspoon file to the court and the Weatherspoon file was still open which required notification to the court and opposing counsel. When respondent made these statements in his affidavit, he was aware, or was grossly negligent in not being aware, that the statements were false.

On October 24, 2007, the State Bar deposed respondent regarding these two matters. During his deposition, respondent stated that (1) he had informed Weatherspoon of his inactive enrollment prior to February 21, 2007; (2) he did not appear in the Weatherspoon matter on February 21, 2007; (3) he was unable to tell Judge Hunt about his inactive status on February 21, 2007; (4) he was no longer acting as Weatherspoon's attorney after February 21, 2007; and (5) he turned over discovery to Judge Hunt's court prior to March 7, 2007.

The State Bar argues that these statements are false and/or dishonest and that respondent knew they were false and/or dishonest when made.

The court finds that there is no clear and convincing evidence that respondent knowingly made these false statements at his deposition on October 24, 2007.

Conclusions of Law

Counts One – Business and Professions Code Sections 6068, Subdivision (a), 6125 and 6126 – Failure to Comply With Laws – Unauthorized Practice of Law

Section 6068, subdivision (a), provides that a member of the State Bar has the duty to support the Constitution and laws of the United States and of the State of California. The State Bar charges that respondent violated section 6068, subdivision (a), by improperly holding himself out as entitled to engage in the practice of law in violation of sections 6125 and 6126.

Section 6125 provides that no person shall practice law in California unless he or she is an active member of the State Bar. Section 6126, subdivision (b), provides that any person who has been involuntarily enrolled as an inactive member of the State Bar or who has been suspended from practice and thereafter practices or attempts to practice law, advertises or holds himself out as practicing or otherwise entitled to practice law is guilty of a crime.

Charging an attorney with a violation of the duty to support the constitution and laws, by reason of the attorney's violation of the statutes prohibiting practicing law while suspended, provides the basis for imposition of discipline for the unauthorized practice of law. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574-575; *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 126.)

The court finds that there is clear and convincing evidence that respondent willfully failed to comply with the law in violation of section 6068, subdivision (a). By suggesting February 21, 2007, as an available date for a preliminary hearing, by appearing and announcing ready in the criminal case on February 21, 2007, and by remaining as attorney of record until March 7, 2007, respondent held himself out as practicing law or entitled to practice law, or otherwise attempted to practice law while he was enrolled as an inactive member of the State Bar of California, in violation of sections 6125 and 6126.

Count Two – Business and Professions Code Section 6106 – Moral Turpitude

The court finds that there is clear and convincing evidence that respondent willfully committed an act or acts involving moral turpitude, dishonesty or corruption, in violation of section 6106, by holding himself out as practicing law or entitled to practice law, or otherwise attempting to practice law while knowing that he was enrolled as an inactive member of the State Bar, and by concealing his inactive enrollment status.

Count Three –Business and Professions Code Section 6068, Subdivision (d) – Seeking to Mislead a Judge

The court finds that there is clear and convincing evidence that respondent willfully sought to mislead a judge, in violation of section 6068, subdivision (d) , by concealing his inactive enrollment status, by suggesting February 21, 2007, as an available date for the preliminary hearing when he knew that his inactive enrollment would become effective February 13, 2007, and by indicating to the court on February 21, 2007, that he was ready for the preliminary hearing.

Count Four – Business and Professions Code Section 6106 – Moral Turpitude

The court finds that there is clear and convincing evidence that respondent willfully committed an act or acts of moral turpitude, dishonesty or corruption, in violation of section 6106, by filing a false affidavit with the State Bar Court (January 3, 2007 order).

Count Five – Business and Professions Code Section 6103 – Failure to Obey a Court Order

The court finds that there is clear and convincing evidence that respondent willfully failed to obey a court order, in violation of section 6103, by failing to file the affidavit with the State Bar Court within 40 days from the date of his inactive enrollment under the January 3, 2007 order.

Count Six – Business and Professions Code Section 6106 – Moral Turpitude

The court finds that there is no clear and convincing evidence that respondent willfully committed an act or acts of moral turpitude, dishonesty or corruption, in violation of section 6106, by knowingly providing a false and or dishonest testimony to the State Bar.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Mitigation

The record establishes that respondent has proven by clear and convincing evidence the following two factors in mitigation. (Rule Proc. of State Bar, tit. IV, Stds for Atty. Sanctions of Prof Misconduct,⁴ std. 1.2(e).)

Respondent was suffering from the effects of depression and alcoholism at the time of his misconduct in the Hildreth matter. (Std. 1.2(b)(iv).)

Testimony of Daniel Skenderan, Ph.D.

Daniel Skenderan's, Ph.D. ("Dr. Skenderan"), deposition transcript of March 5, 2008, was entered into evidence in lieu of court testimony. Accordingly, there is no professional medical or psychological testimony on the record regarding respondent's medical or psychological state after March 5, 2008.

Dr. Skenderan first met with respondent in March 2007. Respondent was also being treated by Rebecca Kornblu, M.D., and was attending meetings as part of the plan for admission into the State Bar's Lawyer Assistance Program ("LAP"). Dr. Skenderan met with respondent on a weekly basis up to the time of his deposition. Initially, Dr. Skenderan diagnosed respondent as suffering from alcoholism, which is in remission, and major depression. Dr. Kornblu prescribed medication for respondent to deal with respondent's depression and anxiety.

According to Dr. Skenderan, respondent's alcoholism started in college and he also suffered from self-esteem and anxiety issues since childhood. Respondent did not suffer from depression until he was an adult. In addition to the stressors at work, respondent suffered the death of family members during this time period, specifically the deaths of his father in September 2006 and his stepfather.

⁴ Future references to standards or std. are to this source.

Respondent has been sober since October 11, 2006.

In a July 17, 2007 letter, Dr. Skenderan recommends that upon return to work, respondent should, among other things, most importantly concertize a very strong relapse prevention program. At his deposition, Dr. Skenderan was not aware if respondent has ever prepared such a program.

Dr. Skenderan finds respondent's current clinical status to be greatly improved over his initial symptomatic presentation.

Respondent demonstrated good character by the attestation of a wide range of references in the legal community and general community. (Std. 1.2(b)(vi).) Respondent produced good character testimony from two witnesses who testified at trial and nine witnesses who submitted letters on his behalf. Four of the letters were from attorneys and are given significant weight, even though the letters were dated more than two years ago.

Character Testimony at Trial

Afra Jones ("Ms. Jones") has known respondent for 25 years and has hired respondent to represent her. She opines that respondent is a great lawyer, is open and honest. Ms. Jones is aware of respondent's misconduct in the Hildreth matter and her opinion is not changed. She is also aware of respondent's alcohol problem. Ms. Jones believes respondent is an honorable and ethical person.

Susan Polson ("Ms. Polson") has known and worked for respondent since November 1997. Ms. Polson believes respondent to be an honest, honorable person and is a religious man.

Character Testimony by Letter

The following letters of good character were admitted into evidence.

Ethel Marie Hubbard ("Ms. Hubbard") submitted a letter dated May 7, 2007. Ms. Hubbard finds that respondent helps those in need at their church and is a man who shows great

compassion and love for people. She states that respondent is the one everyone goes to for advice, money, and whatever their need is. When Ms. Hubbard's husband became ill, leading to his death, respondent helped pay her bills until he no longer could. She claims that respondent is the son that every mother dreams of having.

Michael Brown ("Mr. Brown") submitted an undated letter. Mr. Brown has known respondent for 14 years as a friend and respondent has been his attorney. Respondent represented Mr. Brown pro-bono in a criminal matter in which the charges were eventually dropped. Mr. Brown believes respondent to be a trustworthy and honest person and has referred other clients to respondent. He further claims that respondent is a great asset to the community and to those who hire him.

David P. Carmichael, Esq., ("Mr. Carmichael") submitted a letter dated May 9, 2007. Mr. Carmichael has known respondent for 20 years. He opines that during this time, respondent has demonstrated a high level of personal integrity, competence and respect for his ethical responsibilities as an attorney. He believes respondent's reputation in the community is that of an excellent criminal defense attorney who handles many cases pro-bono or at a reduced fee. He also states that respondent is a devoted father, husband, and employer.

Eric D. Paris, Esq., ("Mr. Paris") submitted a letter dated May 9, 2007. Mr. Paris has known respondent for 14 years and is his friend, business associate, mentor, and spiritual leader. Mr. Paris has worked on cases with respondent and has watched him represent clients with great skill and zealousness. Mr. Paris is aware of a matter in which respondent failed to notify a client regarding settlement and failure to disburse settlement funds and finds this to be an aberration compared to the outstanding work respondent has done over the years. Mr. Paris believes respondent is suffering from depression brought on by family tragedies and sought solace in a manner that has caused harm to him.

Heidi H. Romeo, Esq., (“Ms. Romeo”) submitted a letter dated May 10, 2007. Ms. Romeo has known respondent for four months, during which time respondent has maintained a desire to remain sober and take all steps necessary to do so. Ms. Romeo writes that respondent has shared his misconduct with her and believes respondent is making a sincere effort to overcome his misdeeds.

Ava Hardiek (“Ms. Hardiek”) submitted a letter dated May 7, 2007. Respondent is her brother, mentor, and former employer. Ms. Hardiek believes respondent has exhibited extraordinary character, compassion, determination, and a devotion to his clients. Respondent has provided many hours of volunteer work for staff and members of Loveland Church, as well as serving as a mentor for the youth and young adults. Respondent has provided support and encouragement to Ms. Hardiek as she obtained a paralegal degree and has helped her family financially. Ms. Hardiek writes that she is fully aware of respondent’s misconduct and still believes respondent to be a fine attorney.

Charles E. Singleton, Sr., Pastor (“Pastor Singleton”) submitted a letter dated May 13, 2007. Pastor Singleton is the pastor of Loveland Church and has known respondent since 1982 when respondent joined his congregation. Pastor Singleton has watched respondent grow to be a man of character and integrity. Pastor Singleton was saddened to learn of respondent’s mismanagement of his trust account but was proud to learn that he went beyond merely making his error right. He states that respondent has always been available to help whenever he could. For several years he provided leadership for a ministry called, “The Esquires,” a group of legal professionals that provided pro bono services to the church and its members. Pastor Singleton claims that respondent is a great supporter of the church’s Youth Ministry, giving his time and financial support to the young people of the community. To him, respondent is a trusted friend and has been a positive influence on Pastor Singleton’s children.

Pastor Bill Bauer (“Pastor Bauer”) submitted a letter dated May 8, 2007. Pastor Bauer is the Senior Executive Pastor of Loveland Church and has known respondent for 15 years. Pastor Bauer believes respondent to be a man of integrity and character. Respondent gives his time, energy, and financial support to the ministry. Pastor Bauer states that respondent has taken underprivileged youth to join him and his family on weekend outings, which has helped change the direction of many young men and women. Pastor Bauer trusts respondent’s integrity and honesty and is fully aware of respondent’s trust account violations.

Cynthia A. Dunning, Esq., (“Ms. Dunning”) submitted a letter on May 12, 2007. Ms. Dunning is fully aware of the great error in judgment respondent made in handling the Hildreth matter. Ms. Dunning has known respondent for 25 years and has watched respondent set aside his own needs in dealing with others. She states that respondent has served as a mentor to youth in the community and has been a positive influence to her sons after the death of their father. Ms. Dunning has witnessed respondent’s struggle with depression and dealing with the deaths of his father and stepfather.

B. Aggravation

The record establishes several factors in aggravation by clear and convincing evidence. (Std. 1.2(b).)

Respondent has a prior record of discipline. (Std. 1.2(b)(i).)

On November 19, 1999, the Supreme Court issued an order (S082044; State Bar Court case Nos. 95-O-18057; 96-O-03673; 96-O-03763), suspending respondent from the practice of law for two years, stayed, two years’ probation, and 60 days’ actual suspension. Respondent was culpable of violating rule 4-100(B)(4). In mitigation, respondent had no prior record of discipline; displayed candor and cooperation with the State Bar; took steps to timely atone for his

misconduct; acted in good faith; suffered extreme difficulties in his family life; provided good character declarations; and had shown rehabilitation.

The current misconduct by respondent evidences multiple acts of misconduct. (Std. 1.2(b)(ii).) He committed acts of moral turpitude and dishonesty, including misappropriation; failed to notify Hildreth of receipt of her settlement funds; failed to pay client funds promptly; failed to communicate with client; failed to obey court order; mislead a judge; and engaged in the unauthorized practice of law.

Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations. (Std. 1.2(b)(iii).) Rather than admitting that he had no authority to sign the release in the Hildreth matter, he testified at this trial that he was able to simulate Hildreth's signature because he had the power of attorney.

Respondent's misconduct significantly harmed a client, the public or the administration of justice. (Std. 1.2(b)(iv).) Respondent's client and her medical providers were not paid promptly in the Hildreth matter. Also, respondent appeared in court while not entitled to practice law.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Respondent maintains that he was not practicing law when he appeared before Judge Hunt on February 21, 2007.

V. DISCUSSION

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

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

In this case, the standards call for the imposition of a minimum sanction ranging from reproof to disbarment. (Std. 1.7(a), 2.2, 2.3, 2.4(b), and 2.6.)

Standard 1.7(a) sets forth that if a member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding.

Standard 2.2(a) provides that culpability of willful misappropriation of entrusted funds must result in disbarment, unless the amount is insignificantly small or if the most compelling mitigating circumstances clearly predominate. Then the discipline must not be less than a one-year actual suspension, irrespective of mitigating circumstances.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.4(b) provides that culpability of a member's willful failure to perform services and willful failure to communicate with a client must result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Finally, standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton*, (2005) 36 Cal.4th 81, 92.)

The State Bar urges that respondent be disbarred, particularly in light of his misappropriation in the Hildreth matter and his multiple acts of moral turpitude. Respondent argues that he should be placed on probation only.

It is settled that an attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) In this matter, respondent had flagrantly breached his fiduciary duties to his client by signing the release without Hildreth’s consent or knowledge and by failing to hold the settlement funds in his client trust account, which was tantamount to misappropriation. Moreover, he violated basic notions of honesty and endangered public confidence in the legal profession by engaging in the unauthorized practice of law, filing a false affidavit under California Rules of Court, rule 9.20, and making misrepresentations to the State Bar.

After balancing all relevant factors, including the underlying misconduct, the aggravating circumstances and the mitigating factors, the court concludes that disbarment would be unduly harsh but a period of no actual suspension would not commensurate with the gravity of respondent’s misconduct.

Therefore, the court determines that a two-year actual suspension is proper and necessary for the protection of the public, the courts and the legal profession.

VI. RECOMMENDATIONS

A. Recommended Discipline

IT IS HEREBY RECOMMENDED that respondent **DUANE D'ROY DADE** be suspended from the practice of law in California for three years, that said suspension be stayed, and that respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first two years of probation and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law, pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct;
2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;
3. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

4. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;
5. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1;
6. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201);
7. The period of probation must commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and
8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent

from the practice of law for three years that is stayed, will be satisfied and that suspension will be terminated.

B. Multistate Professional Responsibility Exam

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

C. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Willful failure to do so may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁵

D. Costs

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

Dated: December 16, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court

⁵ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)