FILED JUNE 9, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.:**05-O-03316-RAP** (05-O-03701);
	)	05-O-03569 (07-O-14922;
HOWARD DAVID HENRY	)	08-O-10281) (Cons.)
	)	
Member No. 134634	)	**DECISION AND ORDER OF**
	)	**INVOLUNTARY INACTIVE**
A Member of the State Bar.	)	**ENROLLMENT**

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on March 20, 2009. At the time of submission, the State Bar of California (State Bar) was represented by Deputy Trial Counsel Ashod Mooradian. Although respondent Howard David Henry (respondent) initially participated, this matter ultimately proceeded by way of default.

The State Bar filed a Notice of Disciplinary Charges (NDC #1) against respondent on May 30, 2008. A copy of NDC #1 was properly served on respondent that same day, in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California (Rules of Procedure).[1]

On July 14, 2008, the court held an initial status conference. Respondent participated in this status conference and was ordered to file his response to NDC #1 by July 31, 2008. On August 20, 2008, respondent filed a response to NDC #1.

[1] Unless otherwise indicated, all documents were properly served pursuant to the Rules of Procedure.

On September 30, 2008, the State Bar filed a second Notice of Disciplinary Charges (NDC #2). As respondent did not file a response to NDC #2, the State Bar filed and properly served a motion for the entry of respondent's default on November 7, 2008.[2]

Following respondent's failure to file a written response within ten days after service of the motion for the entry of his default, the court, on December 2, 2008, filed an order of entry of default and involuntary inactive enrollment in the matter involving NDC #2.[3] A copy of said order was properly served on respondent at his membership records address, and was not subsequently returned by the U.S. Postal Service as undeliverable or for any other reason.

The case involving NDC #1 ultimately proceeded to trial on February 24, 2009. Upon respondent's failure to appear at trial, the court struck his response to NDC #1, entered his default, and consolidated this matter with the proceedings involving NDC #2. In addition, State Bar Trial Exhibits 1-36 were admitted into evidence.

Following the filing of the State Bar's closing brief, this matter was submitted for decision on March 20, 2009.

II. Findings of Fact & Conclusions of Law

All factual allegations contained in NDC #1 and NDC #2 are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 14, 1988, and has been a member of the State Bar of California at all times since that date.

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[2] The motion also contained a request that the court take judicial notice of all of respondent's official membership addresses. The court grants this request.

[3] Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e) was effective three days after the service of this order by mail.

B. The Lozano Matter (Counts 1-3) - NDC #1 - Case No. 05-O-03316

1. Findings of Fact

In about October 1998, Antonia Lozano (Lozano) purchased a piece of real property with Ildefonso Alvarenga (Alvarenga). The property was located on Oak Street in Bellflower, California (Oak Street property). Lozano and Alvarenga agreed to share the costs and expenses of the Oak Street property.

In about May 2004, Alvarenga and Lozano began to undergo inter-personal friction and decided that they could no longer live together in the Oak Street property.

On about May 26, 2004, Lozano hired respondent to represent her in an action to determine her rights and interests in the Oak Street property. Respondent's fee agreement required him to file a legal action, serve it upon Alvarenga, and to determine his client's interests in the Oak Street property by negotiation or at trial. Lozano was interested in either purchasing Alvarenga's share of the Oak Street property or selling the Oak Street property to obtain her fair share of the proceeds.

Respondent and Lozano agreed that Lozano would pay respondent $1,000 at the time she retained his services, $1,000 at the time of a settlement conference or mediation, and $1,500 at the time of the trial readiness conference. Lozano was also required to deliver $500 to respondent for costs.

On about May 26, 2004, pursuant to the terms of their fee agreement, Lozano paid respondent $1,000, as advanced attorney fees and $500 for costs.

On or about June 15, 2004, recognizing that the circumstances had changed and that the relationship between Lozano and Alvarenga had deteriorated, respondent and Lozano agreed on a Revised Retainer agreement. The new agreement included a requirement that Lozano pay respondent an advance fee of $27,500 (for 100 hours of

legal work at $275 per hour) and that she pay respondent an additional $1,500 in advance costs.

On about June 15, 2004, respondent knew that Lozano had approximately $29,000 in her bank account and that she intended to use the money in her bank account to pay respondent's advance fees.

The June 15, 2004 Revised Retainer agreement (Revised Retainer agreement) contained a clause that granted respondent a lien on the Oak Street property "for the full outstanding balance of fees and costs incurred under this agreement, and [client] consents to the filing of a lien against said property with the County Recorder."

Respondent never advised Lozano, prior to her agreeing to let him lien the Oak Street property, that she may seek the advice of an independent lawyer of her choice regarding the lien provision of the Revised Retainer agreement. Respondent did not give Lozano any reasonable opportunity to seek the advice of an independent attorney. Lozano's first language is Spanish, and there is no evidence that the lien and its terms were fully disclosed and transmitted in writing to Lozano in a manner which she should have reasonably understood them.

On or about July 28, 2004, Lozano transferred $28,921.24 from her bank account at Washington Mutual Bank into respondent's client trust account at Washington Mutual Bank (CTA).

In about March 2005, Lozano and Alvarenga settled the division of their interests in the Oak Street property.

Throughout March and June 2005, Lozano and her son left numerous telephonic messages at respondents office, and sent numerous e-mails to respondent's AOL account,

asking to speak to him about Lozano's case and demanding that he return Lozano's advance fees.

In about December 2005, respondent agreed to refund $25,000 of Lozano's unearned advance fees. As of about March, 2008,[4] respondent had refunded $11,000 of Lozano's unearned advance fees.[5]

2. Conclusions of Law

a. Count One: Rules of Professional Conduct of the State Bar of California, Rule 3-300[6] [Acquiring Interest Adverse to Client]

Rule 3-300 states that a member must not knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

> (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
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> (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
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> (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

By failing to disclose fully in writing all terms of the lien transaction to Lozano, failing to advise Lozano in writing that she may seek the advice of an independent attorney, and failing to give Lozano a reasonable opportunity to seek legal advice, respondent willfully acquired a pecuniary interest adverse to his client in violation of rule 3-300.

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[4] The NDC mistakenly listed this date as "March, 20008." This is clearly a typographical error and is not prejudicial to respondent.

[5] There is no indication in the record that respondent has since refunded any more of Lozano's unearned advance fees.

[6] All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

b. Count Two: Business and Professions Code Section 6068, Subd. (m)[7] [Failure to Communicate]

Section 6068, subdivision (m), provides that it is the duty of 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.

By failing to respond to Lozano's (and her son's) numerous requests regarding the status of her matter and her demands for the return of all unearned fees, respondent failed to respond to a client's reasonable status inquiries, in willful violation of section 6068, subdivision (m).

c. Count Three: Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By not agreeing to refund Lozano's unearned advance fees until December 2005, and by not completely refunding those fees by March 2008, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

C. Client Trust Account Violations (Counts 4-6) - NDC #1 - Case No. 05-O-03701

1. Findings of Fact

At all times relevant to the events alleged herein, respondent maintained his client trust account at Washington Mutual Bank (CTA). At all times relevant to the events alleged herein, respondent did not maintain any other client trust account.

[7] All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

From on or about March 14, 2005 through on or about September 7, 2005, respondent deposited the following checks into his CTA on the dates indicated below:

Check No.	Amount	Date Deposited	Payor
1119	$ 500.00	03/14/05	H. David Henry
20971	$7,675.00	03/23/05	Val-Chris Invest., Inc.
15356	$2,400.00	03/25/05	JMJ Financial Group, Inc.
9059	$ 900.00	04/28/05	H. David Henry
9058	$ 950.00	05/02/05	H. David Henry
1215	$ 300.00	06/17/05	H. David Henry
1214	$ 800.00	06/24/05	H. David Henry
1212	$ 800.00	06/24/05	H. David Henry
21747	$4,678.00	06/30/05	Val-Chris Invest., Inc.
1220	$ 975.00	08/08/05	H. David Henry
1221	$1,275.00	08/08/05	H. David Henry
25973	$4,675.00	08/23/05	Value Home Loan
1292	$ 700.00	09/07/05	H. David Henry

These checks consisted entirely of respondent's personal funds from his Bank of the West personal account and investments.

Between on or about March 25, 2005 through on or about May 26, 2005, respondent issued checks drawn upon his CTA to pay his personal and business expenses including, but not limited to the following:

Check No.	Date Issued	Amount	Payee
1055	03/25/05	$250.00	Incarnation Parish School
1064	04/11/05	$275.00	Incarnation Parish School
1054 (E-Check)	04/13/05	$460.60	Verizon Wireless
1072	05/26/05	$886.87	Arden Animal Hospital

On or about June 29, 2005, July 18, 2005, and July 21, 2005, Washington Mutual Bank notified the State Bar that respondent issued checks drawn upon his CTA against insufficient funds, including:

Check Nos.	Date Presented	Amount	Account Balance
1070	06/27/05	$1,095.00	$ 115.94
1071	07/14/05	$ 122.00	-$1,559.59
1071	07/19/05	$ 122.00	-$1,559.59

2. Conclusions of Law

a. Count Four: Rule 4-100(A) [Commingling Personal Funds in Client Trust Account]

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in an identifiable bank account which is properly labeled as a client trust account and no funds belonging to an attorney or law firm shall be deposited in such an account or otherwise commingled with such funds. By depositing personal funds into his CTA, respondent commingled funds belonging to respondent in a client trust account, in willful violation of rule 4-100(A).

b. Count Five: Rule 4-100(A) [Misuse of Client Trust Account]

By using checks from his CTA to pay personal and business expenses, respondent misused his CTA, in willful violation of rule 4-100(A). However, because this conduct is so closely related to the misconduct found in Count Four, i.e. respondent's personal use of his client trust account; Count Five is afforded no additional weight in culpability.

c. Count Six: Section 6106 [Moral Turpitude - Issuance of NSF Checks]

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 willfulness, 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.)

By repeatedly issuing checks drawn upon his CTA when he knew, or was grossly negligent in not knowing, that the checks were issued against insufficient funds, respondent committed acts involving moral turpitude, in willful violation of section 6106.

D. The Davis Matter (Counts 7-8)[8] - NDC #2 - Case No. 05-O-03569

1. Findings of Fact

In January 2004, Lennard Davis Jr. filed a divorce proceeding against his wife, Lorna Davis (Mrs. Davis). Mrs. Davis moved out of the family home located in Sylmar, California (the Davis home).

During the pendency of the Davis' divorce proceeding, the lending institution that financed the Davis' home began foreclosure proceedings against the Davis' home. The foreclosure sale was set for October 28, 2004.

Mr. Davis sought to refinance the Davis home to pay the mortgage arrearage, but Mrs. Davis would not agree to sign the loan documents. On about October 5, 2004, Mr. Davis hired respondent for the limited purpose of obtaining Mrs. Davis' signature on the loan documents, or to obtain a court order that would allow Mr. Davis to refinance the Davis home without her signature. Mr. Davis paid respondent an advance fee of $1,800.

On October 18, 2004, respondent filed an Order to Show Cause and a Motion to terminate Mrs. Davis' interest in the Davis home.

On October 22, 2004, the Superior court entered an order that allowed Mr. Davis to refinance the Davis home with only his signature. In addition, Mr. and Mrs. Davis stipulated that the escrow company deliver $20,000 to respondent and that respondent place the $20,000 in his trust account on in an interest-bearing instrument. The stipulation required respondent to keep the $20,000 in trust or in an interest-bearing instrument until Mrs. Davis' rights and/or interest in those funds could be determined. The parties further stipulated that the $20,000 would be distributed in satisfaction of Mrs. Davis' rights or interests or in accordance with the parties' later stipulation.

[8] For the purposes of clarity, the court will identify Counts 1 - 10 of NDC #2 as Counts 7 - 16.

On November 1, 2004, respondent requested that the escrow company, JMJ Financial (JMJ), wire the Davis' funds into his checking account at Bank of the West. That same day, JMJ wired the Davis' money into respondent's checking account. The Davis' money was never deposited into respondent's client trust account.

About one year later, Mr. Davis demanded that respondent take the money out of his checking account and give it to Mr. Davis. Respondent took the money out of the bank, but did not give it to Mr. Davis.

As of September 30, 2008, the Davis' $20,000 was not in a trust account or interest-bearing account.[9] Respondent has not delivered the money to either Mr. Davis and/or Mrs. Davis.

By withdrawing the Davis' funds, and taking sole possession of the Davis' $20,000, respondent has misappropriated the Davis' funds.

2. Conclusions of Law

a. Count Seven: Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]

By putting the Davis' $20,000 into his general account and not his client trust account, respondent failed to deposit funds received for the benefit of a client in an identifiable bank account which is properly labeled as a client trust account, in willful violation of rule 4-100(A).

b. Count Eight: Section 6106 [Moral Turpitude - Misappropriation]

By misappropriating the Davis' $20,000 respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

[9] There is no indication in the record that respondent placed the Davis' funds into a trust account or interest-bearing account at any time following September 30, 2008.

E. The Cooper Matter (Counts (9-12) - NDC #2 - Case No. 07-O-14922

1. Findings of Fact

In about September 2003, Yvonne Cooper (Cooper) was involved in an automobile accident. She was represented in the resulting personal injury claim by Michael Alder (Alder). Alder settled Cooper's claim, but did not disburse Cooper's funds to her. In about January of 2007, Cooper hired respondent to obtain her file and her money from Alder.

On about January 18, 2007, respondent received Cooper's file from Alder and a check in the amount of $5,542.09 that was made out to respondent. The check was for the balance of Copper's funds that Alder had in his possession.

On about January 19, 2007, respondent deposited Cooper's funds into his Citibank checking account. On about February 28, 2007, the balance in respondent's Citibank checking account was $3,849.03.

In about March 2007, Cooper met with respondent who told him that he had received about $5,000 from Alder. At that time, Cooper hired respondent to pursue a claim against Cooper's under-insured motorist policy with 21st Century Insurance.

Respondent never pursued a claim, on Cooper's behalf, against her under-insured motorist policy at 21st Century Insurance.

On about March 30, 2007, the balance in respondent's Citibank checking account was $524.03.

On about April 12, 2007, Cooper spoke to respondent on the telephone. Respondent told her that his wife took all of the money out of his bank accounts including his trust account. On about April 17, 2007, the balance in respondent's Citibank checking account was $9.03.

Between April 18, 2007 and May 31, 2007, Cooper placed numerous calls to respondent's office. Each time that she called, Cooper left a message asking respondent to return her call. Respondent never returned Cooper's calls.

On about May 31, 2007, Cooper hired Shirley Bliss (Bliss) to obtain her money and file from respondent. On May 31, 2007, Bliss sent a letter to respondent demanding Cooper's money and file. Respondent never responded to Bliss' letter.

From about June 8, 2007 through August 2, 2007, respondent's Citibank checking account had a negative balance.

On or about August 2, 2007, CitiBank closed respondent's CitiBank checking account. When CitiBank closed respondent's CitiBank checking account the balance in the account was $-15.97. Respondent misappropriated all of Cooper's funds.

2. Conclusions of Law

a. Count Nine: Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]

By putting Cooper's $5,542.09 into his checking account and not his client trust account, respondent failed to deposit funds received for the benefit of a client in an identifiable bank account which is properly labeled as a client trust account, in willful violation of rule 4-100(A).

b. Count Ten: Section 6106 [Moral Turpitude - Misappropriation]

By misappropriating Cooper's $5,542.09, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

c. Count Eleven: Rule 3-110(A) [Failure to Perform with Competence]

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence. By failing to take any action to pursue Cooper's claim against her under-insured motorist policy at 21st Century

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

d. Count Twelve: Section 6068, Subd. (m) [Failure to Communicate]

By not returning Cooper's phone calls and by not responding to Bliss' letter, respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

F. The Blazevic Matter (Counts (13-16) - NDC #2 - Case No. 08-O-10281

1. Findings of Fact

In about February 2007, Nicole Blazevic (Blazevic) sold her residence. Due to a dispute with Blazevic's homeowners' association, the escrow company, Financial Title Company (FTC), withheld $34,100 of Blazevic's funds from the sale of her condominium.

Blazevic hired respondent in February 2007 to obtain her money from FTC. On about February 22, 2007, respondent sent a letter to FTC regarding Blazevic's matter.

On about April 23, 2007, FTC issued a check in the amount of $34,100 to respondent. The check was for the entire balance of Blazevic's funds that FTC had in its possession. On about that same day, respondent deposited Blazevic's $34,100 into his general account at Citibank.

From that day forward, respondent never released Blazevic's funds to her, nor gave her an accounting of the funds that he held for her. Respondent never told Blazevic that he had received her funds from FTC. On May 29, 2007, the balance in respondent's general account was $-390.46. On or about August 13, 2007, Citibank closed respondent's general account due to multiple overdrafts on the account.

On about January 10, 2008, Blazevic hired Joseph Iacopino to obtain her money from respondent. On about January 10, 2008, Iacopino sent a letter to respondent demanding that he return Blazevic's funds. Respondent never responded to Iacopino's letter. Respondent misappropriated all of Blazevic's funds.

2. Conclusions of Law

a. Count Thirteen: Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]

By putting Blazevic's $34,100 into his general account and not into his CTA, respondent failed to deposit funds received for the benefit of a client in an identifiable bank account which is properly labeled as a client trust account, in willful violation of rule 4-100(A).

b. Count Fourteen: Section 6106 [Moral Turpitude - Misappropriation]

By misappropriating Blazevic's $34,100 respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

c. Count Fifteen: Section 6068, Subd. (m) [Failure to Communicate]

By not notifying Blazevic that he had received her funds from FTC, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

d. Count Sixteen: Section 6068, Subd. (m) [Failure to Communicate]

By not responding to Iacopino's demand letter, respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

III. Mitigating and Aggravating Circumstances

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2.)[10]

A. Mitigation

No mitigating factors were submitted into evidence. Respondent, however, has no prior record of discipline in approximately 16 years of practice prior to engaging in his first act of misconduct in the current proceeding.[11] Practicing law for 16 years before committing misconduct is a mitigating factor.[12]

B. Aggravation

The court finds three factors in aggravation. (Std. 1.2(b).)

1. Multiple Acts of Wrongdoing

Respondent committed multiple acts of wrongdoing ranging from failing to communicate to the misappropriation of client funds. (1.2(b)(ii).)

2. Significant Harm

Respondent's misconduct resulted in extensive financial harm to his clients. (Std. 1.2(b)(iv).) Said harm included his failure to refund $14,000 in unearned fees to Antonia Lozano, his $20,000 misappropriation from Lennard and Lorna Davis, his $5,542.09 misappropriation from Yvonne Cooper, and his $34,100 misappropriation from Nicole Blazevic. In total, respondent misappropriated $59,642.09 and failed to refund an additional $14,000.

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[10] All further references to standard(s) are to this source.

[11] Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's membership records.

[12] The Supreme Court and Review Department have routinely considered the absence of prior discipline in mitigation even when the current misconduct was serious. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 106-107.)

3. Failure to Participate

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) Although respondent participated in the Initial Status Conference and filed a response to NDC #1, he chose not to further participate in the proceedings and provided the court with no explanation for his absence.

IV. Discussion

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

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

Standards 2.2(a), 2.2(b), and 2.3, among others, apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory; they may be deviated from

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

The State Bar urges that respondent be disbarred. The Supreme Court has repeatedly held that disbarment is the usual discipline for the willful misappropriation of client funds. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; and *Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

Based on the present circumstances, including the total amount of monies misappropriated, the number of clients affected, the extensive aggravation, and the lack of compelling mitigating circumstances, the court concludes that no discipline short of disbarment is appropriate. The court's conclusion is guided by extensive case law recommending or ordering disbarment in cases involving the willful misappropriation of significant client funds. (See *Kelly v. State Bar* (1988) 45 Cal.3d 649 [$19,597.05 in misappropriated funds]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 [$39,977.09 in misappropriated funds]; *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583 [$66,423.23 in misappropriated funds]; *Chang v. State Bar* (1989) 49 Cal.3d 114 [over $7,000 in misappropriated funds]; and *In the Matter of Conner, supra,* 5 Cal. State Bar Ct. Rptr. 93 [$26,699.56 in misappropriated funds]. [13])

Respondent's misconduct and his inaction during this proceeding reflect his "disdain and contempt for the orderly process and rule of law and clearly demonstrate that the risk of future misconduct is great." (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 581.) Accordingly, the court recommends his disbarment.

[13] While all of these cases involve unique facts and circumstances, the gravamen in each is the misappropriation of client funds.

V. Recommended Discipline

The court recommends that respondent Howard David Henry, State Bar Number 134634, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

It is further recommended that respondent make restitution and furnish satisfactory proof thereof to the State Bar's Office of Probation, as follows:

> (1) To Antonia Lozano in the amount of $14,000 plus 10 percent interest per annum from December 1, 2005 (or reimburses the Client Security Fund to the extent of any payment from the fund to Antonia Lozano in accordance with Business and Professions Code section 6140.5);
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> (2) To Lennard and Lorna Davis in the total amount of $20,000 plus 10 percent interest per annum from November 1, 2005 (or reimburses the Client Security Fund to the extent of any payment from the fund to Lennard and Lorna Davis in accordance with Business and Professions Code section 6140.5);
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> (3) To Yvonne Cooper in the amount of $5,542.09 plus 10 percent interest per annum from January 18, 2007 (or reimburses the Client Security Fund to the extent of any payment from the fund to Yvonne Cooper in accordance with Business and Professions Code section 6140.5); and
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> (4) To Nicole Blazevic in the total amount of $34,100 plus 10 percent interest per annum from April 23, 2007 (or reimburses the Client Security Fund to the extent of any payment from the fund to Nicole Blazevic in accordance with Business and Professions Code section 6140.5).[14]

It is also recommended that respondent be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule

[14] Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d)

within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[15]

VI. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 220(c).)

VII. Costs

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

Dated: June 9, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court

[15] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)