FILED APRIL 10, 2008

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **STEPHEN RONALD DIAMOND**, **Member No. 183617**, A Member of the State Bar.	)	**Case No. 05-O-04605-RAH (05-O-04613; 05-O-04808; 05-O-04871; 06-O-10462; 06-O-10680; 06-O-11600)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this default disciplinary matter, respondent **Stephen Ronald Diamond** is charged with 28 counts of professional misconduct, including (1) forming a partnership with a non-attorney to operate a personal injury law practice in which respondent aided the non-attorney in the unauthorized practice of law; (2) failing to notify clients of receipt of settlement funds; (3) failing to maintain client funds in a trust account; (4) failing to communicate; (5) failing to return client files; (6) committing acts of moral turpitude, which involved client funds of at least $182,777; and (7) lending his name to be used by a non-attorney.

Based upon the egregious nature and extent of culpability, as well as the applicable aggravating circumstances, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) on July 9, 2007, and properly serving it on respondent at his official membership records address.

Between August and December 2007, respondent filed various unsuccessful motions,

including a motion to dismiss and request for immediate stay. But he never filed a response to the NDC.

Deputy Trial Counsel Melanie J. Lawrence of the State Bar requested that respondent's default be entered on three separate occasions but was denied.

On January 2, 2008, respondent failed to appear for the in-person hearing on the order to show cause. As a result, the court issued terminating sanctions pursuant to the order to show cause for respondent's failure to participate in discovery and ordered his default be entered immediately. Respondent was enrolled as an inactive member on January 5, 2008, under Business and Professions Code section 6007, subdivision (e).[1] An order of entry of default was sent to respondent's official address.

This matter was submitted for decision on January 15, 2008, after the State Bar filed a brief on culpability and discipline. In its brief, the State Bar moved to strike certain allegations alleged in the NDC, count 25, regarding commingling personal funds with client funds in the CTA. The motion is hereby granted.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC 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 September 24, 1996, and has been a member of the State Bar since that time.

B. General Background

In mid-2004, Jae Bum Kim (Kim), a non-attorney, leased office space at 1200 Wilshire Blvd., Suite 312, Los Angeles, California, 90017 (the Wilshire Blvd. Office). Kim had previously worked as the office manager for an attorney at the same address. The attorney had consolidated his

[1]All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

practice in another location, and Kim took over the lease.

Thereafter, Kim hired a staff of at least five case managers, including, but not limited to, Andy Shin (a.k.a. Andy Kim), Dana Chung, Robin Lee, Micky Park, and Evan Chang, and a receptionist, Elsa Villa (hereinafter referred to collectively and individually as "staff"), to form a putative law office. At the time, no attorney worked in the Wilshire Blvd. office.

In September 2004, Kim and respondent entered into an agreement regarding the formation of a personal injury law practice, known as Essence Professional Law Corporation or alternatively, as the Law Offices of Stephen R. Diamond, A Professional Law Corporation. Respondent opened a client trust account (CTA), account No. 046800046, and a business operating account (general account), account No. 500011734, at the Koreatown Galleria Branch of Hanmi Bank in Los Angeles.

Kim and staff, thereafter, through at least September 2005, signed up personal injury clients, performed legal work on their files, entered into settlement negotiations with defendants' insurance carriers, settled cases, endorsed settlement checks, made deposits and withdrawals from respondent's CTA, all pursuant to the September 2004 agreement entered into between Kim and respondent. Kim and staff speak Korean, and respondent does not. Most of respondent's clientele were Korean speaking.

Over the course of their one year association, respondent worked part-time in the Wilshire Blvd. office, and Kim paid respondent approximately $5,000 per month in cash. More than $1.33 million was deposited and withdrawn from respondent's CTA during that period. Activity ceased in the CTA at the end of September 2005; its balance was approximately $583, and remained at that sum through at least in January 2006.

More than 200 client matters were settled by Kim and staff from September 2004 to September 2005. The corresponding settlement checks were endorsed by Kim and staff, and deposited into the CTA. The funds from the settlements were thereafter withdrawn in the form of checks, primarily negotiated in two ways: cashing at a check cashing service located at 3rd Street Liquors in Los Angeles, near the Wilshire Blvd. office; or deposited directly into the general account. In both instances, the checks were routinely negotiated after affixing the purported endorsement of

the payee.

C. Findings of Fact (The Yoo, Hong, Chung and Lee Matters)

1. The Yoo Matter (Case No. 05-O-04605)

In January 2005, Nan Young Yoo employed respondent, through Kim and staff at the Wilshire Blvd. office, to represent her in a personal injury matter arising out of a January 1, 2005 injury. Yoo was given and signed a contingency fee employment agreement. Thereafter, and over the period of several months, Yoo made several calls to the Wilshire Blvd. office, and left a message each time requesting a return call regarding the status of her case. No one returned Yoo's calls.

In March 2005, respondent, through Kim and staff, obtained from Yoo's insurer, Infinity Insurance Co., a check for $2,000, which represented payment for medical costs associated with her personal injuries. Yoo was never informed of the receipt of the $2,000 from Infinity, and never saw the check. Yoo's name, however, was signed by Kim and staff to the check and it was deposited into the CTA.

In June 2005, Kim and staff settled Yoo's case for $13,500, without obtaining Yoo's consent. Yoo's name, however, was signed by Kim and staff, without her knowledge or consent, to a settlement agreement provided by Farmers Insurance Co. (Farmers). Respondent performed no work on Yoo's case and was unaware of the settlement negotiations or ultimate settlement.

On June 28, 2005, Farmers sent a settlement check to respondent at the Wilshire Blvd. office, payable to respondent and Yoo, in the amount of $13,500 (the Yoo settlement check). Respondent caused or permitted the Yoo settlement check to be deposited into his CTA on June 29, 2005. Respondent did not inform Yoo of the receipt of funds on her behalf.

Two days before the settlement check was deposited into the CTA on June 27, 2005, a check for $7,000 was issued from that account, made payable to Yoo. Yoo's name was endorsed on the reverse of the $7,000 check, without her knowledge or consent, and it was cashed.

In September 2005, because she had not received any phone calls from respondent or anyone in his office, Yoo employed new counsel to investigate her claim. Yoo learned for the first time that her case had been settled.

Thereafter, Yoo complained through her new counsel, J. S. Kim, to respondent about the settlement of her case without her knowledge and the failure to distribute to her any portion of the Yoo settlement. On September 13, 2005, attorney Kim also requested that respondent forward Yoo's file. Respondent did not do so.

Instead, in his response to attorney Kim, he disavowed any knowledge of Yoo's case, claimed that he was not her attorney, never had been her attorney and owed her no duty, and blamed his office staff for the misconduct. Respondent claimed, further, that he had recently fired Kim and staff upon discovering they had signed medical liens without his permission.

2. The Hong Matter (Case No. 05-O-04613)

In late October 2004, Katie Lee, her parents (Moon Ja Hong and Myong Kook Hong), and daughter (Michelle Myers) (collectively, "the Hong clients") employed respondent, through Kim and staff at the Wilshire Blvd. office, to represent them in a personal injury matter arising out of an October 23, 2004 hit-and-run, automobile accident that resulted in personal injuries to each of them. On behalf of her family and herself, Katie met with Kim and staff. Kim introduced her to respondent immediately following her first and only meeting with him at the Wilshire Blvd. office. Over the period of the next several months, Katie made numerous calls to respondent's Wilshire Blvd. office, and left a message each time requesting a return call regarding the status of her case. No one returned her calls.

On November 1, 2004, Kim and staff sent a letter to State Farm Insurance Company on behalf of the Hong clients to begin the claims process. On November 9, 2004, Kim and staff sent further correspondence to State Farm, again referencing the Hong clients, individually, by name.

On May 9, 2005, Kim and staff submitted medical bills pertaining to the Hong clients' medical treatment. No billings, however, for Michelle were contained in the correspondence, and no demand for payment was made on her behalf.

On June 23, 2005, Kim and staff sent a demand letter to State Farm on behalf of the Hong clients. The settlement demands were, as follows: $11,000 for Katie, whose medical treatments amounted to approximately $4,345; $19,000 for Mrs. Hong, whose medical treatments amounted

to approximately $9,715; and $30,000 for Mr. Hong, whose medical treatments amounted to approximately $19,472. No demand was made on behalf of Michelle. Respondent performed no work on the Hong clients' case and was unaware of the settlement negotiations or ultimate settlement.

Between May 11 and August 5, 2005, State Farm sent six settlement checks to respondent at the Wilshire Blvd. office, payable to respondent and the Hong clients, totaling $63,000, as settlement of the claims of Katie, and Mr. and Mrs. Hong. Respondent caused or permitted the settlement checks to be deposited into his CTA. Respondent did not inform the Hong clients of the receipt of funds on their behalf.

However, between May and August 2005, eight CTA checks were made payable to the Hong clients and Dr. Christopher Kim for a medical lien, as follows:

Date	***Payee***	***Amount***
5/17/05	Myong Kook Hong	$2,000
5/18/05	Moon Ja Hong	$2,000[2]
8/9/05	Katie Lee	$7,000
8/15/05	Myong Kook Hong	$9,000
8/15/05	Moon Ja Hong	$7,500
8/18/05	Moon Ja Hong	$9,000[3]
8/18/05	Michelle Myers	$8,000
8/19/05	Dr. Christopher Kim	$8,000

The Hong clients' and Dr. Kim's names were endorsed on the reverse of the checks without their knowledge or consent. The $7,000 check dated August 9 and the $9,000 check dated August

[2]The Notice of Disciplinary Charges alleged that the check made payable to Moon Ja Hong was in the amount of $1,000 and $2,000. Since the amount is contradictory, the court finds that the check was most likely in the amount of $2,000, the same amount as the check made payable to Myong Kook Hong. The typographical error is insignificant.

[3]The memo portion of the check stated that it was issued regarding Katie Lee.

15 were deposited into respondent's general account. The other six checks were negotiated at 3rd Street Liquors.

In September 2005, because she had not received any phone calls from respondent or anyone in his office, Katie employed new counsel to investigate her claim. She then learned for the first time that her claim had been settled, as well as her parents' claims.

Thereafter, the Hong clients complained to respondent directly and through Katie's new counsel, Scott Meyers, about the settlement of their claims without their knowledge, and the failure to distribute any portion of their respective settlement funds to them. On September 28, 2005, Katie requested that respondent forward her file. He did not do so.

Instead, on September 28, 2005, respondent responded to Katie, disavowing any knowledge of her case or her parents' cases, claimed that he was not their attorney, never had been their attorney, and owed them no duty, and blamed his office staff for the misconduct. Respondent claimed further that he had recently fired Kim and staff upon discovering they had signed medical liens without his permission. Finally, respondent attempted to blame Katie for not being more vigilant about contacting him previously about the cases.

3. The Chung Matter (Case Nos. 06-O-10462 and 06-O-11600)

In June 2004, Wan Ki Chung and Jun Lee (husband and wife) were involved in an automobile accident resulting in personal injuries (the Chung matter). Mr. and Mrs. Chung initially employed attorney Frederick Lee to represent them. In November 2004, they employed respondent, through Kim and staff at the Wilshire Blvd. office, to represent them in their personal injury matter. Respondent's office sent attorney Lee a substitution of attorney, which attorney Lee executed in early December 2004, and returned, along with formal notice of his attorney's lien against any settlement, verdict or recovery obtained by respondent.

Also in January 2005, attorney Lee informed 21st Century Insurance, the carrier involved in the Chung matter, of his lien. In March 2005, attorney Lee sent respondent a letter, informing him that he would relinquish any claim for attorney fees in the Chung matter, but continued to assert his lien for costs actually advanced.

In July 2005, Kim and staff settled Mr. Chung's claim for $32,000 and Mrs. Chung's claim for $42,000, without obtaining their consent. Respondent performed no work on the Chung matter and was unaware of the settlement negotiations or ultimate settlement.

On August 2, 2005, 21st Century Insurance sent two settlement checks to respondent at the Wilshire Blvd. office: one made payable to respondent, Frederick Lee, and Wan Ki Chung for $32,000, and another to respondent, Frederick Lee, and Jun Lee for $42,000 (the Chung settlement checks). Respondent caused or permitted the Chung settlement checks to be deposited into his CTA on August 5, 2005. Respondent did not inform Mr. Chung or Mrs. Chung of the receipt of funds on their behalf.

Although their names were endorsed on the settlement checks, Frederick Lee and Mr. and Mrs. Chung were unaware that the case had settled, and did not endorse any of the settlement checks, and did not consent to the endorsement of their names by any other person.

However, six CTA checks were made payable to Mr. and Mrs. Chung and Dr. Chang Woo Ko for a medical lien, as follows:

Date	***Payee***	***Amount***
8/5/05	Wan Ki Chung	$ 4,000
8/5/05	Jun Lee	$ 7,500
8/8/05	Dr. Chang Woo Ko	$ 5,000
8/8/05	Wan Ki Chung	$ 7,500
8/18/05	Jun Lee	$10,000
8/19/05	Wan Ki Chung	$10,000

Mr. and Mrs. Chung's and Dr. Ko's names were endorsed on the reverse of the checks without their knowledge or consent. The August 5 check for $7,500 and the August 8 check for $5,000 were deposited into respondent's general account. The remaining checks were negotiated at 3rd Street Liquors.

In September 2005, Dr. Ko first learned that the Chung matter had settled, and contacted respondent by e-mail to attempt to collect on his medical liens of $6,160 and $7,460, respectively,

for Wan Ki Chung and Jun Lee.

Respondent replied to Dr. Ko on September 28, 2005, disclaiming any knowledge of the Chung matter, questioning the veracity of Dr. Ko's assertion of his lien, and disputing the legitimacy of his billings for chiropractic care of Mr. and Mrs. Chung. Respondent claimed that he had been a victim of his employees, Kim and staff, and invited Dr. Ko to file a criminal complaint. Respondent asserted that he would not, however, report his former employees, as he did not possess sufficient evidence of any criminal action, and wished to avoid being named in a possible malicious prosecution claim.

In December 2005, attorney Lee learned from 21st Century Insurance that the Chung matter had settled in August 2005. Attorney Lee then complained to respondent about the settlement without a payment of his attorney's lien. In February 2006, attorney Lee wrote to respondent, informing respondent that his costs incurred during his representation of Mr. and Mrs. Chung totaled $2,754.35.

Respondent responded to attorney Lee, disavowing any knowledge of the Chung matter. He claimed that he was not their attorney, never had been their attorney and owed them no duty, and blamed his office staff for the misconduct. Respondent claimed, further, that he had recently fired Kim and staff.

4. The Lee Matter (Case No. 06-O-10680)

In September 2004, Seung Duk Lee and Sang Won Lee (the Lees) employed respondent, through Kim and staff at the Wilshire Blvd. office, to represent them in a personal injury matter arising out of a September 26, 2004 automobile accident.

Seung Duk Lee was informed by Kim and staff that he and Sang Won Lee would each receive one-third of the settlement funds, that respondent would get one-third, and that the medical provider would get one-third. Mr. Lee agreed that respondent could accept a settlement on his behalf, and purported to agree to the same terms on behalf of Sang Won Lee.

In February 2005, respondent received a $1,000 check for medical payment on behalf of Sang Won Lee and caused it to be deposited into his CTA. Neither Mr. Lee nor Seung Duk Lee were

informed of the receipt of the $1,000 medical payment check.

In April 2005, Kim and staff negotiated a settlement of the Lees' claims with the adverse party's insurer, Auto & Home Insurance Plus: $9,000 for Seung Duk Lee and $4,000 for Sang Won Lee. On April 5, 2005, Auto & Home Insurance Plus sent checks in those amounts to the Wilshire Blvd. office. The respective checks were endorsed with the Lees' names, without their knowledge or consent, and deposited into the CTA. Respondent did not inform the Lees of the receipt of the settlement checks from Auto & Home Insurance Plus.

On April 8, 2005, a check for $4,000 was issued from the CTA, made payable to Sang Won Lee. Sang Won Lee's name was endorsed on the reverse of the $4,000 check without her knowledge or consent, and it was thereafter negotiated at 3rd Street Liquors.

In June 2005, Mr. Lee returned to the Wilshire Blvd. office to inquire about his case. He was informed that respondent was away on a business trip. The staff member he spoke to said that he had no information concerning the Lees' case.

In December 2005, because he had not received any communications from respondent or anyone in his office, Mr. Lee returned to the Wilshire Blvd. office, and found that respondent no longer occupied the office suite. He contacted Auto & Home Insurance Plus in January 2006 and learned for the first time that his case and Sang Won Lee's case had been settled.

Thereafter, Mr. Lee complained by letter to respondent about the settlement of the Lees' cases without their knowledge, and the failure to distribute to them any portion of the settlement funds.

Respondent responded to Mr. Lee, disavowing any knowledge of the Lees' case, and claimed that he was not their attorney, never had been their attorney and owed them no duty. He blamed his office staff for the misconduct. Respondent claimed, further, that he had recently fired Kim and staff upon discovering they had signed medical liens without his permission.

D. Conclusions of Law (The Yoo, Hong, Chung and Lee Matters)

1. Aiding the Unauthorized Practice of Law (Rules of Prof. Conduct, Rule 1-300(A))[4]

[4] References to "rule(s)" are to the Rules of Professional Conduct.

(Counts 1, 7, 17 and 21)

Respondent is charged in counts 1, 7, 17 and 21 with a violation of rule 1-300(A) of the Rules of Professional Conduct, which provides that a member must not aid any person or entity in the unauthorized practice of law.

By creating an environment in the Wilshire Blvd. office in which Yoo, the Hong clients, Mr. and Mrs. Chung, and the Lees could employ respondent without respondent's specific knowledge of the clients' identity, case or cause, and in which Kim and staff could negotiate with the insurance company and settle their cases, without any attorney supervision or client consent, respondent aided and abetted Kim and staff in the unauthorized practice of law.

Therefore, respondent, by clear and convincing evidence, willfully violated rule 1-300(A) by aiding Kim and staff in the unauthorized practice of law in counts 1, 7, 17 and 21.

2. Failure to Notify of Receipt of Client's Funds

(Rules Prof. Conduct, Rule 4-100(B)(1)) (Counts 2, 8, 18 and 22)

Respondent failed to notify a client promptly of the receipt of the client's funds, securities, or other properties in violation of rule 4-100(B)(1) in counts 2, 8, 18 and 22, as follows:

- By not informing Yoo of the receipt of the medical payment from Infinity or the Yoo settlement check from Farmers;
- By not informing the Hong clients of the receipt of the medical payments or settlement checks from State Farm;
- By not informing Mr. and Mrs. Chung of the receipt of their settlement checks from 21st Century Insurance; and
- By not informing the Lees of the receipt of the medical payment check for $1,000, and the settlement funds from Auto & Home Insurance Plus.

3. Failing to Maintain Client Funds in Trust Account

(Rules Prof. Conduct, Rule 4-100(A)) (Counts 3, 9, 19 and 23)

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or

otherwise commingled therewith. Respondent violated rule 4-100(A) in counts 3, 9, 19 and 23, as follows:

- By causing or permitting the issuance of a CTA check purporting to be payable to Yoo, in the amount of $7,000, to be negotiated two days prior to the deposit or receipt of the Yoo settlement, at a time when no funds were on deposit in the CTA for Yoo's benefit, respondent misused his CTA and misappropriated funds belonging to another client or clients;
- By causing or permitting CTA checks purporting to be payable to Moon Ja Hong and Myong Kook Hong, to be endorsed by one other than the respective clients and without the client's knowledge or consent, and then deposited into the general account, respondent misused and failed to maintain client funds in his CTA;
- By causing or permitting CTA checks purporting to be payable to Jun Lee and Dr. Ko to be endorsed by one other than the client and medical provider, respectively, and without the client's and medical provider's knowledge or consent, and then deposited into the general account, respondent misused and failed to maintain client funds his CTA; and
- By causing or permitting CTA a check purporting to be payable to Sang Won Lee to be endorsed and negotiated by one other than the client, and without the client's knowledge or consent, respondent misused his CTA.

4. Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m)) (Counts 4 and 10)

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.

Respondent willfully violated section 6068, subdivision (m), in counts 4 and 10, as follows:

- In the Yoo Matter, by not responding to Yoo's repeated, periodic phone messages requesting information regarding her case and by not informing Yoo that her case was settled; and
- In the Hong matter, by not responding to Katie's periodic phone messages requesting

information regarding her and her parents' claims and by not informing the Hong clients that their claims had been settled.

5. Failure to Return Client File

(Rules Prof. Conduct, Rule 3-700(D)(1)) (Counts 5 and 11)

Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client's papers and property. Respondent willfully violated rule 3-700(D)(1) by not providing Yoo or her attorney, J. S. Kim, with Yoo's file upon J. S. Kim's request and by not providing Katie or her attorney, Scott Meyers, with Katie's file upon her request in counts 5 and 11.

6. Moral Turpitude (Bus. & Prof. Code, § 6106)(Counts 6, 12, 20 and 24)

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

Respondent willfully violated section 6106 in counts 6, 12, 20 and 24, involving a total of $166,500 in client funds, as follows:

- By causing or permitting the Yoo settlement agreement, the $2,000 medical payment check from Infinity, and the $13,500 check from Farmers to be endorsed and negotiated by one other than Yoo, and by not paying Yoo or anyone on her behalf, including any medical provider, any portion of the $15,500 received on her behalf;
- By causing or permitting the Hong clients' medical payment checks from State Farm, and the settlement checks from State Farm to be endorsed and negotiated by one other than Katie Lee, Moon Ja Hong, or Myong Kook Hong, and by not paying the Hong clients or anyone on their behalf, including any medical provider, any portion of the $63,000 received on their behalf;
- By causing or permitting the Chung settlement checks from 21st Century Insurance to be endorsed and negotiated by one other than Wan Ki Chung and Jun Lee, by not paying Wan Ki Chung or Jun Lee or anyone on their behalf, including any medical provider, any portion of the $74,000 received on their behalf, by not honoring attorney

Frederick Lee's lien for advanced costs, and by not honoring Dr. Ko's lien for medical services provided, signed by respondent or on his behalf;

- By causing or permitting the $1,000 medical payment check, the $9,000 settlement check for Seung Duk Lee and the $4,000 check for Sang Won Lee, all from Auto & Home Insurance Plus, to be endorsed and negotiated by one other than the Lees, and by not paying the Lees or anyone on their behalf, including any medical provider, any portion of the $14,000 received on their behalf; and
- By later disavowing any and all responsibility toward his clients and to third parties to whom he had become a fiduciary.

E. Findings of Fact (The Son, Kwon, Kim and Yeum Matters (Case No. 05-O-04808))

This case involved four clients, Sonny Son, David Kwon, Mi Young Kim, and Crystal Sang Sook Yeum. All of whom sought and received treatment from Hyo-Jo Pain Control and Rehabilitation and its proprietor, Richard Kim, D.C. The clients and respondent entered into a medical lien for Dr. Kim's services. After Dr. Kim passed away, attorney Scott Meyers represented Elizabeth Kim, Dr. Kim's widow, in an attempt to obtain payment for the liens. He and respondent agreed to settle those four liens and respondent gave attorney Meyers assurances that he would instruct his staff to pay the liens. To date, respondent has not made any payment to Dr. Kim's estate or to Hyo-Jo Pain Control and Rehabilitation.

1. The Son Matter

In 2004, respondent was employed to represent Sonny Son in a personal injury matter. Son sought and received treatment from Dr. Kim. Respondent and Son entered into a lien for Dr. Kim's services.

Respondent settled Son's case in November 2004, and received a settlement check for $3,442, payable to respondent and Son. On November 30, 2004, respondent caused the check to be deposited into his CTA, and immediately withdrew $2,442 as attorneys fees from the settlement. No sums were disbursed from the settlement to Son or to anyone else on her behalf, including Dr. Kim.

In July 2005, attorney Meyers contacted respondent in an attempt to obtain payment for the Son's lien. Believing that Son's case had settled for only $2,500, attorney Meyers agreed to accept $833.33 as full payment of the lien held for Son's treatment.

2. The Kwon Matter

In 2004, respondent was employed to represent David Kwon in a personal injury matter. Kwon sought and received treatment from Dr. Kim. Respondent and Kwon entered into a lien for Dr. Kim's services.

Respondent settled Kwon's case in November 2004, and received a settlement check for $4,500, payable to respondent and to Kwon. On November 22, 2004, respondent caused the check to be deposited into his CTA. Immediately thereafter, a check was written from the CTA in the amount of $4,500, payable to Kwon. No sums were disbursed from the settlement to anyone else from the Kwon settlement, including Dr. Kim. Respondent ostensibly took no fee for Kwon's representation.

In July 2005, attorney Meyers contacted respondent in an attempt to obtain payment for the Kwon lien. Attorney Meyers agreed to accept $1,500 as full payment of the lien held for Kwon's treatment.

3. The Kim Matter

In 2004, respondent was employed to represent Mi Young Kim in a personal injury matter. Kim sought and received treatment from Dr. Kim. Respondent and Kim entered into a lien for Dr. Kim's services.

Respondent settled Kim's case in January 2005, and received a settlement check for $1,835.15, payable to respondent and to Mi Young Kim. On January 27, 2005, respondent caused the check to be deposited into his CTA. Immediately thereafter, respondent withdrew the entire sum from the CTA as attorney fees. No sums were disbursed from the settlement to anyone else, including Dr. Kim.

In July 2005, attorney Meyers contacted respondent in an attempt to obtain payment for the Mi Young Kim lien. Attorney Meyers agreed to accept $611.71 as full payment of the lien held for

Mi Young Kim's treatment.

4. The Yeum Matter

In 2004, respondent was employed to represent Crystal Sang Sook Yeum in a personal injury matter. Yeum sought and received treatment from Dr. Kim. Respondent and Yeum entered into a lien for Dr. Kim's services.

Respondent settled Yeum's case in April 2005, and received a settlement check for $6,500, payable to respondent and to Yeum. On April 12, 2005, respondent caused the check to be deposited into his CTA, and immediately withdrew $1,300 as attorneys fees from the settlement. A check was issued from the CTA in the amount of $4,300, payable to Yeum, as well as a check in the amount of $600 made payable to Dr. Kim. Although the check to Dr. Kim was endorsed and negotiated, Dr. Kim never in fact received it, or any funds from the settlement of Yeum's case. In fact, the check was endorsed and negotiated after Dr. Kim's death.

In July 2005, attorney Meyers contacted respondent in an attempt to obtain information as to whether the Yeum case had settled. Respondent did not respond.

F. Conclusions of Law (Case No.05-O-04808)

Moral Turpitude (Bus. & Prof. Code, § 6106) (Counts 13-16)

Respondent willfully violated section 6106 in counts 13 through 16, involving a total of $16,277 in settlement funds, as follows:

In count 13, by not disbursing any funds to Dr. Kim (or his successors in interest) for treatment of Son, despite entering into a lien with him and Son for Son's treatment, by withdrawing $2,442 as fees immediately upon depositing Son's settlement check of $3,442, and by not disbursing any further sums to Son, or to anyone else on her behalf;

- In count 14, by not disbursing any funds to Dr. Kim (or his successors in interest) for treatment of Kwon, despite entering into a lien with him and Kwon for Kwon's treatment;
- In count 15, by not disbursing any funds to Dr. Kim (or his successors in interest) for treatment of Mi Young Kim, despite entering into a lien with him and Mi Young Kim for Mi Young Kim's treatment; and

- In count 16, by not disbursing any funds to Dr. Kim (or his successors in interest) for treatment of Yeum.

G. Findings of Fact (Client Trust Account (Case No. 05-O-04871))

On September 6, 2005, check No. 1412, written on respondent's CTA, in the amount of $2,000, was paid against insufficient funds. The resulting balance in the CTA, after payment of the check was ($807.82).

On September 23, 2005, respondent caused a check to be drawn on his CTA, payable to the general account, in the amount of $6,000 (check No. 1418). Respondent personally drafted the check, and affixed his signature on the reverse as an endorsement for deposit.

On the same day, respondent then deposited check No. 1418 into his general account and issued a check from his general account, payable to "CASH for Cashier's Check," in the amount of $6,000 (check No. 1877). Respondent in fact purchased a cashier's check in the amount of $6,000 with check No. 1877.

Thereafter, respondent deposited the $6,000 cashier's check into his personal bank account.

H. Conclusions of Law (Client Trust Account)

1. Preserving Identity of Client Funds

(Rules Prof. Conduct, Rule 4-100(A)) (Count 25)

By issuing a check from his CTA in an amount exceeding the balance of funds on deposit at the time of the check's issuance, respondent misused his client trust account, in willful violation rule 4-100(A).

2. Moral Turpitude (Bus. & Prof. Code, § 6106) (Count 26)

By issuing a $6,000 CTA check, depositing it into his general account, then purchasing a $6,000 cashier's check with a check from the general account, and finally depositing the cashier's check into his personal account, respondent engaged in a scheme to defraud, attempted to and did commit money laundering, and misused his CTA, thereby committing an act or acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

I. Conclusions of Law (Partnership with a Non-Lawyer and Misuse of Name)

1. Forming a Partnership with a Non-Lawyer (Rules Prof. Conduct, Rule 1-310)

(Count 27)

Rule 1-310 prohibits an attorney from forming a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law.

By entering into an agreement with Kim and staff that allowed them to enter into employment agreements with clients, negotiate with adverse parties and insurers, make deposits and withdrawals into his CTA, and have ongoing access to funds from the CTA, in exchange for cash payments each month, respondent formed a partnership with a person or persons who are not lawyers in which the principal activities of the partnership was the practice of law, in willful violation of rule 1-310.

2. Permitting Misuse of Name (Bus. & Prof. Code, § 6105) (Count 28)

Section 6105 provides that lending his name to be used as attorney by another person who is not an attorney constitutes a cause for disbarment or suspension.

By entering into an agreement with Kim and staff that allowed them to enter into employment agreements with clients, negotiate with adverse parties and insurers, make deposits and withdrawals into his CTA, and have ongoing access to funds from the CTA, all while failing to exercise or require any supervisory control of the activities of the practice of law in Essence Law Corporation and Stephen R. Diamond, A Professional Law Corporation, by himself or another attorney, in exchange for compensation made in the form of cash payments of approximately $5,000, each month, respondent loaned his name to be used as attorney by another person or persons who were not attorneys.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factor was offered or received into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[5]

Although respondent had no record of prior discipline in his eight years of practice when the misconduct began in 2004, his lack of record is only given minimal credit as mitigation because his present misconduct is very serious. (Std. 1.2(e)(i).)

[5]All further references to standards are to this source.

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing and some of the misconduct demonstrate a pattern of misconduct involving at least 13 clients, including forming a law partnership with a non-attorney; aiding the unauthorized practice of law; committing acts of moral turpitude; failing to notify clients of receipt of settlement funds; failing to maintain client funds in a trust account; failing to communicate; failing to return client files; and lending his name to be used by a non-attorney. (Std. 1.2(b)(ii).)

Respondent's misconduct harmed significantly his clients, the public or the administration of justice. (Std. 1.2(b)(iv).) The clients did not receive their full portion of settlement proceeds. The medical providers were not paid for their services, despite the liens. The public is indeed harmed by Kim and staff's fraudulent law practice.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Respondent has not shown remorse or apologized to his clients, nor took any remedial action on behalf of his clients. He has yet to pay his clients or the medical providers. Respondent failed to come to grips with his culpability in asserting that he was never the attorney for the complaining clients and that he owed them no duty and blaming Kim and staff for defrauding them. He also blamed his clients for not being more vigilant about contacting him earlier. In fact, these clients left him numerous phone messages but all to no avail. Instead of contrition, respondent went to great lengths in his pretrial motions to blame the State Bar for unfounded misdeeds. "Respondent's use of specious and unsupported arguments in an attempt to evade culpability in this matter reveals a lack of appreciation both for his misconduct and for his obligations as an attorney." (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647.) "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Here, respondent has accepted no responsibility.

Respondent's failure to cooperate with the State Bar before the entry of his default is also a

serious aggravating factor. (Std. 1.2(b)(vi).) He failed to file an answer to the NDC despite the multiple opportunities afforded him to do so. He failed to appear at his deposition despite the order compelling his compliance with discovery. Finally, he failed to appear for the OSC hearing re sanctions.

V. 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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

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

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.

Standards 2.2(b), 2.3, 2.4(b), 2.6 and 2.10 apply in this matter.

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

Standard 2.3 provides: "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the

magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

Standard 2.4(b) provides that culpability of failing to communicate with a client must result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6(a) provides for discipline ranging from suspension to disbarment for violations of section 6068, subdivision (m), depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Finally, standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Respondent has been found culpable of serious misconduct involving at least 13 clients in this proceeding.

The State Bar urges disbarment, citing *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411 (two years of actual suspension), *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627 (18 months of actual suspension), and *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615 (one year of actual suspension) in support of its recommended discipline. The State Bar argues that because respondent's misconduct and the aggravating factors are more serious than those found in *Jones, Malek-Yonan* and *Bragg*, respondent should be disbarred.

Jones involved an attorney who allowed a non-attorney to operate a large scale personal injury practice involving capping, forgery and other fraudulent practices in the attorney's name for more than two years. The non-attorney handled all aspects of the personal injury practice without any supervision from Jones. Nearly $60,000 withheld from client settlements was misused. In mitigation, the attorney turned the non-attorney in to the police and cooperated with the authorities which resulted in a felony conviction for forgery and also turned himself in to the State Bar, established his good character and community activities and paid nearly $57,000 of his own money

to medical providers to remedy the non-attorney's misconduct. In aggravation, the attorney committed multiple acts of misconduct and caused considerable harm to medical providers. The attorney was actually suspended for two years with a three-year stayed suspension and a three-year probation.

Unlike *Jones,* there is no mitigating evidence, such as turning Kim and staff in to the police or cooperated with the authorities, establishing good character witnesses or community services, or paying the medical providers to make amends. Other than claiming that he fired Kim and staff, there is no evidence on whether he stopped the mishandling of his client trust account so to protect his client funds from further theft. Furthermore, respondent's aggravating evidence is more serious than that of *Jones*. Respondent lacked any understanding of his wrongdoing and insisted on blaming his staff for the fraudulent practices. He also committed additional acts of dishonesty, such as money laundering and causing a negative balance in his client trust account.

The court also finds guidance in *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708. There, the attorney for more than two years allowed his office manager, a non-lawyer, to run his practice, sign client trust account checks and handle all financial transactions without supervision. Despite evidence that the non-attorney was telling clients that he was Steele's partner and evidence that the non-attorney was embezzling funds, Steele did nothing to prevent further theft of client funds. Steele also personally committed other acts of dishonesty. In aggravation, Steele lacked candor during the disciplinary proceeding and committed multiple acts of misconduct. Very little mitigation was found. The attorney was disbarred.

Like *Steele,* respondent formed a reprehensible partnership with Kim. He completely abdicated his basic professional responsibilities as an attorney to properly supervise his client trust account and his law practice. In exchange for collecting $5,000 a month from Kim, respondent allowed Kim and staff almost free rein to perform such professional responsibilities in his name. As a result, more than 200 client matters were settled by Kim and staff; more than $1.33 million was deposited and withdrawn from respondent's client trust account; settlement funds involving $182,777 were withheld for payment to clients and medical providers; and forgery and fraudulent practices were order of the day. By the end of September 2005, the client trust account balance was

only $583.

Respondent's misconduct reflects a blatant disregard of professional duties. He had flagrantly breached his fiduciary duties to his clients and abused their trust as their attorney.

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.) The Supreme Court noted that "[t]he essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party." (*Id.*)

In this matter, respondent had abused his clients' trust and allowed Kim and staff to abscond thousands of dollars from settlement funds. Their taking of the funds is tantamount to misappropriation and respondent is responsible for their acts. The misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21.)

Moreover, respondent's misuse of his CTA involving client funds of $182,777 and act of money laundering when he issued the $6,000 for himself were acts of dishonesty which "manifest an abiding disregard of the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice." (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147.) In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) "It is clear that disbarment is not reserved just for attorneys with prior disciplinary records. [Citations.] A most significant factor . . . is respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing." (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.) An attorney's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding.

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Respondent's failure to participate in this hearing leaves the court without information about the underlying cause of respondent's offense or of any mitigating circumstances surrounding his misconduct. Therefore, based on the severity of the offense, the serious aggravating circumstances, the standards and the case law, the court concludes that the appropriate level of discipline is disbarment. "We believe that the public is therefore at risk unless respondent is required to successfully complete a reinstatement proceeding before again being allowed to practice law in this state." (*In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 830)

VI. Recommended Discipline

Accordingly, the court recommends that respondent **Stephen Ronald Diamond** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

The court 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.

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order 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 (Rules Proc. of State Bar, rule 220(c)).

Dated: April ___, 2008.

RICHARD A. HONN
Judge of the State Bar Court